Regulatory Impact Statement: Proposed Regulations for Freshwater Farm Plans

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced for the purpose of informing final Cabinet decisions*
Advising agencies:	*Ministry for the Environment, Ministry for Primary Industries*
Proposing Ministers:	*Minister for the Environment, Minister of Agriculture*
Date finalised:	*20/07/2022*

Problem Definition

1. Freshwater underpins New Zealand's environmental, economic and cultural wellbeing, however our freshwater resources are under significant pressure following 150 years of population growth and land use change, as highlighted in the Environment Aotearoa Report 2019.
2. Progress is being made towards improving waterway health. Part of this has been through efforts made by many farmers and growers to reduce the impacts of their activities on freshwater, including through the use of farm environment plans. However, to achieve the Government's 2018 *Essential Freshwater: Healthy Water, Fairly Allocated* objectives to halt the degradation of our freshwater, start taking immediate steps to improve water quality by 2023, and reverse past damage to bring our waterways and ecosystems to a healthy state within a generation, the scope and scale of progress must accelerate.

Executive Summary

3. Mandatory and enforceable Freshwater Farm Plans (FW-FPs) are a key *Essential Freshwater* initiative designed to improve farm practice and support regional councils to carry out their freshwater management responsibilities under the National Policy Statement for Freshwater Management 2020 (NPSFM). The FW-FP Regulations will build on farmers and growers existing farm planning and land management activities – directly linking these activities to local catchment challenges, values and context.
4. The Regulations will deliver a nationally consistent freshwater farm planning framework that specifies required farm plan content (i.e., required planning outcomes, risk assessment methodology and associated farm plan mitigation actions) and determine the roles and responsibilities of national and regional government, Farm Operators and FW-FP certifiers and auditors. These regulatory requirements will enable progress towards achieving improved freshwater outcomes in a systematic and evidence-based way.

5. On 1 July 2020 Parliament inserted a new Part 9A *Freshwater Farm Plans,* into the Resource Management Act 1991 (RMA)[1]. Part 9A specifies much of the architecture of FW-FPs (e.g., which farms must have FW-FPs, the contents of FW-FPs, the relationships between certified FW-FPs and specified instruments and the compliance functions of regional councils).

6. The proposed components of the FW-FP regulations are summarised in Table 1.

Table 1 – Components of the FW-FP regulations

Component	Purpose
Outcomes	To specify the outcomes that must be achieved for the purpose of avoiding, remedying, or mitigating the adverse effects of farming activities on freshwater and freshwater ecosystems
Risk assessment	Specifying methods for identifying adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems
Actions to avoid, remedy, or mitigate risks	Specifying actions for avoiding, remedying, or mitigating the adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems
Recertification timeframes	Prescribing timeframes for when a FW-FP must be recertified, and prescribing the circumstances in which a certified FW-FP must be amended and recertified
Audit timeframes	Prescribing the frequency of audits

7. In July 2021, the Ministry for the Environment (MfE) and the Ministry for Primary Industries (MPI) published a discussion document[2] that presented options for the detailed design of the FW-FP system, to be promulgated in regulations, as provided for in Part 9A. This Regulatory Impact Statement (RIS) analyses options to achieve the most efficient and effective regulatory design of the FW-FP system.

8. The analysis takes the decision to mandate FW-FPs as a given. The case for mandatory FW-FPs was established as part of the Essential Freshwater RIS[3] in May 2020. The delivery of the FW-FP system using regulations is also taken as a given. The permitted scope of the regulations is specified in 217M (Regulations relating to freshwater farm plans) of Part 9A.

9. The overarching objectives of the FW-FP system are to:

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[1] Parliamentary Counsel Office, New Zealand Legislation. *Resource Management Act, 1991: Part 9A Freshwater farm plans* https://www.legislation.govt.nz/act/public/1991/0069/latest/LMS375840.html

[2] Ministry for the Environment and Ministry for Primary Industries. 2021. *Freshwater farm plan regulations: Discussion document*. Wellington: Ministry for the Environment.

[3] Ministry for the Environment. 2020. Regulatory Impact Analysis, *Action for healthy waterways,* Part II: Detailed Analysis. Wellington: Ministry for the Environment.https://environment.govt.nz/publications/action-for-healthy-waterways-part-2-detailed-analysis/.

- stop further degradation and reverse past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems;
- provide confidence that consistent freshwater outcomes are achieved; and
- provide enough flexibility to reflect individual farm circumstances.

10. The FW-FP regulations need to strike an appropriate balance between these three objectives.

11. Options for each of the components were analysed using five criteria derived from the objectives:

- **Effective:** not contrary to Te Mana o te Wai; identifies and avoids, remedies, or mitigates adverse effects; supports existing legislative requirements, the requirements of regional councils and catchment management objectives;
- **Practical:** minimises administration costs; feasible to implement; verifiable, auditable, and enforceable;
- **Credible:** methods are scientifically and culturally robust and adaptable; trusted by all stakeholders and partners;
- **Integrated:** supports broader Government, iwi, and industry initiatives; supports a competitive New Zealand agricultural sector; supports wider Government and sector objectives; consistent with Treaty of Waitangi obligations; and
- **Equitable:** will provide affected parties time to transition; recognise past actions; equitable distributional impacts; be cognisant the wellbeing of rural communities and people.

12. The criteria build on those used in the Initial Regulatory Impact Analysis[4] that accompanied the Freshwater Farm Plans Regulations discussion document. This discussion document was subject to public consultation during the period July to October 2021.

13. The **status quo**/counterfactual and preferred option for each system component are shown in Table 2.

Table 2

Component	**Status quo**/counterfactual	Preferred option
Outcomes	No outcomes are included in regulations	Outcomes in regulations with some details specified
Risk assessment	The regulations do not include requirements for risk assessment	The regulations set out the minimum requirements for the risk assessment

[4] Ministry for the Environment and Ministry for Primary Industries. 2021. Freshwater farm plan regulations: Initial regulatory impact analysis of the proposed options. Wellington: Ministry for the Environment.

Component	**Status quo**/counterfactual	Preferred option
Identifying actions to avoid, remedy, or mitigate risks	The regulations do not include any requirements for identifying actions	The regulations include high-level factors for the certifier to consider, and for some activities the regulations establish a process by which appropriate actions are identified centrally
Recertification timeframes	FW-FPs do not require regular recertification	Every FW-FP must be recertified within five years, unless a shorter timeframe is specified in a regional plan
Audit timeframes	The regulations do not prescribe audit timeframes	The audit frequency is subject to audit performance and farm system risk

14. Regulated outcomes will drive the content of FW-FPs. The regulations will require FW-FPs to reference catchment challenges, values, and context. This requirement will enable risks and actions to be prioritised based on local circumstances. The regulations will provide enough detail to be enforceable, but not so much detail to stifle on-farm innovation.

15. Part 9A requires that FW-FPs identify any adverse effects of farming activities on freshwater and freshwater ecosystems. This identification will be achieved through risk assessments. The minimum general requirements for risk assessments will be specified in regulations.

16. Part 9A also requires that FW-FPs specify actions that are appropriate for the purpose of avoiding, remedying, or mitigating each farm's adverse effects. It will be important that Farm Operators have the flexibility to identify and implement efficient and effective actions. For lower-risk activities or activities that require tailoring on-farm (e.g., riparian planting, sediment reduction), certifiers will have discretion to determine whether the actions are appropriate.

17. For some high-risk farming activities, the regulations may include explicit management standards to provide confidence that such activities are managed consistently and effectively.

18. Part 9A requires that FW-FPs be certified. Certifiers will be appointed by regional councils. The role of certifiers is to ensure that FW-FPs are fit-for-purpose and that they meet the requirements of Part 9A and the regulations. FW-FPs will need to be recertified to provide assurance that they remain fit for purpose. The preferred approach is for FW-FPs to be recertified every five years. Specific actions and events (e.g., a change in farming system) will trigger recertification to ensure that new risks are appropriately managed.

19. There will need to be checks to ensure that Farm Operators deliver the actions specified in FW-FPs. Part 9A requires auditors, who will be appointed by regional councils, to determine whether Farm Operators have undertaken actions that are specified in FW-FPs. Audit frequency will be determined by the results of audits.

20. Officials in MfE, MPI and regional councils are investigating how best to establish consistent and efficient methods to collect and report data. The intent is to establish systems that will provide the Government and regional councils with data to support:

    - the rollout and implementation of the FW-FP system; and

- regional council compliance, monitoring, and enforcement (CME) functions.

Limitations and Constraints on Analysis

21. The case for mandatory FW-FPs was established in May 2020 in the Essential Freshwater RIS. That RIS analysed all the identified options in the Essential Freshwater package, including mandatory FW-FPs.

22. The problem that FW-FPs seek to address is that too few farmers are adopting practices that would mitigate the adverse impacts of farming operations on water or are not doing so with sufficient urgency. The 2020 RIS analysed alternative options that would address this problem. These were to:

    - strengthen support for voluntary adoption of improved practices;
    - prescribe a comprehensive suite of good management practices in a National Environmental Standard (NES); or
    - introduce mandatory FW-FPs.

23. The analysis in the 2020 RIS concluded that mandatory FW-FPs would be superior to the alternatives because they would facilitate customised actions by Farm Operators, and that such actions would afford higher net benefits than alternative options. Subsequently, the Government decided to implement mandatory FW-FPs.

24. Between July and October 2021, the Government consulted on options for the FW-FP system in the Freshwater Farm Plan Regulations discussion document. This consultation was accompanied by an initial RIS.

25. Much of the architecture of FW-FPs is already legislated in Part 9A of the RMA. Part 9A specifies:

    - those farms that must have FW-FPs;
    - the duties of Farm Operators in preparing and maintaining a FW-FP;
    - the contents of FW-FPs;
    - that FW-FPs must be certified, the requirements of certification, and the obligations of certifiers;
    - that FW-FPs must be audited, the requirements of audits, and the obligations of auditors;
    - the functions of regional councils in relation to compliance;
    - the relationship between certified FW-FPs and specified instruments, specifically that a FW-FP may restrict an activity more than a provision of a specified instrument, but if a provision of a specified instrument restricts an activity more than a requirement of a freshwater farm plan, the provision of the specified instrument prevails; and
    - those aspects of the FW-FP system that may be addressed in regulations.

26. The analysis in this RIS is about identifying the most efficient and effective regulations to prescribe the details of the framework in Part 9A. The detail of the regulations is constrained by the scope of the regulations set out in 217M (Regulations relating to freshwater farm plans) of Part 9A of the RMA.

27. Between July and October 2021, the Government consulted on options for the FW-FP system in the Freshwater Farm Plan Regulations discussion document. This consultation was accompanied by an initial regulatory impact analysis.

28. The discussion document and initial regulatory impact statement presented options for:

- regulated outcomes;
- risk assessment;
- identifying actions to avoid, remedy, or mitigate risks/impacts;
- the process for accrediting and appointing certifiers;
- the role of the certifier (whether a certifier can be involved in the development of the FW-FP they certify);
- recertification;
- the process for accrediting and appointing auditors; and
- rolling out FW-FPs.

29. This RIS builds on options that were subject to consultation for regulated outcomes, risk assessment, actions, and recertification timeframes. It also presents options for audit timeframes. The process for appointing certifiers and auditors and rolling out FW-FPs are discussed in the context of implementation.

30. A total of 172 submissions[5] were received on the discussion document. Key themes from consultation included the costs to Farm Operators, maintaining flexibility in the choice of on-farm actions, and building the capacity and capability of certification and audit systems. These themes are a focus of this RIS.

31. Analysis of the received submissions has provided officials with confidence that in the qualitative impacts of proposals on regional councils, tangata whenua, Farm Operators, industry bodies, and rural professionals. Officials are confident that the identified preferred options will, collectively, be the most cost-effective approach.

Limitations on the analysis of alternative options

32. The available options for each part of the system are analysed against counterfactuals. Most of the analysis is qualitative[6]. We have varying degrees of confidence around the *absolute* size of net costs and benefits. These confidence levels are specified and explained in the cost-benefit analysis tables.

[5] A summary of submissions is available here: https://environment.govt.nz/assets/publications/FW-FP-summary-of-submissions-final.pdf.

[6] The RIS presents monetised costs to farm operators of preparing FW-FPs, and for having FW-FPs certified and audited.

Responsible Managers	
Gin Loughnan Manager - Climate Water and Agriculture Ministry for the Environment July 2022	Olivia Sullivan Manager - Water Policy Ministry for Primary Industries July 2022

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry for the Environment; Ministry for Primary Industries
Panel Assessment & Comment:	A joint Ministry for Primary Industries and the Ministry for the Environment Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement: Proposed Regulations for Freshwater Farm Plans. The panel considers the document meets the quality assurance criteria for regulatory impact analysis. The paper clearly sets out the options available, describes costs and benefits on impacted people, and provides a convincing analysis of the reasons for the regulations.

Background

Essential Freshwater

33. In response to a continuing decline in freshwater quality, in 2019 the Government publicly consulted on the *Action for healthy waterways* discussion document. This consultation informed the development of the *Essential Freshwater* work programme. The objectives of the *Essential Freshwater* work programme are to:

    - stop further degradation of our freshwater;
    - start making immediate improvements, so water quality improves within five years; and
    - reverse past damage to bring our waterways and ecosystems to a healthy state within a generation.

34. Mandatory FW-FPs were included in the 2019 consultation as an important component of the overall *Essential Freshwater* package of reforms. Managing the environmental impact of farming requires different actions depending on the farm type, the location and type of land, the stock and crops being grown, and other local circumstances. Farm plans are a tool to help farmers and growers to understand and respond to the unique environmental situation on their properties.

35. FW-FPs will support regional councils to carry out their freshwater management responsibilities and to provide Farm Operators with a practical tool that will enable them to demonstrate how regulatory requirements are being achieved.

Part 9A of the RMA

36. The structure and coverage of the FW-FP system is legislated in Part 9A. The purpose of Part 9A is to better control the adverse effects of farming on freshwater and freshwater ecosystems using certified FW-FPs.

37. FW-FPs are a risk-based, tailored response to the unique environmental situation on each farm. The purpose of a FW-FP is to determine and describe plans and actions that Farm Operators will undertake to manage the effects of their operations on water quality.

38. Farms must have a FW-FP if 20 or more hectares is in arable or pastoral land use, five or more hectares is in horticultural land use, or 20 or more hectares is a combination of arable, pastoral, or horticultural land use.

39. Once a FW-FP has been developed, it must be certified. The certifier must certify the FW-FP if it complies with the requirements of Part 9A and regulations. The farm will then be audited to check that it is operating in compliance with the FW--FP. The auditor must provide audit findings to the Farm Operator and to the relevant regional council.

40. Each Farm Operator is responsible for:

    - preparing a FW-FP;
    - amending the FW--FP as necessary following assessment;
    - submitting the plan for certification;
    - operating the farm in compliance with the FW-FP; and
    - arranging for the farm to be audited.

41. A Farm Operator is the person who has ultimate responsibility for the operation of the farm.

42. Regional councils are responsible for the enforcement of Part 9A using their powers under the RMA. They are responsible for monitoring compliance by Farm Operators, receiving notifications from certifiers, receiving audit reports, and appointing certifiers and auditors to operate in their regions.

