

# Regulatory Impact Statement: Fresh Start For Fresh Water – Objective and Limit Setting

## Agency Disclosure Statement

This Regulatory Impact Statement has been prepared jointly by the Ministry for the Environment and the Ministry for Primary Industries.

It provides an analysis of options to support the efficient, effective and transparent setting of objectives and limits required under the National Policy Statement on Freshwater Management 2011 (NPS-FM).

This RIS seeks agreement to consult on a *national objectives framework (including limited number of national bottom-lines)* implemented through regulatory means to support the NPS-FM. Impacts have been assessed qualitatively, based around whether regulation (in some form) is the most suitable implementation mechanism. It is considered the RIS contains sufficient rationale to support consulting on a regulatory response. The RIS does not analyse the detail of regulatory response or the associated costs and benefits. Uncertainty around the final design, and limitations of available quantitative data, mean that it is difficult to quantify the magnitude of the costs and benefits at this stage. More detailed work will be done if, and when, Cabinet agrees to progress the national objectives framework through regulation. Further analysis of detailed design options and costs and benefits will be contained in the RIS accompanying Cabinet decisions on implementation of a water reform strategy, scheduled for mid-2013.

Our initial view of the proposed policy direction is that it will not: have a net negative effect on business costs (over the long term); impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles. The potential exists for regulations to increase costs for businesses, in the short term, in areas where the national bottom-lines impose higher environmental requirements than would otherwise have occurred. Early indications are that this will only apply to a few areas and that generally the difference from the status quo will not be significant. A final assessment of these matters will be made once detailed design work is complete in late 2013.

Kay Harrison

**Director, Water Reform Directorate**

Date

## Background and scope of policy decisions

1. When Cabinet agreed to the NPS-FM in May 2011, it also agreed to the development of further measures to increase the effectiveness of NPS-FM implementation [CAB Min (11) 18/8 refers]. One of those measures was to undertake *detailed work on the nature of limits, technical methods for describing limits and ways to implement limits to reduce the potential cost of the NPS*. As part of the Fresh Start for Fresh Water programme, the Government commissioned the Land and Water Forum (the Forum) to undertake further policy development on approaches (including the above measure) to support regional councils in setting the objectives and limits for water quality and quantity required under the NPS-FM.
2. In its April 2012 report the Forum recommended greater central government direction on setting *objectives and limits*, including though the establishment of a national objectives framework with a limited number of national bottom-lines which would apply to all freshwater bodies. At the request of Ministers, officials then worked with the National Objectives Framework Reference Group (the Reference Group) to build on the Forum's recommendations - to test and develop a national objectives framework and national bottom-lines.
3. The Reference Group was supported by a series of science panels, council, iwi and stakeholder representatives<sup>1</sup>. Their final report reflected high consensus, and concluded that the development of a national objective framework is feasible and would increase consistency and transparency in the planning process, reduce time and costs associated with plan development and overall, provide for better quality planning.
4. Further work by Ministry officials has defined the full range of options for providing greater central government direction on setting objectives and limits. These are<sup>2</sup>:
  - a) a **national objectives framework** to support regional objective setting
  - b) a limited number of **national bottom-line objectives** to apply to all freshwater bodies
  - c) national methods and toolkits for regional setting of objectives, limits and adjustment timeframes
  - d) national expectations for monitoring and reporting against objectives and limits; and
  - e) national expectations for the management of outstanding water bodies and/or significant values of wetlands.
5. These options are intended to be consulted on through a public discussion document in early 2013.
6. Any, some, or all of these options could be implemented and the options for implementation generally range from support and guidance through to secondary regulation and amending legislation. Further design and analysis is required on most of the components before a recommendation for how best to implement them can be

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<sup>1</sup> Including representatives from: regional councils, Iwi Advisers, National Institute of Water and Atmospheric Research, Mighty River Power, Fish & Game New Zealand, DairyNZ, Federated Farmers, Horticulture New Zealand, Straterra, and Scion.

