

Submission from Straterra and the Aggregate and Quarry Association

To Ministry for the Environment

National Environment Standards for Freshwater

October 2019

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Its membership is comprised of mining companies, explorers, researchers, service providers, and support companies. The Aggregate and Quarry Association (AQA) is the industry body representing construction material companies which produce aggregate and quarried materials consumed in New Zealand. Together we represent the New Zealand extractives sector.
2. We welcome the opportunity to comment on the government's set of proposals designed to improve the current management of freshwater. The package of measures comprises a [discussion document](#), *Action for Healthy Waterways*, a draft national policy statement for freshwater management ([NPSFM](#)) to replace the existing national policy statement (last amended in 2017) and a proposed national environmental standard ([NES](#)) for freshwater.
3. This submission is on the proposed NES which contain rules that will apply nationally for matters such as vegetation clearance and earthworks in and adjacent to wetlands, and stream infilling and diversions. We have made a separate, accompanying submission on the Draft NPSFM.
4. The NES will have a lot of unintended consequences for the extractives industry as relatively harmless and routine activities could get unnecessarily caught by the proposals - particularly the non-complying and prohibited (in the case of infilling riverbed) status proposed.

Submission

5. In general, there is a move to non-complying status for industrial activities in the NES which reinforces the anti-development bias of the NES and the reform package generally. We are opposed to this non-complying classification under which no allowance is made for the environmental impact of the activities or the ecological value of the wetland or waterway being affected.

Definition of Natural Wetland

6. In the definitions (Clause 4), the definition of Natural Wetlands means a wetland as defined in the Resource Management Act (regardless of whether it is dominated by indigenous or exotic vegetation, and including coastal wetlands), except that it does not include:

- a) wet pasture or paddocks where water temporarily ponds after rain in places dominated by pasture, or that contain patches of exotic sedge or rush species; or
 - b) constructed wetlands; or
 - c) geothermal wetlands
7. The same definition is used in the draft NPSFM.
 8. This definition encompasses wetlands of all sizes and qualities. Combined with the restrictive rules, set out below, the impact is to protect just about any wet area of land against nearly all activities.
 9. A cost benefit analysis of taking this amount of land out of production has not been done – which isn't surprising given how much land in New Zealand covered by this definition is unknown.
 10. Under the proposed NPS councils are only required to try and identify natural wetlands over 0.05 hectares but there is no such qualifier in the NES.

Vegetation destruction and earth disturbance (Clauses 7-11)

11. The effects of Clauses 7 to 11 are to make engaging in vegetation clearance and earth disturbance activities within 10 metres of a natural wetland, a non-complying activity.
12. Non-complying is too restrictive a status, for such activities. Wetlands have a wide range of ecological values, but the non-complying status would assume they are all significant whereas they are not. The scale and effects of the vegetation clearance and earth disturbance activities need to be taken account of before blanket restrictions like this are applied.
13. The effects of both of the vegetation clearance and earth disturbance rules on the extractive sector, as well as many other industries, will make consents impossible to obtain. Significant land-based business activities would be halted, often for little gain.
14. Rather than non-complying, we believe vegetation clearance and earth disturbance activities should be classified as permitted, controlled or discretionary depending on the extent of the works and what conditions are met. If there are no effects on the wetland, vegetation destruction and earth disturbance should be permitted.
15. Clause 18(1)(d) makes infilling riverbeds discretionary if there are *no practical alternative methods of enabling the activity to take place*. In the case of vegetation clearance or earth disturbance, mineral extraction is often not possible without some form of this occurring. One option, therefore, is to replicate clause 18(1)(d) for vegetation clearance or earth disturbance activities so these be classified as discretionary in cases where there are no practical alternatives to enable the extraction to occur.
16. Finally, we point out that the term vegetation “destruction”, used in Clause 7 and 8 and elsewhere, has negative connotations. Vegetation ‘clearance’ or ‘removal’ are the terms usually used in regional and district plans. We recommend use of the word clearance rather than “destruction” be used in the NES.

Earth Disturbances for Drainage (Clauses 12-14)

17. Draining a wetland would become a prohibited activity under clause 14. Again, the clause elevates protection of all natural wetlands irrespective of their ecological value above any type of development other than the small list of exempted activities.
18. We consider any such proposal should be able to be assessed on their merits. Where any adverse effects on the water way (or the environment generally) are minor relative to the overall gains that the proposal provides, the activity should be allowed.
19. Clause 14, and the proposed prohibited status, would have unintended consequences for the extractives industry as a lot of relatively harmless and routine activities could get caught.
20. For example, overburden landforms are often constructed in valleys which have streams in the bottom of them and tributaries entering from the sides of the valleys. The earthworks / landform “fills” these stream beds. Vegetation removal in the riparian margin is also a component of this activity. In most cases, the stream around the landform is able to be diverted without any significant impact.
21. We believe the clause should be redrafted to make provision for disturbance for drainage in natural wetlands as permitted, controlled and restricted discretionary in relation to the size and quality of the natural wetland.

Water Take Activities (Clauses 15-17)

22. In these clauses water take activities include taking, using, damming, or diverting water.
23. Water take activities for industrial purposes will essentially become non-complying. Just about all other water take activities are discretionary.
24. Water take activities in the extractive sector are used for a number of purposes, many of which have environmental benefits, for example dust suppression. Streams that are diverted away from open case pits would be captured by the clause.
25. Again, the effect of this is to have no regard to the ecological value of the water nor take account of the purpose for which the water is taken, or the value of the activity.
26. We believe the clause should be redrafted to make provision for water take activities in natural wetlands as permitted, controlled and restricted discretionary in relation to the size and quality of the natural wetland.

Infilling Bed of River (Clause 18)

27. Essentially any infilling of a riverbed as part of normal industrial activity will become a non-complying activity under this clause. What constitutes the infilling of a riverbed is not defined in the NES.
28. Shifting overburden into a valley could be deemed to be filling a riverbed and would therefore be non-complying.

29. We believe the clause should be redrafted to make provision for infilling of a riverbed as permitted, controlled and restricted discretionary in relation to the size and quality of the natural wetland.