43. Part 9A provides for regulations to give effect to Part 9A. Regulations may prescribe:

    - the content of FW-FPs, including how to identify, measure, avoid, remedy, or mitigate adverse effects, and outcomes to be achieved;
    - the form and manner of certification, including prescribing timeframes and circumstances in which a FW-FP must be recertified;
    - the timeframe and frequency of audits and the way audits must be completed;
    - criteria for the appointment of certifiers and auditors; and
    - infringement offences.

44. The scope of this Regulatory Impact Statement is limited to the analysis of options to establish a mandatory FW-FP system through regulations.

Objectives and assessment criteria

45. The objectives of the FW-FP system are derived from the purpose of the *Essential Freshwater* programme and Part 9A. These objectives are to:

    - stop further degradation and reverse past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems;

- provide confidence that consistent freshwater outcomes are being achieved; and
- provide enough flexibility to reflect individual farm circumstances.

46. Consistent assessment criteria are used throughout this Regulatory Impact Statement, with sub-criteria adapted or removed as necessary for different system components. The criteria are in Table 3.

Table 3: Assessment criteria

Effective	• Not contrary to Te Mana o te Wai • Identifies adverse effects of farming activities on freshwater and freshwater ecosystems • Avoids, remedies, or mitigates the effects of farming on freshwater • Supports the requirements of the RMA, the National Environmental Standards for Freshwater (NESF), and the NPSFM • Supports regional council requirements and catchment management objectives
Practical	• Minimises administration costs for the regulator and implementing organisations • Minimises administration and compliance costs to participants • Feasible to implement, including within the required timeframes • Verifiable, auditable, and enforceable
Credible	• Methods to avoid, remedy, or mitigate adverse effects are scientifically and culturally robust • Methods are adaptable as science, technology, and management practices change • Trusted by all stakeholders and partners
Integrated	• Integrates with and supports broader Government, iwi, and industry initiatives, processes, and tools • Supports a productive, profitable, and competitive New Zealand agricultural sector • Supports wider Government and sector objectives • Consistent with the Crown's Treaty of Waitangi obligations
Equitable	• Gives affected parties an appropriate amount of time to modify practices and transition to the new system • Recognises past actions and does not penalise people with undeveloped land • Distributional impacts are equitable, including on Māori agribusinesses • Recognises the wellbeing of rural communities and people

47. Figure 1 shows how options are assessed against the criteria.

Figure 1: Key for qualitative judgements

++	Much better than doing nothing/the **status quo**/counterfactual
+	Better than doing nothing/the **status quo**/counterfactual
0	About the same as doing nothing/the **status quo**/counterfactual
—	Worse than doing nothing/the **status quo**/counterfactual
— —	Much worse than doing nothing/the **status quo**/counterfactual

Chapter 1: Regulated outcomes

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

48. Part 9A of the RMA provides for regulations that specify the content of FW--FPs, including outcomes that must be achieved.

49. The discussion document proposed three regulated outcomes:

    - the reflection of catchment values and context;
    - ecosystem health; and
    - farm practices that respond to environmental needs.

Catchment challenges, values, and context

50. Catchment challenges, values and context are about the local area within which each farm operates, and the impacts of farming activities on receiving environments.

51. The inclusion of catchment challenges, values and context as a regulated outcome is important because the health of waterways is affected by the cumulative effects of land use in catchments. A requirement that FW-FPs consider local freshwater conditions and community aspirations will expand farm planning activity beyond the farm gate, linking farm management activities to catchment outcomes.

52. Catchment context information would draw on information held by regional councils. However, the FW-FP regulations would not impose additional requirements for councils to provide catchment context information, compared to the **status quo**.

53. Catchment context will link to limits and objectives developed through the NPS-FM, and other related planning documents, including relevant iwi management plans. The NPSFM includes the National Objectives Framework, which describes the required process for use by regional councils to manage freshwater in their regions, alongside communities and tangata whenua.

Ecosystem health

54. Based on submissions and subsequent analysis, ecosystem health will be better addressed through catchment context and the existing provisions of Part 9A. Section 217L of Part 9A (Relationship between certified FW-FPs and specified instruments) requires FW-FPs to be consistent with regional plan rules. These requirements will include rules that provide for the achievement of ecosystem health values. This value is a compulsory part of the National Objectives Framework.

Farm practices that respond to environmental needs

55. Farm practices that respond to environmental needs are already accounted for under section 217F of Part 9A (Contents of freshwater farm plan).

Status quo

56. Under the **status quo**, there would be no prescribed outcomes for FW-FPs. FW--FPs would only be required to comply with mandatory content requirements prescribed in regulations, and the requirements of Part 9A.

What is the policy problem or opportunity?

57. The actions in FW-FPs are required to achieve the objectives in Part 9A. These are to avoid, remedy, or mitigate the adverse effects of farming activities on freshwater and freshwater ecosystems. The committed actions will also need to achieve any other regulated outcomes.

58. The discussion document sought views on the included detail in the regulations. Many submitters advocated for the inclusion of outcomes in regulations. Some submitters suggested that outcomes should be determined at catchment or regional level, and not be included in regulations.

59. During consultation, some farmers and growers, industry bodies, and tangata whenua supported approaches that would maximise on-farm flexibility. Tangata whenua submitters recommended that regulated outcomes include recognition of wider tangata whenua values and aspirations for water across the nation, and for sites of cultural significance, mahinga kai values, and the health of taonga species and their habitats.

60. The inclusion of more detail in regulations may provide a stronger basis for CME by regional councils. Environmental non-governmental organisations (ENGOs) advocated that the regulations should include more detail.

What objectives are sought in relation to the policy problem?

61. The objective is confidence in the achievement of consistent freshwater outcomes and optimum flexibility in regulations to recognise the circumstances that apply to each farm.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

62. The scope of options is the prescribed detail prescribed in regulations. If regulations did not include such detail, the detail would need to be specified elsewhere, for example in guidance.

What options are being considered?

Option 1 – Status quo

63. Under the **status quo**, no outcomes would be included in regulations.

64. Part 9A specifies that FW-FPs identify and establish place requirements to address any adverse effects on freshwater and freshwater ecosystems, and that they comply with specified instruments, and not restrict a farming activity less than a provision in a specified instrument. Councils would be able to address regional outcomes through regional plans, and Farm Operators would still need to comply with national regulations.

Option 2 – Outcomes in regulations with additional guidance

65. This approach was the preferred option in the discussion document. Under this option, outcomes would be specified at a high level in the regulations, for example:

    The FW-FP is developed and implemented in a way that reflects catchment values and priorities.

66. Details on the requirement that FW-FPs reflect catchment values and priorities, and the composition of such catchment values and priorities, would be in guidance material. Guidance material would provide information on how to interpret the regulations but would not be enforceable.

Option 3 – Regulations specify how to achieve the outcome

67. Under this option, the regulations would provide detail on how to achieve the outcomes, for example:

    The FW-FP describes the catchment context and priorities.

    Risks and actions at farm scale are prioritised based on catchment priorities.

    If a regional council identifies specific outcomes in national policy statements, regional plans, or action plans these must be reflected in the FW-FPs.

68. This approach would provide clarity about how FW-FPs should reflect catchment values and context, and the information that must be included in FW-FPs.

Option 4 – Regulations define the outcome in more detail

69. Some submitters supported a middle ground between **Option 2** and **Option 3**, therefore this option was added after consultation.

70. This approach would provide details on catchment context, however Farm Operators would be able to determine the catchment values and context included:

    The FW-FP incorporates the catchment context and freshwater outcome priorities. This could include existing catchment information (e.g., biophysical characteristics such as soil, climate, freshwater data, water bodies, culturally significant sites) and any freshwater outcomes that have been identified in iwi management plans, regional plans or action plans. The catchment context may also reference applicable catchment group outcomes and catchment community goals.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

71. Both **Option 2** and **Option 4** would better address the need for specificity to guide FW-FP actions relative to the **status quo**. **Option 4** is the preferred option.

72. There are trade-offs between on-farm flexibility and enforceability. **Option 2** would provide more flexibility, while **Option 4** would provide for more enforceability.

73. **Option 4** would allow Te Mana o te Wai to be placed to influence the development of catchment context information. **Option 4** would reference iwi management plans and support the Government's objectives of improving freshwater quality and supporting the Crown to meet its Treaty of Waitangi obligations.

What are the marginal costs and benefits of the option?

Table 4: Cost-benefit analysis – Outcomes

Additional costs of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	Compared to the status quo (no national FW-FP system) the Government will incur costs to deliver the national oversight system functions and associated operating requirements to support FW-FPs (for example providing and updating guidance).	Low	**High.** We have identified the system components that will be funded by the Government, and we have high confidence in the costing methodologies. FW-FP framework has potential to accelerate the delivery of a national, integrated farm planning system.
Tangata whenua	It is proposed that FW-FPs will align with the regional and catchment work regional councils are undertaking to deliver upon the requirements of the NPSFM 2020. Catchment context will link to limits and objectives developed through the NPSFM. The NPSFM includes the National Objectives Framework, which describes the required process for use by regional councils to manage freshwater in their regions, alongside communities and tangata whenua. Māori farmers and growers will need to comply with the FW-FP requirements. Many Māori land holdings are on lower productivity land meaning the costs as a proportion of revenue may be high.	Low/ Medium	**Medium.** The ability of FW-FPs to identify targeted freshwater management solutions has potential to make a significant improvement to water quality and ecosystem health, in turn better enabling Māori to undertake customary food gathering. Getting all farmers and growers to good practice may also create opportunities for development of Māori land in catchments where water quality is not under significant pressure (medium impact; medium certainty). With regard to impacts on Māori farmers and growers who will have to comply with the FW-FP requirements, Te Tumu Paeroa commented that the proposals could impact on rental revenue (medium-low impact and certainty).
Regional councils	There will be a cost to regional councils to administer the FW-FP regime, however a coordinated implementation of FW-FPs alongside regional plan changes will enable efficiencies and reduce costs *(medium impact; medium high certainty).*	Medium	**High.** The specification of outcomes in the regulations should not add significant additional costs to regional councils.
Farm operators	Financial costs to farmers and growers of preparing a FW-FP and having it certified will vary depending on the complexity of the farm system; whether a farmer already has a (good quality) Farm Environment Plan; the level of	Medium	**High.** The preferred option will provide farmers with flexibility in the methods used to achieve outcomes.

	farm system change that is already underway, and on the cost and availability of planning support services. The cost will primarily be a one-off other than up-dates following recertification and/or in response to audit outcomes)		Good farm plan audit results can make it easier to borrow money and impact positively on property values. *(medium impact; medium certainty)*
Industry bodies	Industry bodies have an interest in ensuring that existing farm planning programmes with different consumer market objectives and requirements can evolve and incorporate FW-FP regulatory requirements. Part 9A. Specifying outcomes in the regulations could make such a process more costly. However, we have low certainty around any such costs because the work needed for existing programmes to meet the requirements of Part 9A and regulations is undetermined.	Low/ Medium	**Low/Medium.** As the assessment of what is needed from industry assurance plans (existing programmes) to meet the needs of Part 9A regulations is yet to be determined, it is not possible to have certainty around likely costs. It can be assumed that for those industry programmes that require little amendment to align with the FW-FP requirements, the cost may be low. Similarly for those programmes where greater amendments or additions are required, the costs will commensurately increase.
Rural professionals	Rural professionals are likely to play a significant role in the FW-FP system as certifiers and auditors. Any initial costs of becoming a recognised certifier is likely to be passed on to clients. To achieve certification / auditor appointment, costs could include application fees and training costs.	Low	**Low.** Rural professionals are expected to act as certifiers and auditors in the system.
Monetised costs	Impact assessed against status quo. The initial assessment of the cost of FW-FPs in the Final Regulatory Impact Analysis: Action for healthy waterways[7] is: • Approximately: $100 Million to develop FW-FPs • $435 Million per year to implement actions in FW-FPs • $22 Million auditing	Low	**High**
Non-monetised costs		Nil	**Not applicable**

[7] Page 231 - Action for healthy waterways part 2: Detailed analysis | Ministry for the Environment

Additional benefits of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	No additional benefits to Government	Nil	**High**[8]
Tangata whenua	The ability of FW-FPs to provide more bespoke tailored solutions has potential to make a significant improvement to water quality and ecosystem health, in turn better enabling Māori to undertake customary food gathering. Getting all farmers and growers to good practice may also create opportunities for development of Māori land in catchments where water quality is not under significant pressure. Giving effect to Te Mana o te Wai will involve councils working with iwi-hapū in particular catchments to identify how Māori values and aspirations can be incorporated into the catchment context information that will guide farmers, growers and their advisors in the development of FW-FPs, including identification of priority actions.	High	**Low.** Several tangata whenua submissions emphasised the importance of cultural values and perspectives being developed at a regional or catchment level. Only iwi/hapū can determine these and how they want to engage in the system.
Regional councils	The preferred option links to NPSFM action plans, catchment group outcomes, and iwi management plans. It provides detail about what catchment context should or may include. The preferred option will produce environmental benefits by providing consistency about environmental outcomes.	Medium	**Medium.** FW-FPs should help deliver on council RMA obligations and contribute to better environmental outcomes in region and enhanced ability to provide for cultural and recreational values of citizens More information on farming activities in their region will be valuable to councils. There is also the potential to improve

[8] In the RIS, the benefits of options that produce a more effective FW-FP system, are recorded against regional councils. This is because regional councils have a legal obligation to maintain and improve waterways based on the values and attributes in the NPSFM. Where the current state is below the national bottom line, regional councils must introduce measures to bring waterways at least back to the bottom line. Without a FW-FP system, regional councils would need to rely on other methods to achieve these obligations.

			relationships with farmers and help better target council and/or industry farmer extension programmes and catchment initiatives to where they can have biggest impact.
Farm Operators	A good FW-FP process (with commitment to adequate extension programmes) should help farmers be more resilient and able to tackle other environmental challenges and opportunities. Evidence from Canterbury is that good farm plan audit results can make it easier to borrow money and impact positively on property values (converse for poor audit grades), providing motivation to improve performance. Additional motivation for improved performance may also come through peer pressure where farmers are part of an industry scheme that has to transparently report on audit grades of its members.	Medium	**Medium.** Existing industry and regional council farm plans provide examples of benefit to Farm Operators from having recognised certified farm plans.
Industry bodies	FW-FP requirements have been designed to integrate with existing industry programmes over time.	Nil	**High.** A commitment to aligning with industry programmes has been made.
Rural professionals	Rural professionals are expected to have a key role in the FW-FP system as certifiers and auditors.	High	**Medium.** It is unknown how many current Rural Professionals are likely to become certifiers or auditors under the FW-FP system.
Monetised benefits	A number of groups involved in FW-FPs will benefit financially from the implementation of FW-FPs as identified in the assessment above.	Medium	**Low.** Given the variability of affected groups in the FW-FP system, any assessment of total benefit is not possible without relying on substantial assumptions.
Non-monetised benefits	If FW-FP delivery is well-resourced the policy has potential to provide significant benefits not only in contributing to improved water quality and associated values, but also building a more sustainable and resilient primary sector and farm advisor workforce.	Medium	**Medium.** While benefits to a mandatory FW-FP system are expected, capacity and capability challenges are expected, reducing the certainty that benefits will be delivered within a certain timeframe.