<sup>2</sup> The first two (in bold) are the subject of this RIS. See Appendix 1 and 2 for a detailed description of all the various reform options. Note: Appendix 1 illustrating the national objectives framework also shows those values being considered for national bottom-lines as proposed in reform option b) above.

made. More detailed design and analysis has been undertaken on a national objectives framework and national-bottom lines, and this has enabled a high-level assessment of the impacts of different implementation options (regulatory etc) which is the subject of this RIS.

7. This paper does not analyse the detail of policy design or the detail of costs and benefits, which cannot be done until Cabinet has agreed to the next phase of work. Further analysis of detailed design options and costs and benefits will be contained in the RIS accompanying Cabinet decisions on implementation of a water reform strategy, scheduled for mid-2013.

### Status quo

8. The NPS-FM requires all councils to manage water in an integrated and sustainable way, while providing for economic growth, by establishing objectives and setting enforceable water quantity and quality limits. There is a requirement to maintain or improve “the overall quality of fresh water within a region” and to involve iwi and hapu in freshwater decision making. It also contains a narrative bottom line that must be met which applies to all water bodies: *to safe guard the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater*, though how this is to be achieved is open to interpretation.
9. The NPS-FM has a provision that gives regional councils the choice of either completing implementation of the NPS-FM by 31 December 2014, or if the council considers this “impracticable”, setting *objectives and limits* by “no later than” 31 December 2030. Regional councils undertaking the latter option must formally adopt and publicly notify by 12 November 2012, a “programme of time limited stages by which it is to be fully implemented”.
10. Prior to the NPS-FM objectives and/or limits in plans for water quality and quantity were underutilised<sup>3</sup>. Since the NPS came into effect three councils (Canterbury, Otago and Southland) have publicly notified plan changes to give effect to it; some plan changes (covering some of the objectives) were also already well through relevant plan changes at the time the NPS came into effect (Horizons-Manawatu, West Coast, and Otago again)
11. A review of regional council progress against the requirements of the NPS-FM, conducted in October 2012 has shown that:
  - all 16 councils have assessed if their plans give effect to the NPS-FM and have decided when they will complete implementation
  - 15/16 councils consider plan changes are needed to give effect to water quality requirements, and 9/16 believe changes are needed to give effect to water quantity requirements
  - 13/16 councils have signalled that they will not complete implementation by 2014 and have, or are about to, adopt a program of time limited stages to complete implementation by no later than 2030.

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<sup>3</sup> For instance, only four regional councils had a set of operative or proposed quality limits and flow regimes. Less than half of the 16 regional councils had allocation regimes. Only eight had numeric objectives or targets for water quality.

12. Existing tools that contribute to and support implementing the NPS-FM are Schedule 3 of the Resource Management Act (RMA) and a range of water quality and quantity guidelines produced by the Ministry for the Environment and other agencies. Schedule 3 is a classification of *water quality classes* based on the uses for which water may be managed. Some classes specify measurable parameters (eg temperature and pH) to ensure water quality will support the uses it is being managed for. But many classes contain only narrative descriptors to support the class objectives (eg. 'no undesirable biological growths' for swimming); this results in the need to use additional technical guidance to create quantitative objectives (eg the Recreational Bathing Guidelines).
13. Schedule 3 of the RMA has some elements similar to the proposed national objectives framework, but it has low statutory weight and has not been updated to reflect scientific advances. There could be confusion if it sits alongside the proposed framework and therefore amendments to Schedule 3 and consequently the RMA may be required.

### **Problem definition**

14. In the absence of further reform there are risks that implementation of the NPS-FM will not achieve the level of improvement sought in freshwater management to provide for New Zealand's economic growth and environmental integrity. Many of the implementation decisions that councils will need to make are significant and have the potential to become caught up in lengthy and costly debates due to:
  - uncertainty about interpretation and implementation of the NPS-FM, and
  - challenges to effective and efficient decision-making under the RMA planning process
15. Therefore, efficient and effective implementation requires further specificity and guidance from central government on how to implement its policies.