Chapter 2: Risk assessment

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

74. A number of industry farm plan programmes and regional council (regulated and voluntary) farm plan initiatives currently exist, all with a varied approach to the assessment of on farm risks.

75. Part 9A requires FW-FPs to identify any adverse effects of farming activities on freshwater and freshwater ecosystems. Part 9A also requires FW-FPs to specify requirements to avoid, remedy, or mitigate those effects.

What is the policy problem or opportunity?

76. Under the **status quo**, current industry and regional council farm plans take a variable approach to assessing on-farm risks to freshwater and similarly a varied approach to what on-farm actions are necessary to address these risks.

77. There is an opportunity for the regulations to set out a risk assessment methodology to support Farm Operators to identify and take ownership of the adverse effects of their operations on freshwater. Specifying the risk assessment approach in regulations would also avoid inconsistent approaches in different FW-FPs, reduce pressure on certifiers, and reduce the compliance burden for Farm Operators.

78. The discussion document proposed that risk assessments consider all land that makes up farms, the biophysical characteristics of the land (inherent risk), the management practices on the farm (management risk), and how these risks interact to impact on freshwater and freshwater ecosystems. A risk assessment process will identify, assesses, and prioritises the actual or potential adverse effects of farm activities on freshwater. That process will then guide the choice of actions to avoid, remedy or mitigate the identified risks.

79. Risk assessments will consider catchment values and context so to understand how farms are contributing to downstream effects and how actions can be prioritised to meet catchment objectives. A question posed in the discussion document was about the level of prescribed detail in the regulations. The choice is either specify minimum general requirements or to prescribe methodology.

80. Industry group submitters recommended a pragmatic approach to risk assessment. They considered that a lighter approach would be more appropriate for those with relatively low risks and impact. They considered that risk assessments should consider what is achievable with available resourcing, funding, capability, and time.

81. Regional councils also supported a pragmatic approach. Several councils emphasised that a standardised risk assessment process is important so that there are consistent actions and investment across farms.

What objectives are sought in relation to the policy problem?

82. The relevant objectives are to:

- stop further degradation and reverse past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems;
- provide confidence in the achievement of consistent freshwater outcomes; and
- provide enough flexibility to reflect individual farm circumstances.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

83. The scope of options is the level of detail in the regulations. The specific risk assessment method (e.g., likelihood-consequence) is also an important consideration. Regardless of the framework, the extent of prescribed methods in regulations will determine the flexibility afforded to Farm Operators to tailor risk assessments to their circumstances.

What options are being considered?

Option 1 – Status Quo

84. Under the **status quo**, regulations will not include requirements for the risk assessment. The only requirements for FW-FP content will be those set out in Part 9A:

    - to identify adverse effects of farm activities on freshwater and freshwater ecosystems;
    - to specifying clear and measurable requirements to avoid, remedy, or mitigate those adverse effects; and
    - to demonstrate how any outcomes prescribed in regulations are achieved.

85. Farm Operators and certifiers would determine how best to give effect to Part 9A in their FW-FPs.

Option 2 – Specify the minimum general requirements for a risk assessment

86. This was the preferred approach in the discussion document. Under **Option 2**, the regulations would specify the minimum general requirements of the risk assessment:

    - **Risk identification:** Spatial mapping of land units and the identification of potential inherent (biophysical) risks, relevant sites of cultural value or importance (e.g., wāhi tapu), and management risks associated with farming activities undertaken on the property;
    - **Risk analysis and prioritisation:** Identifying the likelihood and potential severity of risks. Risks are prioritised as to their significance with reference to current regulations, catchment values and context, and their potential impact on the immediate environment; and
    - **Risk treatment:** identifying appropriate actions to avoid, remedy, or mitigate risk (see Chapter 3).

87. Guidance material would support the interpretation of the regulations.

Option 3 – Prescribe the methodology for risk assessment

88. **Option 3** would prescribe in more detail a required methodology for risk assessment for a FW-FP, through the provision of a template.

89. In this approach the regulations would incorporate a national FW-FP risk assessment. This would create a template for completing a risk assessment, the factors of the farm system to be assessed, set minimum datasets to be collected, and prescribe a methodology for assessing the likelihood and impact of a risk.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

90. **Option 2** will best address the need for a risk assessment (see Appendix One).

91. Specifying the minimum general requirements for risk assessments will provide enough consistency to achieve the Government's objectives for consistent improvements in freshwater quality, while affording Farm Operators the flexibility to assess risks in ways that make the most sense for their farm. The flexibility of this approach would allow risk assessments to reflect mātauranga and cultural values. It would also mean that risk assessments can reflect specific challenges faced by Māori landowners.

92. **Option 3** may provide more consistency, but such a 'one-size-fits-all' approach would not be able to recognise inequities faced by Māori and reduces the ability to tailor the risk assessment to the farm. This could make the risk assessment process less effective if it did not allow the consideration of farm-specific risks.

What are the marginal costs and benefits of the option?

Table 5: Cost-benefit analysis – Risk assessment

Additional costs of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	The preferred option may result in costs incurred by the Government to provide national oversight and operation (for example in the provision of guidance material). However, whether or not risk assessment approaches are included in regulations or not, is regardless likely to only have a very minimal variation in program cost for the Government.	Low	**High.** We have high certainty about the costs that will be incurred by the Government and the drivers of those costs.
Tangata whenua	No additional costs for tangata whenua (see tangata whenua benefits). Catchment context and consideration of matters such as te mana o te wai will occur as part of regional plan change processes and therefore, is not directly impacted by the approach to on-farm risk assessments.	Low	**High.** Tangata whenua involvement in regional council approaches to provide for the NPSFM 2020 will occur regardless of FW-FPs. Tangata whenua will want to be involved in any risk assessment areas in particular catchment context, while the regional freshwater plans are being developed and implemented.
Regional councils	No additional costs for regional councils (see regional councils benefits). Greater flexibility allows for regional variation and alignment.	Low	**High.** Regional council approaches to managing their individual resources is hugely variable. An approach that enables greater alignment across all regional councils is therefore likely to be more successfully adopted.
Farm Operators	Compared to the **status quo**, the preferred option will result in minor additional costs to farmers who wish to adapt their existing farm environment plans (FEPs) to meet FW-FP regulatory requirements. This is because the **status quo**, without any guidance on risk assessment, offers maximum flexibility for assessment methodologies. Offsetting these costs, will be lower costs of certification, as certifiers will have guidance on risk assessment that is absent in the **status quo**.	Low	**Low.** We have low certainty around these costs as it is recognised that farms systems are variable depending on their biophysical conditions and farm system type.

	The actions of Farm Operators under the preferred option should be more effective in managing risks. This will not reliably translate into the costs of actions. Actions that better manage risks will not necessarily be more costly that ineffective actions.		
Industry bodies	Compared to the **status quo**, the preferred option may result in additional costs to industry bodies relating to the integration FW-FP requirements within their existing farm planning programmes.	Low	**Low.** Industry bodies have an interest in ensuring that existing farm planning programmes, many of which were originally established to achieve market requirements, evolve to meet FW-FP regulatory requirements and provide practical support to assist their farmer and grower members during the transition process. Specifying an approach to risk assessment in the regulations could make such a process more costly. However, we have low certainty around any such costs because the work needed for existing programmes to meet the requirements of Part 9A and regulations is undetermined.
Rural professionals	The advisory and certification processes will be more efficient under the preferred option (see rural professionals' benefits).	Nil	**Medium.** A risk assessment approach that enables certifier or auditor discretion will allow for rural professionals to adapt to consider the individual environment and farm system being assessed.
Monetised costs	Unknown. As the risk assessment option proposed is bespoke to FW-FPs, it is not known how cost effective it will be to deliver. However, a flexible by default approach is likely to result in efficiencies (including for costs).	Unknown	**Low.** Given the infancy of the FW-FP risk assessment approach, the ability to make an informed assessment of cost or benefit is problematic, along with any assessment of certainty.
Non-monetised costs	A risk assessment that enables consideration of the specific environment or farm system will provide a more accurate assessment of risk and therefore a more appropriate set of mitigations or actions to achieve water quality improvements.	Low/ Medium	**Medium.** A risk assessment specific to the farm will enable better assessment of likely effects and therefore mitigations to undertake to make necessary water quality improvements.

Additional benefits of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	A bespoke FW-FP risk assessment will enable better alignment with the needs of FW-FP stakeholders. Alignment is likely to subsequently lead to greater uptake of FW-FPs.	Nil	**High.** There are no Government functions within the FW-FP system that will be affected by the preferred option compared to the **status quo**.
Tangata whenua	The preferred option will provide a high level of assurance that mātauranga is incorporated into the risk assessments. The preferred option will also allow risk assessments to be designed so that they take account the unique features of Māori agribusinesses.	High	**High.** Submissions from tangata whenua emphasise the importance of a system that provides them with assurance that the consideration of mātauranga is part of the risk assessment. The preferred option provides such an assurance.
Regional councils	The preferred option will make FW-FPs more efficient and effective as they will be more likely to adequately and consistently address risks compared to the **status quo**. In turn, this will allow regional councils to more efficiently meet their legal obligation to maintain and improve waterways based on the values and attributes in the NPSFM.	Medium - High	**Low.** Regional councils are required to implement the NPSFM 2020 regardless of the inclusion of the FW-FP tool. However, the provision of an alternative consent pathway is likely to create efficiencies between future regional council direction and current farm plan (including industry) approaches.
Farm Operators	Under the **status quo**, with no prescribed risk assessment methodologies, it is likely that farm advisors and certifiers will require more time to determine whether FW-FPs will be compliant with Part 9A.	Low	**Medium.** We are confident that the statis quo would result in higher compliance costs, but we cannot quantify these costs.
Industry bodies	Low additional benefits to industry bodies. It is in the interests of industry bodies to promote consistent approaches to risk assessment. However, it is difficult to assess the size of such benefits.	Low	**Low**
Rural professionals	Without clarity in the regulations about the approach to risk assessment, the certification process will be more complex and more expensive. Farmers will ultimately incur the costs of this increased complexity. Compared to the preferred option, the	Medium	**Low.** It is difficult to quantify the potential range of net benefits to rural professionals.

	status quo would likely to result in less consistency ion the approach to risk assessment and in higher numbers of disputes.		
Total monetised benefits		Nil	**Not applicable**
Non-monetised benefits		Nil	**Not applicable**

Chapter 3: Identifying actions to avoid, remedy, or mitigate risks

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

93. In accordance with Part 9A of the RMA, requirements to avoid, remedy, or mitigate risks to freshwater must be clear, measurable, time-bound, and considered in the context of the individual farm.

94. For a FW-FP to meet the statutory requirements for certification, the certifier must be satisfied that:

- the identified actions appropriately address the identified risks/ impacts; and
- the actions proposed are not less stringent than other national or regional regulations, resource consent conditions or rules.

95. Appropriate actions to manage risk, such as sediment loss, might include engineering solutions, e.g., the construction of sediment traps and earth bunds, or farm management procedures, e.g., paddock selection and stock management. Most single farm systems will require a combination of actions to appropriately manage risks to freshwater.

96. The scope and scale of appropriate actions to reduce on-farm risks will vary according to the characteristics of each farm, particularly geography, climatic conditions and farm system type (e.g., a dairy farm's risk profile and required actions will be different to a horticultural farm).

97. There are some high-risk activities that may benefit from more consistency to ensure that freshwater outcomes are achieved. For example, the NESF contains regulations to better control the effects of intensive winter grazing (IWG). IWG is a farming practice where many stock are confined over winter to small feeding areas planted with annual forage crops. If done poorly or too extensively, this practice can result in serious negative effects on the environment and animal welfare. The NESF provides three pathways for undertaking IWG:

- complying with the default conditions in the NESF;
- a certified FW-FP that achieves an equivalent or better outcome to the default conditions; and
- resource consent.

98. Lower-risk actions will require more tailoring to individual farms. For example, riparian planting can be an effective mechanism to exclude stock from waterways and take up nutrients from the soil before they leach into the waterway. This protects the waterway from nutrient inputs and damage to the riparian margin by stock. However, different species have different capacities to take up nutrients and hence mitigate sediment loss. Depending on the species and the topography, it will be necessary to plant varying widths to reduce nutrient inputs effectively. Varied species will be more effective at excluding stock. A species may be a pest in only some regions. A prescriptive methodology for making those decisions could result in less-effective actions.

99. Under the **status quo**, the regulations would not specify any requirements for actions or requirements to avoid, remedy, or mitigate the farm's adverse effects. This **status quo** would result in diverse actions by Farm Operators, with certifiers having the discretion to determine whether the deployed actions meet Part 9A requirements.

100. The **status quo** may present challenges for managing high-risk farming activities. For IWG there is a regulatory requirement for the FW-FP to achieve equivalent or better outcomes to those that would result from NESF conditions. It may be challenging for individual certifiers to determine appropriate methods to make this assessment.

What is the policy problem or opportunity?

101. Section 217F of Part 9A (Contents of FW-FPs) requires FW-FPs to specify clear and measurable requirements that are appropriate for avoiding, remedying, or mitigating the adverse effects of farming activities on freshwater. The risk assessment process will identify these requirements. The problem is that there is currently no guidance that would provide clarity on how to identify appropriate actions.

102. There is an opportunity for the regulations to promote optimally consistent actions, while still enabling farmers to design actions that are appropriate for each farm.

103. The discussion document proposed that actions be customised to the farm system, accounting for co-benefits and costs. Actions should be prioritised according to risks assessed risks and impacts. The key question asked in the discussion document was about *balance* between the prescription of actions and affording certifiers the freedom to determine the best actions.

What objectives are sought in relation to the policy problem?

104. The relevant objectives are to:

- stop further degradation and reverse past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems;
- provide confidence in the achievement of consistent freshwater outcomes; and
- provide enough flexibility to reflect individual farm circumstances.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

105. The scope of options covers the level of detail included in regulations.

106. The options proposed are the scope of available options within the constraints of Part 9A of the RMA.

What options are being considered?

Option 1: Status Quo

107. Under the **status quo**, the FW-FP regulations would not prescribe any requirements for actions. The only requirements for FW-FP content would be those set out in Part 9A. Farm Operators and certifiers would determine how to best give effect to Part 9A.

108. FW-FPs would only require that appropriate actions are utilised to manage identified risks but how to do so would be at the discretion of Farm Operators, farm advisers, and certifiers.

Option 2: Regulations include high-level criteria

109. The discussion document consulted on this option. The regulations would include high-level criteria to determine whether the actions identified to manage on-farm risks are appropriate. Such criteria could include suitability, cost effectiveness, and durability.

110. It would be important that certifiers consider proposed actions and confirm that they would effectively avoid, remedy or mitigate the most significant risks identified in the risk assessment. The priority accorded to these actions would be based on risk assessments. There would need to be evidence that the proposed actions would work to reduce environmental risk. This could be science-based evidence, local practical experience of what has worked in the past, or information about mātauranga Māori relating to the land.