### ***Uncertainty about interpretation of the NPS-FM***

16. The NPS-FM is open to wide interpretation on some matters, e.g. what is meant by "the life supporting capacity of water". There is also potential for regional councils to take very different approaches to setting objectives and limits because the NPS-FM is not directive on the methodology. The likelihood that councils will take varying approaches to interpreting and implementing the NPS-FM is evidenced by the varying approaches to other, general RMA matters contained in planning documents, for example, nationally there are 230 different definitions of residential zones.
17. This variability increases the likelihood of:
  - Inefficiency, e.g. unnecessary costs and delays both with gathering the science, and debate over the science, duplicated over multiple catchments and regions
  - Ineffectiveness, e.g. objectives and limits that don't provide certainty for economic and environmental outcomes; or fail to address over-allocation; or allow for cumulative effects to be better considered and managed.
18. There is a risk that councils progressing plan changes quickly will do so without transparency of process and that decision-making will not reflect community values or be informed by suitably rigorous analysis of the implications (including economic) of all options on all relevant values. Likewise progressing a plan change too slowly, due to conducting the required technical work or debate around that work, risks water bodies becoming further degraded as catchment activities continue unabated until objectives in plans become operative.

19. The size, magnitude and incidence of these problems will vary considerably across different regions and plan changes, but in general the costs will fall to:
- regional councils and submitters on plan changes due to debate through the planning process
  - regional councils and resource users where water bodies become over-allocated and require claw-back
  - resource users where lack of certainty restricts investment and results in lost opportunity; and
  - the general public where water bodies do not provide for the outcomes and uses sought.

### ***Challenges to effective and efficient decision-making under the RMA planning process***

20. Councils will implement the requirements of the NPS-FM through RMA policy and planning processes, which presents fundamental challenges, including:
- complex plan changes tend to be determined through an adversarial and litigious process in the Environment Court, carrying high costs for councils and submitters/appellants alike (e.g. Horticulture New Zealand spent \$120,000 appealing a council decision on irrigation); and
  - long timeframes to finalise plans create uncertainty and high costs for resource users (e.g. the Tasman Resource Management Plan did not become operative until 2011<sup>4</sup>) and can expose already vulnerable water bodies to further decline.
21. The causes of these problems are both the lack of clarity in the NPS-FM, and the considerable variation between councils in terms of their capability and capacity, both to deal with difficult planning issues and with gathering the technical information to inform values based policy. Even if these resources are increased, the planning system incentivises adversarial behaviour via de novo appeal rights to the Environment Court, meaning if the hearing decision is not the outcome sought by a submitter it can be appealed to the Environment Court with no regard to the earlier decision. This often results in final decisions being made by the court, despite good collaboration and outcomes from community consultation.

### ***Costs of the status quo – implementing the NPS-FM***

22. Ensuring the objective and limit setting process results in quality decisions requires a mix of science and technical information, as well as values-based judgements. As mentioned above, these are all matters that could become the subject of time-consuming and costly research, followed by debate through regional council planning and court processes, with uncertain and potentially inconsistent outcomes. The costs of this fall to submitters and appellants on regional planning documents, as well as regional councils (and therefore ratepayers) and the courts.

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<sup>4</sup> For almost 20 years, between the commencement of the RMA in 1991 and notification of this part of the plan the district relied on transitional arrangements which included requirements for resource consents for all activities in the beds of river and lakes. This absence of permitted activities meant that even small projects, such as the placing of a hose to take water for stock drinking, culverts in small streams and riparian planting required resource consent.