Option 3: Detailed approach through prescribed practice standards

111. The discussion document consulted on this option. The regulations would include prescribed practice standards to and a prescribed list of actions for certain circumstances to ensure certifiers exercise their professional judgement in a consistent manner.

112. Under this option certifiers would need to ensure that one or more actions listed in the regulations address high priority risks. This list would be based on the best available information about known actions to reduce risks/impacts. Some of the criteria described in **Option 2** could be used to determine which action was most suitable.

113. This option would promote consistency and provide confidence that high-risk activities are well controlled. However, it would not allow for a tailored approach to mitigation based on the farm enterprise's unique circumstances. It may also stifle innovation by limiting the options available to known mitigations at the time the regulations were established.

Option 4: A hybrid option between Option 2 and Option 3

114. This was the preferred approach in the discussion document. **Option 4** is a hybrid version of **Option 2** and **Option 3**, combining certifier discretion and robust practice standards.

115. Lower-risk activities or activities that require on-farm customisation (e.g., riparian planting) would be at the discretion of certifiers. Higher-risk activities (e.g., IWG) or potentially other activities where the Government is seeking a more direct level of control (e.g., stock exclusion) would need the application of a prescribed methodology to identify actions.

116. For those activities where a prescribed action would produce superior outcomes, regulations would include required management standards. These standards would draw on appropriate tools to ensure that the prescribed actions are robust.

117. When FW-FP actions are identified, many will already be required by other regulations (e.g., stock exclusion). Risk assessments would identify any adverse effects on freshwater. Chosen actions will avoid, remedy, or mitigate those effects. Those actions

will be a combination of those required through other regulations, regional plan rules, or resource consent conditions, those included in the FW-FP regulations, and further actions judged by certifiers to be effective. Catchment values and context will inform the prioritisation of the actions.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

118. **Option 4** is the preferred option (see Appendix One). This approach provides the optimum balance most flexibility to enable certifier discretion to determine the most appropriate actions to manage bespoke farm risks, while enabling innovative management practices tailored to each farm system. There will be consistent processes to determine appropriate actions for high-risk activities.

119. Actions will also utilise catchment context and consequently will not be contrary to Te Mana o te Wai and will account for iwi/hapū values.

What are the marginal costs and benefits of the option?

Table 6: Cost-benefit analysis – Actions

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Government	No additional costs to Government.	Low	**High.** We understand the drivers of all of the costs to the Government.
Tangata whenua	No additional costs to tangata whenua compared to the **status quo** (see tangata whenua benefits).	Low	**High**
Regional councils	No direct costs to regional councils. CME actions are likely to be equally cost-effective under both the **status quo** and the preferred option. Indirectly, regional council could face longer term consequent costs because the **status quo** would result in a less cost-effective FW-FP system (See regional council benefits).	Low	**High.** Regional councils will have clear CME functions.
Farm Operators	There may be minor additional costs to Farm Operators compared to the **status quo**. The costs of transitioning existing FEPs could be higher as there may need to be consistent with relevant prescribed standards.	Low	**Low.** We have low certainty around any such costs because the work needed for existing programmes to meet the requirements of Part 9A and regulations is undetermined.
Industry bodies	See Farm Operators.	Low	**Low**
Rural professionals	No additional costs to rural professionals (see rural professional benefits.)	Nil	**High.** There is no scenario where better prescription of required actions for high-risk activities would increase the costs to rural professionals. The prescription of these actions reduces the complexity of judgement required of rural professionals and produces a more credible FW-FP system.

Total monetised costs		Nil	**Not applicable**
Non-monetised costs		Nil	**Not applicable**

Affected groups	Comment	Impact	Evidence Certainty
Additional benefits of the preferred option compared to taking no action			
Government	Prescription of high-risk activities provides greater clarity and consistency. This will lead to improved levels of compliance and deliver sustainable improvements over a generation for freshwater.	Low	**High.** We understand the drivers of all the benefits to the Government.
Tangata whenua	There are substantial benefits to tangata whenua from the preferred option relative to the **status quo**. The **status quo** will not achieve consistent incorporation of catchment context, and tangata whenua values.	Medium-High	**Medium.** We know from tangata whenua submissions that the protection and restoration of the mauri of lands and waters needs to be prioritised. Further, submitters told us that the FW-FP system needs to recognise the impact of degraded water quality on Māori.
Regional councils	Regional councils will accrue high benefits because they will be able use a more functional FW-FP system to achieve their legal obligations to maintain and improve waterways.	Medium-High	**High.** We have high certainty in the efficacy of a system that prescribes actions for high-risk activities compared to the **status quo**.
Farm Operators	Farm Operators would face moderately lower costs compared to the **status quo**. The **status quo** would place a premium on the competencies of certifiers and their judgment. The **status quo** could drive up compliance costs as certifiers would need to devote more time determining appropriate actions. The **status quo** could also place a premium on highly experienced certifiers, driving up the costs of certification.	Low-Medium	**Low.** We have no reliable methodology for determining *magnitude* of the cost differential for advisory and certifier services under the preferred option compared with the **status quo**. However, we have high confidence that they will be lower under the preferred option.

Industry bodies	No additional benefits to industry bodies	Low	**High**
Rural professionals	Both advisors and certifiers would face moderately lower costs with the preferred option because they will have legislated guidance to make their judgments. If the market is competitive, these reduced costs will be reflected in prices to farmers. Separately, rural professionals should incur less professional development costs compared to the **status quo** because there will be prescribed methodologies to identify actions for higher-risk activities. Under the **status quo**, rural professionals would need to invest in skill acquisition to advise on, and certify the appropriateness of, mitigation actions for high-risk activities.	Low	**High.** We have high confidence that the training costs for rural professionals would be higher under the **status quo**. There would be less legislated guidance. This would require more complex judgements informed by skills acquisition and professional development.
Total monetised benefits		Nil	**Not applicable**
Non-monetised benefits		Nil	**Not applicable**

Chapter 4: Recertification timeframes

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

120. Part 9A requires that FW-FPs be certified if they comply with the requirements for FW-FP content in Part 9A and in regulations. It also provides for regulations to establish circumstances and timeframes where FW-FPs must be recertified to ensure they remain fit for purpose.

121. Under the **status quo**, there is a risk that FW-FPs will degrade or not be actioned over time. There is also a risk that FW-FPs will fail to meet regulated requirements when farm circumstances change. This failure could arise due to changing environmental challenges on the farm, new farming systems, changed farm ownership, or changed catchment context. These changes could result in the unsuitable or ineffective FW-FPs.

What is the policy problem or opportunity?

122. Farm systems will change over time in response to market and climate changes and innovations in science or management. These changes can materially affect the source and profile of the risks from farming activities to freshwater. Under the **status quo** there would be no mechanism to respond to these changes. The **status quo** would result in many FW-FPs becoming redundant and ineffectual. Part 9A provides for the regulations to set out circumstances or timeframes where FW-FPs must be recertified to ensure they continue to be fit-for-purpose.

123. The discussion document proposed two options for recertification: every three years or every five years. Most submitters supported a frequency of five years, with some submitters suggesting criteria that would trigger earlier, or more frequent, reviews. Some submitters supported a performance-based recertification frequency.

What objectives are sought in relation to the policy problem?

124. The relevant objective is stopping further degradation and reversing past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

125. The scope of feasible recertification options covers the circumstances in which, and the timelines for, the review and recertification of FW-FPs. For all options, *initial* certification will be within 12 months of regulations coming into effect in a district, region, or part of New Zealand. Recertification will be triggered by specified circumstances. These special circumstances are:

- additional land is added to a farming operation;
- a change in farming system or land use; or
- a change in ownership (where the existing FW-FP is not adopted by the new owner).

126. If regional councils were to establish regional rules that require FW-FPs to be recertified more frequently, or under specific circumstances, this requirement would apply.

127. None of the options would prevent any Farm Operator from voluntarily seeking recertification.

128. Officials considered but rejected the option of recertification timeframes to be determined by farm system risk and compliance history. This option was not in the discussion document.

129. Officials also consider that the audit process is a more appropriate mechanism to reward compliance. This is because the audit process is fundamentally about assessing whether Farm Operators are complying with their FW-FPs. A history of compliance does not mean that the farm system is less likely to change over time, so regular recertification remains important.

What options are being considered?

Option 1: Status quo

130. Under the **status quo**, FW-FPs would not require recertification. FW-FPs would remain static over time and would not adjust to changed circumstances.

Option 2: Recertification no longer than every three years

131. This option was the preferred approach in the discussion document. Under this option, FW-FPs would automatically be reviewed and recertified every three years.

132. Regular review would produce a higher quality plan. The plan would more frequently incorporate changes in circumstances and knowledge. A downside is that some actions identified in FW-FPs may not have sufficient time to become productive and visible before review. This option would impose higher costs on Farm Operators compared to both the **status quo** and **Option 3**.

Option 3: Recertification no longer than every five years

133. The discussion document consulted on this option. FW-FPs would automatically come up for review and recertification every five years. Compared to **Option 2**, this option would allow more time to implement committed actions. However, this longer review, and recertification period increases the risk that some FW-FPs become less relevant in shaping on-farm mitigation actions.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

134. **Option 3** is the best approach for recertification frequency (see also Appendix One). It provides balance between robustness, enforceability, and practicality. It also aligns

with other key features of the FW-FP system, particularly the preferred audit frequency (see Chapter 5).

135. If a Farm Operator wants to change a FW-FP, they can do so at any time, and request recertification.

136. The proposed approach would enable recertification to be required more frequently than every five years if such a requirement is included by a council in a regional plan. Councils may include such a provision in at-risk catchments.

What are the marginal costs and benefits of the option?

Table 7: Cost-benefit analysis – Recertification timeframes

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Government	Part 9A provides for regional councils to appoint certifiers and auditors. As part of the regional appointment process, national guidance will be provided to ensure consistency in the skills and capabilities of certifiers and auditors. This guidance would be provided under both the **status quo** and the preferred option.	Nil	**High**
Tangata whenua	No additional costs to tangata whenua (see tangata whenua benefits).	Nil	**High.** Without recertification, FW-FPs would lose effectiveness
Regional councils	There will be some data management costs as part of CME and identifying recertification timeframes.	Low	**High.**
Farm Operators	Farm Operators will incur the costs of recertification every five years. When the system is fully established, Farm Operators will incur additional annual operating costs totalling $26 million (in 2022 dollars)[9] compared to the **status quo**.	High	**Medium**
Industry bodies	No additional costs to industry bodies. Industry bodies will provide support and advisory services to Farm Operators. However, these services are already provided under existing industry assurance programmes (IAPs).	Low	**High**

[9] A 10-year NPV of these costs has not been included because the rollout of FW-FPs across New Zealand will be phased (see Section 3). This complicates the calculation of the NPV of the costs over the first 10 years. These annual costs represent the costs incurred by farm operators after the system has been fully rolled out.

Rural professionals	No additional costs to rural professionals (see rural professional benefits).	Nil	**High.** Effective recertification as part of the FW-FP system will provide considerable benefits to rural professionals.
Monetised costs	$26 million annually	High	**High.** See Chapter 7 for an explanation of the methodologies.
Non-monetised costs		Nil	**Not applicable**

Affected groups	Comment	Impact	Evidence Certainty
Additional benefits of the preferred option compared to taking no action			
Government	No additional benefits to Government (see Government costs).	Nil	**High**
Tangata whenua	There are high marginal benefits for tangata whenua. Without recertification of FW-FPs, the system would lose credibility and actions would not reflect contemporary cultural values. Regional councils can impose more stringent recertification timeframes. Tangata whenua will be able to influence the design of these processes through the regional plan process.	High	**High**
Regional councils	Regional councils would accrue significant benefits compared to the **status quo** because a functional FW-FP system will allow them to deliver their legal obligations more efficiently under the NPSFM.	Medium-High	**High.** We have high certainty in the efficacy of a system that prescribes actions for high-risk activities compared to the **status quo**.
Farm Operators	Farm Operators will accrue significant marginal benefits compared to the **status quo**. In the absence of a national FW-FP system, regional councils would require consents from farmers to ensure that identified freshwater outcomes (as required by the NPSFM) are met. Resource consent costs would therefore continue be incurred by farmers. FW-FPs should have greater utility under the preferred option. Over time, credible FW-FPs will demonstrate the sustainability status of farms and add to farm value.	High	**High**

Industry bodies	No additional benefits to industry bodies.	Nil	**High**
Rural professionals	Rural professionals will accrue significant benefits under the preferred option compared to the **status quo**. A highly functioning and credible FW-FP system will create an environment for rural advisory and certification services to expand, with a more skilled and expanded workforce.	High	**High**
Total monetised benefits		Nil	**Not applicable**
Average non-monetised benefits		Nil	**Not applicable**

Chapter 5: Audit timeframes

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

137. Section 217H of Part 9A (Audit of farm for compliance with certified FW-FP) requires Farm Operators to arrange for an auditor to audit their farm for compliance with their certified FW-FP commitments. This audit is to provide assurance that certified FW-FP actions are being implemented, and to assess progress in achieving regulated outcomes.

138. Part 9A provides for regulations which prescribe the timeframe for the first audit, and the frequency for subsequent audits. These timeframes are necessary to ensure that Farm Operators know the required timeline for completing a farm audit. Without this requirement, it would be impossible to enforce FW-FP audits.

What is the policy problem or opportunity?

139. The purpose of mandatory FW-FPs is to facilitate the uptake of good farming practices by determining, describing, and setting out actions that Farm Operators will undertake to manage risks to freshwater. The audit process is the way in which auditors check Farm Operators to ensure that the actions in certified FW-FPs have been satisfactorily implemented.

140. Farm Operators may choose to be audited without compulsion. However, without specified audit timeframes in regulations, the audit section of Part 9A would not be enforceable.

141. The discussion document proposed a risk-based approach to audit frequency, where all farms would be audited within 18 months of certification. Farms that pass an audit with no or minor non-compliance would be audited within three years, and farms with significant non-conformities would need to be re-audited within twelve months. Farms with serious non-compliance would need be re-audited within six months. The discussion document did not present different options for audit timeframes.

142. Most submitters supported the preferred approach in the discussion document. Submissions from farmers advocated for an audit frequency approach based on audit performance and farm risk, including a pathway for low-risk farms to extend their audit timeframes.

What objectives are sought in relation to the policy problem?

143. The relevant objective is stopping further degradation and reversing past damage by better controlling the adverse effects of farming on freshwater and freshwater ecosystems.

144. The key objective of the audit system is to provide assurance that FW-FP actions are implemented, so enhancing public confidence in the FW-FP system.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

145. The scope covers the identification of options that embed a risk-based approach to audit frequency, like the approach proposed in the discussion document.

146. For all options, the initial audit will be within 12 months of initial certification. Audit will be required within 12 months of the following trigger circumstances.

- After a change in Farm Operator, to demonstrate that the new operator is familiar with the FW-FP; and
- Following recertification triggered by a change in farm system or land use.

What options are being considered?

Option 1 – Status Quo

147. Under the **status quo**, Farm Operators would develop certified FW-FPs but would not be required to have them audited within a specified timeframe.

Option 2 – Annual audit

148. Under this option, farms would need to be audited every year.

Option 3 – Audit every three years

149. Under this option, farms would need to be audited every three years.

Option 4 – Audit every five years

150. Under this option, farms would need to be audited every five years.

Option 5 – Audit frequency subject to audit performance

151. Under this option frequency would be subject to audit performance. This is similar to the audit approach recommended in the discussion document.

- If there is compliance or minor non-compliance, the next audit would be in three years;
- If there is moderate non-compliance, the next audit would be in twelve months; and
- If there is significant non-compliance, the next audit would be in six months and the regional council would undertake CME. The subsequent audit would be in 12 months unless significant non-compliance remains, in which case the interval between audits would remain at six months.

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

152. **Option 5** is the preferred option for audit timeframes. It would enable checks on poor performers, at least annually, until they become good performers. It rewards good performers and low-risk farm systems by checking less frequently, reducing compliance costs. This will promote compliance.

153. This approach would focus regional council and rural professional resources on farms that are at higher risk of adversely affecting the freshwater environment. The approach aligns with the policy goal of embedding a risk-based approach to setting audit frequency.

154. The approach would honour the intent and purpose of the Treaty of Waitangi and Te Mana o te Wai by prioritising resources towards less compliant farms which present a greater risk to freshwater.

What are the marginal costs and benefits of the option?

Table 8: Cost-benefit analysis – Audit timeframes

Additional costs of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	Part 9A provides for regional councils to appoint certifiers and auditors. As part of the regional appointment process, national guidance will be provided to ensure consistency in the skills and capabilities of certifiers and auditors (see Section 3). Guidance would be provided under both the **status quo** and the preferred option.	Low	**High.**
Tangata whenua	No additional costs to iwi/hapū (see tangata whenua benefits). Māori Farm Operators will incur the costs of audits compared to the **status quo**[10].	Low	**High.** There is no scenario under which tangata whenua would incur costs for audited FW-FPs compared to a **status quo** of no audits for FW-FPs.
Regional councils	Councils will operate a process for appointing auditors and certifiers in their regions. However, the costs would not be significantly different if the counterfactual required fewer auditors[11]. There is a high fixed staffing cost for this function in	Low – Medium	**High** certainty for the low marginal costs incurred by regional councils for the audit system.

10 Estimated costs of audits range from an average of $1,000 to $2,000 per farm operator.

11 Regardless of timeframes, Part 9A requires the regional council to appoint at least one auditor.

	each regional council.[12] Without an audit system, the FW-FP system would be impossible to enforce. Councils would not incur any additional CME costs. Regional councils would face higher costs because they would be required to achieve obligations in the NPSFM without using FW-FPs as a tool. It is impossible to quantify these costs.		**Medium** certainty about the additional costs incurred by regional councils if they were required to achieve obligations in the NPSFM in the absence of mandatory FW-FPs[13].
Farm Operators	Compared to the **status quo**, Farm Operators will incur the costs of audits. Once the system is established, the annual cost of audits across all farms has been estimated at $32 million (in 2022 dollars)[14].	High	**High**[15].
Industry bodies	There should be low marginal costs to industry bodies because of an effective audit system.	Low	**Low.** The counterfactual is a FW-FP system that is not enforceable. In that scenario, regional councils would still be required to achieve their obligations in the NPSFM. Industry bodies would incur the costs of supporting Farm Operators under such an alternative system. Such an alternative system would be 'rules based' which would impose higher costs on industry bodies.

12 The establishment costs for regional councils of the certifier and auditor appointment process are estimated at $2.2 million for all regional councils. The ongoing annual costs are estimated at $1.1 million.

13 Ministry for the Environment. 2020. Regulatory Impact Analysis, Action for healthy waterways, Part II: Detailed Analysis. Wellington: Ministry for the Environment. https://environment.govt.nz/publications/action-for-healthy-waterways-part-2-detailed-analysis/.

14 See footnote 10.

15 Farm certification and audit costs are based on existing FEP system audit costs and adjusted to reflect the increased time required to complete the FW-FP certification process and the streamlined audit cost. They also assumed the certifier or auditor would recoup their annual appointment fee.

Rural professionals	Advisors and auditors will not face additional costs. All their costs should be recovered from farmer operators as a competitive market is established.	Nil	**High.** A functional audit system will deliver benefits to rural professionals.
Total monetised costs	$32 million annually for Farm Operators	High	**Medium**
Non-monetised costs		Nil	**Not applicable**

Additional benefits of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	Receiving regular audit reports will help with monitoring and evaluation and requirements under the RMA.	Low	**High**
Tangata whenua	Significant benefits from the preferred option compared to the **status quo**. The absence of auditing would bring the FW-FP system into disrepute. This would make it impossible for the inclusion of iwi/hapū cultural values in catchment contexts. Further, submissions in response to the discussion document emphasised the importance of protection and restoration of the mauri of lands and waters as well as recognition of the impact of degradation on Māori.	High	**High.** We know from submissions the value that tangata whenua have placed on design features that will ensure an efficient and effective FW-FP system.
Regional councils	Significant benefits to regional councils. In the absence of a functioning FW-FP system, regional councils would need to meet their legal obligations under using tools that are less efficient than FW-FPs.	Medium-High	**High.** We have high confidence in the cost-effectiveness of the FW-FP system in mitigating the adverse effects of farming activities on water quality compared to an alternative system that would rely on currently available tools.

Farm Operators	Significant benefits. These are difficult to quantify but will exceed the quantified costs of incurring audits. This is because in the absence of a functional FW-FP system, farmers will ultimately incur higher costs of achieving environmental bottom lines imposed by consents, using methods that are less efficient than those available under the FW-FP system.	Medium – High,	**High.** This is dependent on the farm system, the characteristics of the farm, and the challenges in achieving environmental bottom limes in relevant catchments.
Industry bodies	Provides regulated audits which delivers business certainty.	Medium	**Low.** We know that a counterfactual to a FW-FP system would still require regional councils to achieve their obligations under the NPSFM. This would result in in costs for industry bodies in supporting their sectors. In contrast, the preferred option will allow industry bodies to leverage their investments in existing IAPs and transition these to meet FW-FP requirements.
Rural professionals	Farm advisors, certifiers, and auditors will accrue significant benefits from the preferred option. They will experience a flourishing market and increased demand for their services as FW-FPs are rolled out.	High	**High.** We have a sound understanding of the role of FW-FP certifiers and auditors in the system. A functional FW-FP system with effective audits will increase the demands for skilled rural professionals.
Total monetised benefits		Nil	**Not applicable**
Average non-monetised benefits		Nil	**Not applicable**

Chapter 6: Preferred design of the FW-FP system

155. The preferred design of the FW-FP system is summarised in Table 9.

Table 9: Summary of preferred approach

Component	Preferred option
Outcomes	'Catchment values and context' outcome included in regulations with some details specified
Risk assessment	The regulations set out the minimum requirements for the risk assessment
Identifying actions to avoid, remedy, or mitigate risks	The regulations include high-level factors for the certifier to consider, and for some activities the regulations will provide detailed practice and performance requirements
Recertification timeframes	Every FW-FP must be recertified within five years, unless a regional plan specifies a shorter timeframe
Audit timeframes	The audit frequency is subject to audit performance

156. Section 217 of Part 9A (Contents of FW-FP) of the RMA requires FW-FPs to identify any adverse effects of farming activities on freshwater and freshwater ecosystems, specify clear and measurable requirements to avoid, remedy, or mitigate those effects, and demonstrate how any regulated outcomes are to be achieved.

157. The regulations will require FW-FPs to reflect catchment values and context. The regulations will specify some details, such as what catchment context information could include and what existing information should be reflected. This will enable the rest of the FW-FP to reflect the farm's local catchment challenges, risks and values.

158. The regulations will set out the minimum general requirements for the risk assessment, including risk identification, risk analysis and prioritisation (with prioritisation based on criteria including catchment values and context), and risk treatment.

159. The regulations will include high-level factors that will need to be considered when determining actions (or risk treatments). For some activities, the regulations may provide detailed practice and performance requirements.

160. Section 217G of Part 9A (Certification of FW-FP) of the RMA requires the certifier to certify a FW-FP if they are satisfied that it complies with the requirements for the content of a FW-FP. Section 217G applies to a certified FW-FP that is required by regulations to be amended and recertified.

161. Initial certification will be required within 12 months of the regulations coming into effect in the specified region, district, or part of New Zealand.

162. The regulations will require the recertification of FW-FPs every five years, and under the following circumstances:

- Additional land is added to the farming area that has an additional inherent risk, is in a different catchment, or upon which a different farm system is being undertaken;
- A change in farming system or land in land use; and

- A change in ownership or Farm Operator where the new owner or Farm Operator does not adopt the existing FW-FP.

163. Section 217H of Part 9A (Audit of farm for compliance with certified FW-FP) of the RMA requires the Farm Operator to arrange for an auditor to audit the farm for compliance with the certified FW-FP within the prescribed timeframe and at the frequency prescribed in regulations.

164. The regulations will require the initial audit within 12 months of certification. Subsequent audits will be required at a frequency dependent on audit performance. If there is compliance or minor non-compliance, the next audit will be in three years. If there is moderate non-compliance, the next audit will be in twelve months. If there is significant non-compliance, the next audit will be in six months and the regional council will undertake CME. The subsequent audit will be in 12 months unless significant non-compliance remains, in which case, the frequency will remain at six months.

165. The following circumstances will trigger audits:

- After a change in Farm Operator, to demonstrate that they are familiar with the FW-FP; and
- Following recertification triggered by a change in farm system or land use.

Marginal costs and benefits[16]

Costing Methodology for the Monetised Costs to Farmers

166. Farm Operator costs were estimated using Agriculture Census 2017 data in conjunction with sector farm system data.

167. Average FW-FP development costs were estimated at $6,000. This was based on a range of $2,500 to $15,000 informed by regional plan hearing technical evidence from Canterbury, Hawke's Bay, and Waikato. The cost includes farm mapping, nutrient budget preparation (where applicable), and other specialist support costs. The cost of developing a FW-FP was assumed to be 50 percent less for farms with existing FEPs. For non-commercial farms the FW-FP development cost was estimated at $1,200.

168. Farm certification and audit costs were based on existing FEP system audit costs and adjusted to reflect the increased time required to complete the FW-FP certification process and the streamlined audit cost. They also assumed the certifier or auditor would recoup an annual appointment fee.

16 Both the Government and regional councils will incur costs from administering the FW-FP system. The Government will incur costs in establishing and operating national leadership and coordination of the system. Regional councils will incur costs from producing catchment challenges, values, and context in collaboration with tangata whenua; supporting farm operators with implementation; appointing certifiers and auditors; managing certification and audit data; and managing significant non-compliance.

Officials have estimated these costs. These monetised costs are not presented in the cost-benefit analysis tables because they will be incurred under both the status quo and the preferred options.

169. Recertification costs assumed the mandatory five-year recertification period alongside an annual five percent significant change in farm system or annual land use change. Audit costs assumed 70 percent full compliance, 28 percent moderate non-compliance and 2 percent significant non-compliance. Audit frequency was adjusted accordingly to provide an annual average cost.

Cost-benefit analysis of preferred system design options

Farm Operators

170. Farmers will incur the costs of having their FW-FPs audited and certified.

171. The preferred option for recertification and audit timeframes will deliver benefits to farmers, because under the counterfactual the FW-FP system would degrade over time. In the absence of a FW-FP system, regional councils would continue to use resource consents to ensure water quality improvements are met, passing on associated costs (consenting and compliance) to farmers.

172. FW-FPs should have greater utility under the preferred option. Over time, credible FW-FPs will demonstrate the sustainability status of farms and add to farm value.

Regional Councils

173. Regional councils will incur low costs and medium-high benefits under the preferred option compared to the **status quo**. FW-FPs will provide regional councils with a new mandatory and enforceable regulatory tool to address on-farm risks to freshwater. The implementation of FW-FPs will therefore assist regional councils to achieve their legal obligations under the NPSFM to improve water quality. The costs and benefits of the application of FW-FPs to councils is not able to be quantified as this will be an output of regional council plan changes to implement the NPSFM.

Government

174. For the preferred options, the Government incurs no costs or benefits compared to each of the counterfactuals.[17] This is because the preferred options do not change the costs of the system that will be funded by the Government, and because the combined higher environmental benefits of the preferred options are accrued to regional councils.

Tangata whenua

175. Tangata whenua incur minor costs compared to the **status quo** and on average medium-high benefits.

176. The preferred option will provide assurance that mātauranga is incorporated in risk assessments. The preferred option for risk assessment will also allow the design of risk assessments so that they take account of the unique features of Māori agribusinesses.

177. The preferred option for identifying actions will ensure the consistent incorporation of catchment context and tangata whenua values.

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17 See footnote 15 for further details.

178. The preferred option for audit and recertification will ensure that the FW-FP system maintains credibility and currency and that mitigation actions continue to reflect contemporary cultural values.

Industry Bodies

179. Industry bodies incur low marginal costs, and medium benefits under the preferred design options compared to the **status quo**.

Rural Professionals

180. Rural professionals incur medium marginal benefits compared to the **status quo**.

181. The preferred options for recertification and audit timeframes will result in a highly functioning and credible FW-FP system which will create an environment for rural advisory and certification services to expand, resulting in a more skilled and expanded workforce.

Treaty of Waitangi and Te Mana o te Wai

182. Part 9A of the RMA does not require FW-FPs to give effect to Te Mana o te Wai. However, Te Mana o te Wai is incorporated in New Zealand's freshwater management system through the NPSFM.

183. The assessment criteria include whether proposed options are contrary to Te Mana o te Wai. The analysis also assesses the overall system design against Te Mana o te Wai.

Analysis

184. There are several opportunities for tangata whenua involvement across the FW-FP system as iwi/hapū and as landowners. These include potential roles as well as having interests in, and being users of, the system. Engagement with tangata whenua (see Appendix Two) has assisted in this analysis.

System oversight

185. MfE will establish a FW-FP system oversight function to provide national leadership and coordination of the FW-FP system. Tangata whenua have an interest in the FW-FP system because it will impact on Māori as landowners, Farm Operators, iwi/hapū, and practitioners in the system. Tangata whenua will participate on an advisory group to support the FW-FP system oversight function, alongside regional councils.

186. Regional implementation and leadership by regional councils means that existing local relationships with iwi/hapū will be exercised via implementation of the system.

Catchment values and context

187. Every FW-FP will reference catchment challenges, values and context, and risks and actions will reflect catchment challenges, values and context. This requirement will be limited to information that regional councils have made available for this purpose.

188. The development of this information will involve iwi/hapū via existing processes (e.g., regional planning processes under the NPSFM, iwi management plans). Regional

councils must actively involve tangata whenua in freshwater management (including decision making processes) under the NPSFM.

189. Utilising existing established processes, particularly the NPSFM, will enable iwi/hapū involvement and to determine how their perspectives will be reflected in the operation of the FW-FP system. This approach will address the diversity of Māori social and cultural structures across regions. It will provide flexibility to determine which actions will best respond to the freshwater challenges in each catchment. This approach will also enable iwi/hapū to exercise a level of manaakitanga, kaitiakitanga and stewardship over freshwater for the benefit of present and future generations.