23. NPS-FM implementation costs were estimated by Harrison Grierson and NZIER (2011) at \$33 – 49 million of planning costs for regional councils and planning participation costs of between \$35 – 52 million for communities, stakeholders, local authorities and industry. Though Harrison Grierson noted these costs would be “highly sensitive to the way the NPS-FM will be implemented”. They further noted that “each regional council is likely to implement policies and plans in different ways” and that “the approach taken will impact greatly on how the costs and benefits fall”.
24. The costs to individual councils to implement the NPS-FM without further guidance or direction are likely to be significant, as they individually undertake the science required to inform and develop objectives and limits, and embark on the statutory plan process. For example:
- Environment Canterbury’s budget for scientific investigations (and monitoring work) for the 2011/12 year was \$7.6 million. From the 2010/11 financial year, Environment Canterbury is now recovering 30 per cent of the cost of scientific work directly from consent holders
  - Waikato Regional Council indicated through their Long Term Plan process an allocated budget of \$1.92m in 2012/13; \$1.97m in 2013/14 and \$2.15m in 2014/15, to implement the NPS-FM.
  - Northland Regional Council estimates an additional \$110,000 per year will be required to implement the NPS-FM, which they will partially fund by reducing existing activities e.g. reduced environmental monitoring and reduced levels of response to the Environmental Hotline.
  - Costs to councils to progress a plan through the statutory process can also be considerable. Current estimates for Horizons One Plan preparation (2006/2007) are in the region of \$1m while appeals have cost approximately \$1.4m and expected expenditure for appeals (1 September 2010 to 31 July 2012) is approximately \$1.9m.

## Objectives

25. In order to address the problems identified in the previous sections, the overarching objective of the **national objectives framework** and **national bottom-lines**, is to *achieve transparent, cost-efficient and effective implementation of an objectives and limits-based approach to water management* – so as to support the objectives contained in the NPS-FM. This overarching objective is broken down into specific objectives that separately contribute to this being achieved. These specific objectives are:
- Effective and consistent objectives and limits in place for all bodies of fresh water (to proved certainty).
  - Efficient and transparent process for objective and limit setting (to address the challenges and costs in decision making)
  - National values and tāngata whenua values reflected in regionally-set freshwater objectives and limits (to assist in a transparent decision making process).
  - NPS-FM bottom-lines given effect through regionally-set freshwater objectives and limits.
  - Environmental state and resource use monitoring and reporting that supports a limits-based approach (to inform the iterative decision making process).

26. How the national objectives framework should be implemented will be assessed against the status quo using these objectives. All objectives are weighted equally.

## Regulatory impact analysis

### Approach to option identification

27. This RIS assesses implementation options for a national objectives framework and national bottom-lines. Although detailed design has not yet been completed, the following sections provide a high-level of indication of how these would work. The choice of how to implement the national objectives framework and national bottom-lines is a continuum between the status quo, non-statutory guidance and regulation or legislation.

### *A national objectives framework*

28. A national objectives framework would:
- specify some common values and uses that individual water bodies could be chosen to be managed for (e.g. as a drinking water source or for swimming)
  - for each of those values and uses, specify what quality and quantity aspects of the water body state will need to be managed (e.g. slime, bacterial contamination, flows)
  - provide a description of what it would mean for that value or use to be provided for at banded levels of poor, fair, good and excellent (e.g. a 1 to 5% infection risk may be considered 'fair' and a <1% infection risk considered 'good' )
  - where possible, specify minimum numeric objectives for each band (e.g. *E. coli* concentrations could not be above 550/100mL to be considered 'fair' for swimming, and would need to be between 550/100mL and 260/100mL to be considered 'good')
  - where it is not possible to nationally specify numeric objectives, regional councils would be directed to do this for the identified quality and quantity aspects
  - integrate tāngata whenua values and mātauranga māori (traditional science) where appropriate.
29. The framework would then be used by regional councils when setting objectives with iwi and communities. They would consider which of the values and uses in the framework a particular water body was to be managed for, and what band they wanted it to be in. The combination of values and uses desired would determine limits required, and the impacts of different choices would need to be tested before final decisions were made.
30. By providing a menu of values and uses, and related objectives, a national objectives framework would improve the efficiency of objective setting by reducing the need for local technical and scientific work. It would provide national consistency, and support transparent, informed and focussed discussion about what values and uses communities want water bodies to provide for. Together with supporting tools such as catchment models, communities are then also able to have a discussion about the implications of differing objectives.