190. This approach reflects engagement with tangata whenua groups who expressed a desire that the government not prescribe how they engage with and develop values within the FW-FP system.

Regional appointment of certifiers and auditors

191. During engagement, tangata whenua groups expressed an interest in the regional appointment process and how certifiers and auditors will determine cultural values in FW-FPs.

192. Iwi/hapū will contribute to and be involved in regional councils' processes to appoint certifiers and auditors via existing relationships, including contributing to regional competency frameworks and training development and delivery.

193. The regional appointment process will build confidence that certifiers and auditors understand local planning rules, relevant Treaty settlements, and catchment values, as well as catchment context competencies. While regional councils will develop appointment processes, existing regional processes allow iwi/hapū to be involved in the implementation of the appointment process. This will also help build the capability of tangata whenua as certifiers in the system.

Users of the system (landowners, Farm Operators, management of Māori freehold land)

194. Submissions highlighted the need for the FW-FP system to recognise the specific challenges[18] associated with Māori freehold land due to complex ownership and governance arrangements and the implications of the Te Ture Whenua Māori Act 1993 (TTWA).

195. FW-FPs will require actions to reduce risks to freshwater (see Chapter 3). Some actions may require substantial investment which may be more challenging for some Māori landowner structures to undertake. For example, farm tracks may need to be upgraded to reduce sediment loss. On a farm with multiple kilometres of track across steep land, owned by multiple trustees receiving marginal economic returns, upgrades can be challenging due to difficulties accessing capital and reaching agreement. A farm may then be issued with compliance actions for not undertaking actions due to these challenges.

18 Māori Agribusiness in New Zealand: A study of the Māori freehold land resource, Ministry of Agriculture and Forestry, 2011.

196. Consideration of these specific challenges is required to enable an equitable system under the Treaty and to allow landowners to be effective stewards of their lands and water.

197. Engagement is continuing with Māori landowners on how the system can recognise these challenges. Part of the Essential Freshwater Fund is committed to addressing capability and capacity of Māori landowners and their ability to operate within the FW-FP system. Guidance will also be developed to support Māori freehold land arrangements to meet regulatory requirements. There will be ongoing engagement with tangata whenua via testing on Māori land to assess the performance of the system. The context-specific on-farm focus of FW-FPs will go some way to meet these challenges.

Capacity challenges

198. Māori need support and resourcing to engage across the FW-FP system. This is integral to enable them to act as effective Treaty partners. The *Essential Freshwater Fund* will help build the capacity and capability of iwi/hapū and the ability of Māori landowners to operate within the FW-FP system.

Treaty settlements

199. FW-FP regulations will not affect Treaty settlements and agreements between the Crown or councils and specific iwi/hapū. However, various settlements place obligations on the Crown in certain decisions (e.g., under the RMA) and on matters affecting areas or matters of interests (e.g., particular waterbodies). Officials have analysed relevant settlements to understand their relevance to FW--FPs.

200. Councils need to comply with existing Treaty settlement obligations when implementing the FW-FP regulations. The provision of catchment challenges, values, and context as a regulated outcome provides for the consideration of these settlement obligations in each FW-FP and region.

201. The regional appointment of certifiers will also allow regional councils to require demonstration of an understanding of regional rules and plans, and key catchment context competencies to undertake their functions and certify FW-FPs in a catchment. This includes the requirements of relevant Treaty settlements. This means the certifier will be aware of any settlement obligations (and regional planning provisions that provide for settlement obligations) when certifying FW-FPs.

Delivering the system

How will the new arrangements be implemented?

Regional councils

202. Regional councils will be responsible for enforcing the FW-FP regulations. Regional councils will be able to recover the administrative costs of CME activities for FW-FPs under section 36 of the RMA.

203. Regional councils will appoint certifiers and auditors who will operate in their regions. This appointment process will provide for assessments of the knowledge held by certifiers and auditors about planning rules and relevant catchment values and

contexts. The regulations will prescribe standards and competencies that persons will be required to meet to operate as certifiers and auditors.

Government

204. The FW-FP system will require national leadership and coordination. MfE will establish a FW-FP oversight function. An advisory group (including representatives from key system partners) would be appointed by MfE (in consultation with relevant Ministers) to support initial rollout and implementation of the FW-FP system.

Tangata whenua

205. Tangata whenua will participate in the advisory group that will support the FW-FP system oversight function. Tangata whenua will be involved in the regional appointment of certifiers and auditors.

Rolling out the regulations

206. Implementing the FW-FP system across 16 regional councils and 34,000 farm businesses will require a staged approach, both over time and across regions. Part 9A authorises the Minister for the Environment, in consultation with the Minister of Agriculture, to phase the rollout of regulations, including the order in which regulations apply to regions. The areas to which the regulations apply will be periodically updated and notified by Order in Council as and when new areas fall under the FW-FP system.

207. The discussion document presented two options for the roll out of FW-FPs:

- catchment-by-catchment prioritisation; or
- prioritisation based on farm characteristics and risks, where rollout could be based on farm system, farm activity, or current FEP status.

208. The proposed approach to rollout is different to that which was proposed in the discussion document, as different approaches will be appropriate in different places. The Order in Council process will enable the rollout to be responsive to capacity issues such as the number of certifiers and auditors appointed in a region, to ensure that the system is ready for the regulations to come into effect.

Rollout timeframes

2022	2023		2024			2025
Regulations promulgated	Phase 1: Southland Waikato Gisborne	Phase 2: Hawkes Bay Otago West Coast Tasman/Nelson	Phase 3: Bay of Plenty Greater Wellington Horizons	Phase 4: Canterbury Chatham Islands Taranaki	Phase 5: Northland Marlborough Auckland	Regulations in place across the country

209. Timeframes for rolling out to the different regions were determined based on:

- the presence of farm planning infrastructure;
- alignment to the NPSFM freshwater planning process; and
- investment needs for capability and capacity.

Communications and education

210. A targeted communications strategy will support regional councils with the rollout campaign. There will be national communications, engagement, and guidance to support the implementation of the FW-FP system.

211. The capacity of rural professionals to deliver the FW-FP system was a key risk raised during consultation The Government will fund programmes to build the capability and $capacity of certifiers. These programmes will integrate with MPI's advisory services.

How will the new arrangements be monitored, evaluated, and reviewed?

212. Regional councils will be responsible for monitoring and evaluation of FW-FPs. Part 9A sets out data and reporting requirements for certifiers, auditors, and regional councils (e.g., the certifier must notify the regional council when a FW-FP has been certified).

213. Work is underway to establish a consistent and efficient way to capture, collect and report data in a standardised and robust manner. This will avoid each regional council having to independently develop their own FW-FP data system. This system will also provide central and regional government with data to support and report on the rollout and implementation of the FW-FP system and regional council compliance, monitoring and enforcement functions related to FW-FPs.

214. There will also be continued engagement with relevant groups on how FW-FP data is generated, collected, managed, shared, and published to ensure transparency and effectiveness. Engagement will be undertaken through regular workshops, along with ongoing opportunities for feedback from affected parties (i.e. farmers, tangata whenua).

How else will the impact of the new arrangements be monitored?

215. Regional Councils are also required under the NPSFM 2020 to measure and report on components of ecosystem health. Regional data informs national assessment of the state and changes in water quality, in accordance with the Environmental Reporting Act 2015.

216. The 2023 Environment Aotearoa Report will provide a baseline for water quality prior to the implementation of FW-FPs, with the subsequent report, Environment Aotearoa 2026 the first report post implementation. While changes reported over this period cannot be assumed to be solely from the implementation of FW-FPs, it is expected that the FW-FP regime will improve water quality. Regional comparisons of water quality changes compared to time since implementation will enable further investigation of any correlation between FW-FPs and water quality changes.

Chapter 7: Infringement offences

Section 1: Diagnosing the policy problem

What is the context behind the policy problem?

217. Infringement offences are a type of strict liability offence which do not require enforcement agencies to prove the mental element of the offence. This reduces the

evidential burden on enforcement agencies. Infringement offences result in financial penalties, but not convictions.

218. Infringement offences are commonly used across the New Zealand public sector to target low-level non-compliance. Under the RMA, a Council may serve an infringement notice where an infringement offence has been committed, as an alternative to criminal proceedings.

What is the policy problem or opportunity?

219. Approximately 34,000 farmers and growers nationally will require a certified and audited FW-FP. Given the scale of the system being introduced, regional councils will need effective and efficient tools to motivate compliance.

220. As FW-FPs will be the first regulated farm planning mechanism applied at a national level under the RMA, an infringement regime specific to FW-FPs is necessary to:

- ensure enforcement approaches across regional councils are nationally consistent;
- provide clarity about the role of the regional council, certifier and auditor in compliance and enforcement;
- provide regional councils with clarity about what actions (or lack of actions) require enforcement;
- encourage FW-FP implementation by providing regional councils with specific offences for no action (i.e. not having a FW-FP within the required time-frame or failing to implement actions specified in the FW-FP);
- provide regional councils with the ability to undertake enforcement and issue offences in a timely manner; and
- set infringement fees at a level appropriate to discourage active non-compliance (i.e. an infringement fee less that the cost of obtaining a FW-FP, or taking appropriate actions, may inadvertently encourage non-compliance).

Consultation

221. The following question and table of proposed infringements and fees was included in the discussion document to seek specific feedback on the FW-FP infringement regime:

Question 43 – Are the proposed offences and infringement fees appropriate? If not, what would be appropriate?

Proposed infringement	Proposed fee range
Farm Operator does not have a certified FW-FP within the specified timeframe	$1,000 - $1,500
Farm Operator does not have an audited FW-FP within the specified timeframe	$1,000 - $1,500
Farm Operator does not seek recertification of their FW-FP in line with the recertification triggers	$1,000 - $1,500
Farm Operator does not implement actions in line with the agreed timeline	$1,000 - $1,500
Farm Operator does not lodge an addendum or update details when required	$500

222. The infringement offences and fees proposed were supported by submitters as a cost-effective tool to keep Farm Operators on track. Some submissions noted that the proposed fees are lower than the cost to Farm Operators of the FW-FP system, but as regional councils have the discretion to apply the fees repeatedly, they are still likely to be an effective tool.

What objectives are sought in relation to the policy problem?

223. The key objective of the FW-FP system is to better control the adverse effects of farming on freshwater and freshwater ecosystems, to stop further degradation and reverse past damage. Infringement offences under the FW-FP will encourage the timely uptake of FW-FPs along with the completion of identified on-farm actions to deliver freshwater outcomes.

Section 2: Deciding upon an option to address the policy problem

224. Infringement offences for FW-FPs are empowered under the RMA. The relevant sections of the RMA are:

- Section 21(1)(b) - the options for initiating infringement offence proceedings and the steps to be taken after an infringement notice has been issued;
- Section 217M (k) - infringement offences for the contravention of, or non-compliance with, a provision of this Part or any regulations made under this section;
- Section 343B - an infringement offence can be proceeded against by way of an infringement or by laying a charge under the Summary Proceedings Act 1957;
- Section 360 (ba) – prescribes the offences under this Act, including offences prescribed under paragraph (ho) or section 217M(1)(k);
- Section 360(bb) prescribes infringement fees, which may be different fees for different offences; and
- Section 360(1) (ba) - specific infringement offences to be created, i.e. for FW-FP regulations.

What options are being considered?

Option 1 – Status quo

225. Under the status quo, no specific FW-FP infringement regime would be included in the regulations.

Option 2 – Specific FW-FP infringement offences and fees

226. The discussion document consulted on this option. Under this option, the regulations would provide specific offences relating to FW-FP uptake and implementation, along with associated fees.

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

227. **Option 2** is the preferred option. An infringement regime specific for FW-FPs will:

- ensure there is a nationally consistent approach to FW-FP infringement offences (what actions, or lack of actions require enforcement);

- provide clarity about the role of the regional council, certifier and auditor in compliance and enforcement;
- provide regional councils with the ability to undertake enforcement and issue offences in a timely manner, targeting particular offences relating to lack of action (i.e. failing to implement identified on-farm actions); and
- set infringement fees at a level appropriate to discourage active non-compliance (i.e. an infringement fee less that the cost of obtaining a FW-FP, or taking appropriate actions, may inadvertently encourage non-compliance). See table below.

Proposed Infringement	Proposed fee
Farm Operator does not have a certified farm plan within the specified timeframe	$1,500
Farm Operator does not have an audited farm plan within the specified timeframe	$1,500
Farm Operator does not seek re-certification of their freshwater farm plan in line with the re-certification triggers	$1,500
Farm Operator does not implement action or actions in line with the agreed timeline	$1,500
Farm Operator does not lodge an addendum or update details	$500

Consultation with Ministry of Justice

228. MfE and MPI consulted with the Ministry of Justice (MoJ) on the proposed infringement offences. Key matters for clarification identified by MoJ included:

- Human rights - the potential for the FW-FP system to limit human rights (for example freedom of expression in relation to information and reporting requirements); and
- Maximum infringement fee amounts – reference to the 2021 Legislation Design and Advisory Committee (LDAC) Legislation Guidelines, specifically the recommendation that infringement fees generally should not exceed $1,000.

229. In response, MfE and MPI provided the following clarifications to MoJ:

- MfE and MPI recognise that the design of the FW-FP system will involve some limitations on rights, however it is considered that these limitations are justified;
- MfE and MPI have given due consideration to the Legislation Guidelines and consider that the exceptions to the general principles (for maximum limits) in cases where there are significant financial incentives for non-compliance is relevant for FW-FP Infringement fees. As the cost of obtaining a FW-FP is likely to be in the range of $1500 to $10,000, an infringement fee of $1000 (less than the minimum cost of compliance) may inadvertently incentivise non-compliance, therefore a fee of $1500 was preferred.

What are the marginal costs and benefits of the option?

Table 10: Cost-benefit analysis – Infringement offences and fees

Additional costs of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	Compared to the status quo (no FW-FP specific infringement regime specified in regulations) the Government will incur minimal costs. Any costs associated will be related to delivering national oversight system functions to support FW-FPs (for example providing and updating guidance).	Low	**High.** We have identified the system components that will be funded by the Government, and we have high confidence in the costing methodologies.
Tangata whenua	It is proposed that a targeted FW-FP infringement regime be established to enable Councils to undertake more timely compliance with the FW-FP regulations. More efficient delivery of on-farm actions to address risks to freshwater will honour the intent and purpose of the Treaty of Waitangi and Te Mana o te Wai by providing targeted enforcement tools to encourage more timely compliance. Māori farmers and growers will need to comply with the FW-FP requirements and therefore will be subject to regional council enforcement actions. Complex Māori land ownership structures may impede the ability to undertake necessary actions within specified FW-FP deadlines. Similarly, the ability to access the resources necessary to implement any identified on-farm actions may impact on Māori land owner compliance.	Low/Medium	**Medium.** An infringement regime that encourages the early adoption of FW-FPs and the timely implementation of identified on-farm actions to improve freshwater honours the intent and purpose of the Treaty of Waitangi and Te Mana o te Wai.
Regional councils	A targeted FW-FP infringement regime will provide regional councils with a more effective and efficient tool to enforce FW-FP compliance. For example, the inclusion of specific infringement offences provides certainty to regional councils about what actions (or lack of actions) require enforcement.	Low	**High.** The specification of FW-FP infringement offences and fees in the regulations should not create significant additional costs to regional councils, rather it is likely to create efficiencies given the clarity provided by the inclusion of specific infringement offences.

Farm Operators	The intent of targeted FW-FP infringement offences is to encourage timely compliance with the regulations including the adoption of identified on-farm actions. For those Farm Operators that are compliant, there will be no additional costs.	Low/Medium	**High.** The preferred option will impact only those Farm Operators who do not comply with the FW-FP regulations within the required timeframes. Non-compliance with regulations may negatively impact on a farmers operators' ability to borrow money and can also impact on property values. *(medium impact; medium certainty)*
Industry bodies	Industry bodies have an interest in ensuring that their farmers and growers are compliant with regulations and delivering upon any consumer market objectives. Industry bodies will not be impacted by infringement fees directly.	Low	**Low.** The level of oversight provided by industry bodies regarding farmer or grower compliance with regulations is varied. For example, some industry bodies require members to be fully compliant with necessary regulation in order to be industry accredited.
Rural professionals	A FW-FP infringement regime that provides greater clarity in enforcement is not anticipated to add any additional costs to certifiers and auditors. Rather, additional certainty will provide those rural professionals involved in the system (as a certifier or auditor) with greater clarity as to their individual role.	Low	**High.** Rural professionals are expected to act as certifiers and auditors in the system. Certainty about the interface with the infringement regime and the role of the certifier and auditor will provide greater transparency and clarity.
Monetised costs	$500 - $1500 per offence fee	Low	**High**
Non-monetised costs		Nil	**Not applicable**

Additional benefits of the preferred option compared to taking no action			
Affected groups	Comment	Impact	Evidence Certainty
Government	Timely Farm Operator compliance with FW-FP requirements (including actions identified to mitigate or manage risks to freshwater) will deliver on the Government's freshwater improvement and restoration goals.	Nil	**High**[19]
Tangata whenua	A FW-FP infringement regime that encourages the on-farm actions to address risks to freshwater is likely to enable faster improvements in water quality and ecosystem health, in turn better enabling Māori to undertake customary food gathering.	High	**Medium.** Several tangata whenua submissions emphasised the importance of cultural values and perspectives being developed at a regional or catchment level. The timely delivery of local freshwater improvements will therefore lead to more timely recognition of cultural values.
Regional councils	A targeted FW-FP infringement regime will provide regional councils with a more effective and efficient tool to undertake FW-FP compliance. For example, the inclusion of specific infringement offences provides certainty to regional councils about what actions (or lack of actions) require enforcement.	Medium	**High.** The specification of FW-FP infringement offences and fees in the regulations should not create additional costs to regional councils, rather it is likely to create efficiencies given the clarity provided by the inclusion of specific infringement offences.
Farm Operators	FW-FP infringement offences will encourage timely compliance with the regulations including the adoption of identified on-farm actions.	Low	**High.** Compliance with regulations can positively impact on a farmers ability to borrow money and can also impact positively on property values. *(medium impact; medium certainty)*

[19] In the RIS, the benefits of options that produce a more effective FW-FP system, are recorded against regional councils. This is because regional councils have a legal obligation to maintain and improve waterways based on the values and attributes in the NPSFM. Where the current state is below the national bottom line, regional councils must introduce measures to bring waterways at least back to the bottom line. Without a FW-FP system, regional councils would need to rely on other methods to achieve these obligations.

Industry bodies	Industry bodies will benefit from having certainty on what offences will be enforced, enabling more appropriate support for their farmers and growers.	Medium	**Low.** The level of oversight provided by industry bodies regarding farmer or grower compliance with regulations is varied. For example, some industry bodies require members to be fully compliant with necessary regulation in order to be industry accredited.
Rural professionals	A FW-FP infringement regime that provides greater clarity in enforcement will provide certainty for those rural professionals involved in the system (as a certifier or auditor).	Medium	**High.** Rural professionals are expected to act as certifiers and auditors in the system and will not be directly responsible for infringement fees.
Monetised benefits	A number of groups involved in FW-FPs will benefit financially from the implementation of FW-FPs.	Medium	**Low.** Given the variability of affected groups in the FW-FP system, any assessment of total benefit is not possible without relying on substantial assumptions.
Non-monetised benefits	If FW-FP delivery is successfully implemented the policy has potential to provide significant benefits not only in contributing to improved water quality and associated values, but also building a more sustainable and resilient primary sector and farm advisor workforce.	Medium	**Medium.** While benefits to a mandatory FW-FP system are expected, capacity and capability challenges are expected, reducing the certainty that benefits will be delivered within a certain timeframe.

Section 3: Delivering the system

230. The FW-FP Regulations on gazettal (if approved by the Executive Council and Governor-General) will amend the Resource Management (Infringement Offences) Regulations 1999 to add a schedule providing for FW-FP Infringement Offences.

How will the new arrangements be implemented?

231. The role of regional councils in enforcement is laid out in Part 9A of the RMA. It requires regional councils "to monitor compliance by Farm Operators with their duties under this Part and with any requirements in regulations". Regional councils can employ all the tools available to them under the RMA to enforce compliance with the freshwater farm plan regulations. Regional councils have the discretion to decide whether to impose an infringement fee for non-compliance on a Farm Operator.

232. Enforcement action normally begins with an enforcement officer directly observing an act or omission that constitutes an offence. Alternatively, an enforcement officer may issue an infringement notice after receiving information that gives him or her reasonable cause to suspect an offence may be, or is about to be, committed. The information received may be in the form of a complaint, the results of environment monitoring, or the observations of other local authority officers.

233. For FW-FPs, the auditor is required to report non-compliance of a Farm Operator with the freshwater farm plan regulations to the relevant regional council. The auditor has no enforcement powers or further role in the enforcement process.

234. Having infringement offences within the FW-FP system will provide regional councils (as the responsible enforcement body) with the necessary tools to undertake timely and appropriate enforcement. Infringement offences targeted to specific actions (or lack of actions) will also provide enforcement officers clarity about what offences warrant infringement. The benefit of including infringement within the system means that the prosecuting agency (Regional Councils) do not have the cost of bringing court proceedings or of proving the elements of the offence.

235. Section 343D of the RMA provides that a local authority shall be entitled to retain all infringement fees received for notices issued by its enforcement officers.

Appendix One: Detailed Impact Analysis

Regulated Outcomes

	Option 1: Status quo	**Option 2**: Outcomes in regulations with additional guidance	**Option 3**: Regulations specify how to achieve the outcome	**Option 4**: Regulations define the outcomes in more detail (Preferred)
Effective	0	++	0	++
	Effectiveness depends on Part 9A. Regional plan rules will determine the extent to which FW-FPs are not contrary to Te Mana o te Wai, as FW-FPs must be consistent with specified instruments. There is no explicit link to catchment management objectives.	The flexibility allows Te Mana o te Wai to be placed in local context. Outcomes, when combined with regional plan settings developed with involvement of tangata whenua, will not contradict Te Mana o te Wai. This approach requires the FW-FP to consider catchment management objectives.	The increased prescription may make FW-FPs less effective as farm operators have less flexibility to reflect their circumstances. The narrower description of catchment context may make this approach less compatible with regional council objectives put in place to give effect to the NPSFM.	This allows flexibility which will be more effective at reflecting catchment context for a particular operation. It explicitly links to NPSFM action plans, catchment group outcomes, and Iwi Management Plans. It also provides more detail about what catchment context should or may include.
Practical	0	—	—	+
	There are no added costs for farm operators from outcomes but there is less basis for the certifier to assess the FW-FP beyond mandatory content requirements.	Guidance will be difficult to enforce, but greater flexibility minimises costs for farm operators.	Enforcement is challenging due to reliance on subjective assessment, and the prescription for how to reflect catchment values and context gives farm operators less flexibility.	Enforcement will be more straightforward, and farm operators have flexibility in how to give effect to outcomes. This is a practical balance between enforceability and flexibility.
Credible	0	++	— —	++
	Most submitters supported the inclusion of outcomes included in regulations.	Having the detail in guidance makes updating outcomes less difficult and aligns well with existing farm planning approaches, increasing stakeholder trust. A total of 67 percent of submitters supported this option. However, the use of guidance raised concerns for enforceability.	The increased prescription aligns poorly with existing farm planning approaches. However, some submitters preferred this approach as it provides more clarity and certainty for farm operators and certifiers and leaves less room for certifier discretion.	Updates will be difficult, but the regulations should be high-level enough not to constrain innovation on-farm. Submitters supported the inclusion of Iwi Management Plans in catchment context. The balance of this approach is likely to be most credible to partners and stakeholders.

Regulated Outcomes (continued)

	Option 1: Status quo	Option 2: Outcomes in regulations with additional guidance	Option 3: Regulations specify how to achieve the outcome	Option 4: Regulations define the outcomes in more detail (Preferred)
Integrated	0	+	—	+
	This provides flexibility to the sector. However, without catchment context and Māori values this approach is inconsistent with Treaty obligations. It will also be challenging to assess how well FW-FPs are meeting environmental objectives.	This gives the primary sector flexibility while working towards outcomes. Reflecting catchment context is consistent with Treaty obligations. This approach allows iwi/hapū to develop what catchment outcomes look like for them.	The increased prescription does not align well with existing initiatives and may constrain the primary sector's productivity. The approach is similar to **Option 2** in its consistency with the Treaty.	This approach balances achieving the Government's objectives for freshwater with flexibility for the primary sector, and explicitly requires the catchment context to reflect relevant iwi management plans, further supporting the rangatiratanga of iwi/hapū.
Equitable	0	0	0	+
	This gives affected parties maximum flexibility and treats everyone equally but there may be less clarity about FW-FP content.	Affected parties will have less time to give effect to any guidance produced.	This approach could be too prescriptive for the variety of farming practices.	All the detail is included in regulations, giving as much time as possible to transition to the new system. This approach does not constrain farm operators with undeveloped land.
Overall assessment	0	+	—	+ Preferred

Risk Assessment

	Option 1: Status quo	**Option 2**: Specify minimum general requirements (Preferred)	**Option 3**: Prescribe the methodology
Effective	0	+	+
	Risk assessment approaches will be inconsistent. The risk assessment may be contrary to Te Mana o te Wai without assurance that catchment context and therefore tangata whenua values will be incorporated.	Tailoring the risk assessment to the farm best encourages bottom-up action and flexibility allows the risk assessment to not contradict Te Mana o te Wai by recognising different catchment contexts unique to tangata whenua. There may be some inconsistency in approaches.	Consistency supports the integrity of the FW-FP system, but the lack of flexibility creates a risk that the risk assessment will be contrary to Te Mana o te Wai.
Practical	0	+	0
	Lack of clarity in regulations could increase compliance costs if more farm advisers need to allocate more time to develop FW-FPs. Inconsistent approaches would make it more difficult to assess system performance.	This provides more consistency and clarity than the **status quo**, and balances certifier discretion with more clarity from the regulations. The flexibility means there is still some risk of inconsistency, which can be managed with guidance.	This approach provides more clarity and consistency, but the increased prescription reduces on-farm flexibility. The same process will need to be followed including where not relevant, driving up costs.
Credible	0	++	—
	Inconsistent approaches could cause concern. Robustness relies on individual advisers and certifiers.	The risk assessment can incorporate place-specific mātauranga and adapt to the latest information. 80 percent of submitters supported this option.	Regulations will need to be updated to require the risk assessment to incorporate emerging information. Few submitters supported this option.
Integrated	0	+	—
	This leaves maximum flexibility so will integrate well with industry initiatives but does not ensure integration of mātauranga or support the Government's objectives for freshwater.	This somewhat constrains flexibility compared to the **status quo** but supports the Government's freshwater objectives and is more consistent with Treaty obligations as mātauranga can be incorporated into the risk assessment.	Prescription does not support the primary sector and will make it more difficult for existing FEP programmes to transition to meet the new requirements. The reduced flexibility means that the risk assessment is unlikely to reflect Māori values and specific challenges.

Equitable	0	—	— —
	It will be easy for FEP programmes to transition to the FW-FP system and flexibility ensures that distributional impacts are equitable.	The ability to tailor the risk assessment means it can address unique challenges faced by Māori landowners. It will be more difficult for farmers and growers to transition to the new system with specific risk assessment requirements.	The 'one size fits all' approach does not recognise inequities faced by Māori, so distributional impacts will not be equitable.
Overall assessment	0	+ Preferred	—

Actions

	Option 1: Status quo	**Option 2**: High-level criteria	**Option 3**: Detailed approach through prescribed practice standards	**Option 4**: A hybrid approach between Option Two and **Option 3** (Preferred)
Effective	0	+	+	++
	There would be an emphasis on certifier judgement. This may reduce the effectiveness and consistency of risk management across New Zealand.	Including minimum requirements in regulations provides more consistency, but there is still emphasis on certifier judgement.	Risks will be managed consistently, but prescription would require farmers to invest in mitigations not tailored to their farm or catchment and may be contrary to Te Mana o te Wai.	This ensures that high-risk activities are managed appropriately while allowing flexibility for low-risk activities. Most submitters agreed that this provides flexibility and confidence.
Practical	0	+	—	++
	The **status quo** would be ineffective due to the inconsistency in approaches. It may be contrary to Te Mana o te Wai because there would be no assurance that catchment context, and tangata whenua values, will be incorporated into actions. An emphasis on discretion may drive up compliance costs.	Mitigations can be targeted where it most makes sense on the farm. This could reduce compliance costs as certifiers would be guided by minimum requirements in the FW-FP regulations to apply on-farm. However, certifiers would determine appropriate actions to manage the most high-risk activities which could increase compliance costs.	This the least cost-effective option. Farm operators may be required to invest in actions not suited to their farm system. This could displace investment in actions that would deliver higher benefits. It would also be challenging to implement this approach within proposed timeframes as detailed practice standards would need to be developed.	This is the most cost-effective option. There is greater certainty about how to handle high-risk activities, but flexibility ensures investment is targeted to where it makes most sense for other activities. Administrative costs are reduced to both the farmer and the regulator as the implementation of actions for high-risk activities will be guided by practice standards.
Credible	0	+	+	++
	Under the **status quo**, stakeholders may not have confidence that appropriate actions to manage identified risks have been applied consistently. This reduces the credibility of the system to manage risks to the environment.	Certifiers would have discretion to utilise innovative actions and management options to manage on-farm risks based on some considerations specified in regulations. However, the management of high-risk activities could be undertaken ineffectively across New Zealand.	Prescribed practice standards would stifle innovation. The regulations will not be able to reflect emerging knowledge. While practice standards would provide confidence to some stakeholders that activities were being managed consistently, most submitters preferred an option that promotes flexibility.	Emerging knowledge can be utilised that is most appropriate for a farm system. Stakeholders would have confidence that high-risk activities are managed consistently. Innovative solutions and mātauranga Māori can be incorporated. This ensures that the most appropriate actions are implemented and can consider catchment and cultural nuance. Most submitters supported this option.

Actions (continued)

	Option 1: Status quo	**Option 2**: High-level criteria	**Option 3**: Detailed approach through prescribed practice standards	**Option 4**: A hybrid approach between **Option 2** and **Option 3**e (Preferred)
Integrated	0	++	—	++
	The **status quo** will not integrate well with broader Government objectives such as the NPSFM to achieve consistent freshwater outcomes. This option is also not consistent with Treaty obligations as iwi/hapū input is restricted.	The flexibility aligns with sector objectives and will create more consistent freshwater outcomes compared to the **status quo**.	Although this option sets a consistent approach to manage freshwater, the primary sector cannot tailor actions in the way that makes the most sense to each farm or catchment which may be contrary to Te Mana o te Wai and iwi/hapū values.	This approach aligns with sector objectives and achieves consistent outcomes. Actions can be targeted to address Te Mana o te Wai and iwi/hapū values and account for most local values except for some high-risk activities.
Equitable	0	+	—	+
	The **status quo** is reasonably equitable. It will be straightforward to transition to the new system, but with maximum certifier discretion there is potential for unequal distributional impacts.	There will be additional work needed by farm operators to transition to the new system. There is a risk that distributional impacts will not be equal for everyone as more emphasis is placed on certifier discretion.	The prescriptive requirements will create more pressure on farm operators and provides less flexibility. It does not recognise inequities between Māori farm operators and the broader sector.	Some additional work would be required to modify practices to account for differences in Māori farms and the broader primary sector, but there is more flexibility.
Overall assessment	0	+	+	++ Preferred

Recertification Timeframes

	Option 1: Status quo	**Option 2**: Three years	**Option 3**: Five years (Preferred)
Effective	0	++	+
	FW-FPs will become out-of-date without recertification; risk assessments and actions are likely to become ineffective. This may be contrary to Te Mana o te Wai, as FW-FP actions will not effectively mitigate adverse effects.	More frequent reviews mean risks and actions are identified more frequently, so the health of the water is prioritized, which will reflect Te Mana o te Wai. Tangata whenua have input into the system through the regional plan process.	With less frequent reviews, adverse effects may not be managed appropriately which may be contrary to Te Mana o te Wai, although regional councils can impose shorter timeframes.
Practical	0	—	0
	This approach minimises costs for councils and farm operators. However, there is no opportunity to verify that the risk assessment and actions remain relevant.	Administration and compliance costs will be high. There could be capacity issues for rural professionals.	Costs will be lower than **Option 2**. There will be more time for actions to run their course and there are less likely to be capacity issues for rural professionals.
Credible	0	+	++
	Actions will not be updated over time so will not reflect changes in science, technology, and management practices. Stakeholders may have reduced confidence in the system.	The system would be adaptable to changes, but this approach will likely be considered too frequent by stakeholders.	The recertification system will be adaptable, and stakeholders are likely to prefer this approach.
Integrated	0	0	+
	Allowing FW-FPs to become out-of-date is inconsistent with the Treaty and does not support the Government's objectives for freshwater. This approach would integrated well with existing FEP programmes.	Regular reviews honour the intent and purpose of the Treaty but will not align well with the rest of the FW-FP system (e.g., recertification will be more frequent than audit in some cases).	This frequency aligns well with the rest of the FW-FP system and honours the Treaty as tangata whenua will have input into the recertification system through the regional plan process. The frequency will align well with the preferred audit frequency.
Equitable	0	— —	—
	Without enforced updates, there is unlimited time for actions to run their course. Everyone is treated equally.	There are tight timeframes before review which do not recognise challenges for some farm operators (e.g., Māori landowners). The approach does not reward past good performance.	There are longer timeframes before review, but like **Option 2** it does not recognise resourcing challenges.
Overall assessment	0	0	+ Preferred

Audit Timeframes

	Option 1: Status quo	**Option 2**: Annual audit	**Option 3**: Audit every three years	**Option 4**: Audit every five years	**Option 5**: Frequency based on performance (Preferred)
Effective	0	++	+	+	++
	There is no incentive for farm operators to comply with the FW-FP. This may be contrary to Te Mana o te Wai as a farm's adverse effects may not be managed.	Frequent audits would promote compliance, supporting FW-FPs to reflect Te Mana o te Wai. Non-compliance can be addressed in a timely manner.	Audits would promote compliance, but with less frequent audits there is less incentive for poor-performing farm operators to improve practices than **Option 2**.	Poor performers will have even less incentive to improve than **Option 3**.	Frequent audits of poor-performing farms promote compliance. Good performers have less frequent audits which rewards compliance. This is not contrary to Te Mana o te Wai.
Practical	0	+	+	++	+
	Although costs are minimised, the audit is unenforceable, so this approach is impractical.	This provides the most enforcement opportunities, but the high frequency drives up costs and could create capacity issues for regional councils and rural professionals.	The reduced audit frequency keeps costs lower than **Option 2** and makes better use of rural professional and regional council capacity. The audit will be enforceable.	This option has the lowest costs other than the **status quo**. Farm operators have more time to complete actions, and capacity issues are minimised while allowing regional councils to undertake CME.	Costs are higher for some farm operators, but the audit frequency can be extended with good performance.
Credible	0	+	+	+	++
	Without enforceable audits, stakeholders will not have confidence in the system.	The audit will be enforceable, but some submitters expressed a preference for a risk-based approach.	The audit will be enforceable, but submitters expressed a preference for a risk-based approach.	The audit will be enforceable, but submitters expressed a preference for a risk-based approach.	This approach is in line with submitters' feedback. Rewarding compliance encourages farm operators to find innovative solutions.
Integrated	0	+	+	+	++
	Lack of enforceability is not consistent with the Government's objectives or Treaty of Waitangi obligations.	This approach aligns well with most existing FEP programmes which have standard audit timeframes. It honours the Treaty to an extent through stringent timeframes.	The longer timeframes increase the risk of adverse effects on freshwater not being managed, so this approach is less consistent with the Treaty than **Option 2**.	The longer timeframes increase the risk of adverse effects on freshwater not being appropriately managed, so this approach is less consistent with the Treaty than **Option 2**.	This approach is well-placed to honour the Treaty as farms with poor compliance history, which present greater risks to freshwater, are prioritised.

Audit Timeframes (continued)

	Option 1: Status quo	**Option 2**: Annual audit	**Option 3**: Audit every three years	**Option 4**: Audit every five years	**Option 5**: Frequency based on performance (Preferred)
Equitable	0	—	+	++	+
	Distributional impacts will be equitable.	Imposes tight timeframes for compliance with the FW-FP and does not reward good performance.	There is more time for farm operators to implement actions, but past good performance is not recognised.	This approach provides the most time for farm operators to implement actions, but past good performance is not recognised.	The risk-based approach comes at high cost for non-compliant farm operators.
Overall assessment	0	+	+	+	++ Preferred

Appendix Two: Engagement with tangata whenua

Submissions

236. During public consultation MfE received 35 five submissions from tangata whenua groups. These groups comprised both iwi/hapū and Māori landowners. These submissions informed officials about the potential roles of tangata whenua in the system and the potential impacts of FW-FPs on Māori.

Targeted hui

237. From March 2022, officials held hui with tangata whenua groups who submitted and requested further engagement, and with groups who expressed interest in FW-FPs. Further hui will be scheduled as implementation progresses. The aim of these hui is to determine how involved each group wants to be in assisting in the development of the FW-FP system and how officials can best undertake engagement.

Other forums

238. Officials met with the National Iwi Technicians group in 2022. This group reports to the National Iwi Chairs Forum which represents iwi across the country. The aim of these meetings was to seek feedback from the technicians on parts of the FW-FP system such as catchment context, and to seek their insight on the proposed regulations.

239. As Part 9A was developed officials engaged with Kāhui Wai Māori in late 2019 and early 2020. Meetings were also organised with Iwi Māori prior to public consultation to identify and understand how FW-FP regulations can provide opportunities for iwi and Māori in the system.

Key themes

240. Those consulted supported the aim of FW-FPs to improve the effects of farming on freshwater. The context-specific nature of FW-FPs as also supported.

241. A central theme was that the regulations should not determine cultural values and perspectives. These should be developed at a regional or catchment level, as only iwi/hapū can determine these and how they want to engage in the FW-FP system (e.g., with landowners or with regional councils, or both). Many tangata whenua groups have work programmes and goals which the FW-FP system should facilitate.

242. Another theme was that Mātauranga Māori can only be determined by iwi/hapū in each rohe. It is whatever knowledge the iwi/hapū determines that helps te taiao in that area.

243. Officials also heard that the protection and restoration of the mauri of lands and waters should be prioritised. Outcomes should be specified in regulations because there will be differences between catchments. Some of those consulted stressed the point that Māori interests in freshwater are not confined to cultural values, but rather extend to the environment.

244. Certifiers and auditors cannot determine mātauranga Māori if they are not of the particular iwi/hapū and do not have the necessary expertise. How certifiers and auditors assess whether FW-FPs give effect to cultural values and mātauranga Māori needs to be addressed. Tangata whenua groups should be involved in the appointment

of certifiers and auditors. Some of those consulted said that consideration of a 'by Māori for Māori' approach to for certification and audit is needed.

245. Māori rights and interests require resolution. There should be partnership with tangata whenua throughout the FW-FP system. Māori need to be resourced to participate in the FW-FP system. Engagement will require adequate time.

246. Māori landowners face specific challenges compared to general freehold landowners.

247. Testing the FW-FP system on Māori-owned farms in different rohe is important to assess how the system may work in different parts of the country.

248. The whenua and wider catchment, followed by the wai, must be considered first when assessing risks. Tangata whenua need to be involved in the risk assessment process. Actions should recognise the context of the individual farm and a "reasonableness" test is needed. Some higher risk activities will require a more prescribed methodology to identify actions.

249. FW-FPs should be integrated with other resource management requirements and reforms such as He Waka Eke Noa and the proposed Natural and Built Environments Act. FW-FPs should also build on the existing work being undertaken in the farming sector around farm environmental planning.

Future engagement

250. Initial engagement focused on working with tangata whenua who responded to requests for feedback on the FW-FP system in their rohe. Officials are considering how to engage with other groups. An exposure draft of the regulations will be tested with targeted stakeholders prior to their enactment.

251. There will be on-farm testing of the FW-FP system from mid-2022. Testing will be undertaken on different farm types, including on iwi/hapū-owned farms and Māori freehold land.

252. Many Treaty settlements, relationship agreements, and accords require early engagement between the Crown and iwi/hapū. The engagement undertaken, particularly via the FW-FP discussion document and other forums, has provided avenues for engagement. However, continued targeted engagement will be undertaken to meet these requirements.

Appendix Three: Glossary

Auditors

FW-FP auditors will assess each FW-FP to ensure that the actions that were in the plan have been undertaken.

Catchment challenges, values, and context

The actions in FW-FPs will need to formulated to reflect catchment challenges, values, and context. Catchment context will provide detail about the values and challenges that will need to be addressed in each plan. The context could include the identification of significant sites to tangata whenua, local values or priorities, and local action plans to restore waterways or protect and enhance mahinga kai. Catchment context includes the values and priorities that the community and tangata whenua have for waterways. Catchment context will reflect freshwater regional plans notified by 2024.

Certifiers

FW-FP certifiers will assess each FW-FP and sign-off that it meets regulated requirements.

Essential Freshwater[20]

The Essential Freshwater package is made up of several initiatives that requires landowners, farmers, and communities to put the health of waterways first. These include the NPSFM, NESF, stock exclusion regulations, and updates to the regulations which cover the measurement and reporting of water takes. The objectives of Essential Freshwater are to:

- stop further degradation of freshwater;
- start making immediate improvements, so water quality improves within five years; and
- reverse past damage to bring waterways and ecosystems to a healthy state within a generation

Farm environment plans (FEPs)

A FEP is a non-regulatory tool that allows farmers to identify on-farm environmental risks and set out a programme to manage those risks.

MPI[21] has an *Integrated Farm Planning* programme to bring all of farm planning requirements into one place. This is designed to streamline compliance, reduce duplication and costs, and improve information sharing across the primary industries and between regulators and industry assurance programmes.

Industry assurance programmes (IAPs)

20 https://environment.govt.nz/acts-and-regulations/freshwater-implementation-guidance/factsheets-on-policies-and-regulations-in-the-essential-freshwater-package/

21 https://www.mpi.govt.nz/funding-rural-support/farming-funds-and-programmes/integrated-farm-planning-work-programme/

Industry assurance programmes (IAPs) are developed by the primary sector to provide assurance about the credentials of a farm on dimensions such as integrity, traceability, animal health and welfare, and environmental impacts. These include Synlait's Lead With Pride, New Zealand Good Agricultural Practices (NZGAP), and the red meat sector's New Zealand Farm Assurance Programme (NZFAP).

Industry bodies

Industry bodies are organisations that represent the interests of different farming sectors. These include Beef + Lamb New Zealand Limited, Dairy NZ, and Horticulture New Zealand. These organisations operate assurance programmes and provide resources and support to farmers. These organisations are funded by levies on farmers and growers.

National Policy Statement for Freshwater Management (NPSFM)[22]

The NPSFM provides local authorities with direction on how they should manage freshwater under the RMA.

National Environmental Standards for Freshwater (NESF)[23]

The NESF set requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems.

The standards are designed to:

- Protect existing inland and coastal wetlands;
- Protect urban and rural streams from in-filling;
- Ensure connectivity of fish habitat (fish passage);
- Set minimum requirements for feedlots and other stockholding areas;
- Better manage intensive winter grazing of forage crops;
- Restrict further agricultural intensification until the end of 2024;
- Limit the discharge of synthetic nitrogen fertiliser to land and require reporting of fertiliser use.

Regional plans

Regional plans allow regional councils to carry out their functions under the RMA. They must give effect to national policy statements (i.e., NPSFM). They state regional objectives, policies to implement objectives, and rules.

Rural professionals

In the context of FW-FPs, rural professionals provide advisory services to farmers on a commercial basis. These services include advice to improve productivity and sustainability. They also include advice on compliance with regulatory requirements. FW-FP auditors and certifiers will be part of the rural professional community.

22 https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-freshwater-management/#requirements-of-the-freshwater-nps

23 https://environment.govt.nz/acts-and-regulations/regulations/national-environmental-standards-for-freshwater/

Rural professionals will provide advisory services to farmers on the formulation of FW-FPs.

Specified instrument

Specified instrument has the meaning given in 217B (Interpretation) of Part 9A of the RMA: any designation, national environmental standard, national planning standard, regulations made under Part 14 of the RMA, resource consent, rule in a plan, or water conservation order.

Tangata whenua

Tangata whenua has the meaning given in section 2 of the RMA: tangata whenua, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area, where mana whenua means customary authority. Throughout the RIS tangata whenua also refers to Māori landowners.

Te Mana o te Wai

Te Mana o te Wai[24] has the meaning given in section 1.3 of the NPSFM which refers to the fundamental importance of water. It establishes a hierarchy of obligations that prioritises first, the health and wellbeing of water bodies and freshwater ecosystems; second, the health needs of people; and third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

24 https://environment.govt.nz/publications/essential-freshwater-te-mana-o-te-wai-factsheet/