### *National bottom-line objectives*

31. Within a national objectives framework, some values and uses could be expected to apply to all water bodies. These would relate to the existing requirements of the NPS-FM i.e. the narrative bottom line objective to 'safeguard the life-supporting capacity of freshwater'; and the associated objectives, 'maintain or improve the overall quality of

freshwater within a region’; ‘protect the quality of outstanding freshwater bodies and ‘protect the significant values of wetlands’.

32. The Forum and Reference Group have suggested additional national bottom-line objectives relating to managing risks to human health, indigenous species and ecosystem health - other values could also be added.

### *Option identification*

33. The three main options considered include:
- a. maintaining the status quo
  - b. guidance option package; or
  - c. regulatory option package.
34. Each option’s costs and benefits will be identified and assessed against the status quo, and against the stated policy objectives. Where the costs and benefits fall is only indicated at a high level eg between regional councils, central government, resource users and the general public. It is not possible to break down impacts down until further design and analysis is undertaken.
35. Likely magnitude of impacts is expressed as small, medium, large or very large and is intended mainly to give a sense of relativity between different costs and benefits and where those are likely to fall.<sup>5</sup> The likely magnitude takes into consideration the cumulative impacts of costs and benefits across multiple councils and/or catchments, which may be small when considered individually but add up to a larger impact. Further work on regulatory options, including consultation, will look at the impacts in more detail.
36. The scale chosen for magnitude enables comparison of the impacts of different options and packages on administrative benefits and costs. We have also accounted for the benefits of improved water quality and the costs of adjustment. These are expressed as ‘very large’ but, once quantified, could actually be on a completely different scale from the administrative benefits and costs. For example, our evidence suggests that the overall value of water is of a magnitude of billions of dollars, so a cumulative impact of ‘very large’ from the packages analysed is likely to be a reasonable estimate. Similarly \$450 million has been allocated for clean-up of Lake Taupō, the Rotorua Lakes and the Waikato River, so estimating the cumulative adjustment costs as ‘very large’ is also likely to be reasonable. Although these are both currently assessed as having an equivalent magnitude on the scale used, they will not necessarily remain so following more detailed analysis and they can be more accurately estimated or quantified.

### *Status Quo*

37. Under the status quo councils continue to implement the objectives and policies of NPS-FM using the existing guidelines. They commission the scientific and economic analysis information required to inform the objective and limit setting process and

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<sup>5</sup> Uncertainty around, and limitations of, available quantitative data mean that it is difficult to quantify magnitude at this stage, however, the qualitative descriptors indicate estimates of: small - less than \$500k; medium - \$500k-\$1.5m; large - \$1.5m-\$3m; very large – greater than \$3m.



select a timeframe for adjustment if current resource use means community objectives are not being achieved<sup>6</sup>.

38. The costs associated with the status quo are detailed in the problem definition above.
39. There are also potential benefits in maintaining the status quo. At present, regional councils have considerable discretion about how to implement NPS requirements to set objectives and limits. This means there is ample opportunity for regional councils to develop locally appropriate solutions. Also, by giving space to try different approaches, it is quite possible that optimal approaches to dealing with particular circumstances may be found and consequentially shared between regional councils.

*Table 1: Costs and benefits of the status quo*

<b>Costs</b>			
<b>Costs</b>	<b>Magnitude</b>	<b>Falls to</b>	<b>Rationale</b>
Science and Technical studies	Medium	Regional Councils	Costs to gather the scientific and technical studies required to underpin the objective and limit setting.
Consultation	Low	Stakeholders participating in consultation	Costs to participate in consultation on plan development.
Investment certainty	Large	Regional councils and resource users	Costs in terms of council plan development being slowed while the necessary technical information is gathered - reducing investment certainty.
Appeals	Very large	Councils, Courts and submitters	Costs as plan provisions and methodologies are contested through the planning and court process.
<b>Benefits</b>			
<b>Benefits</b>	<b>Magnitude</b>	<b>Falls to</b>	<b>Rationale</b>
innovation	Low	Regional councils	Greater scope of work needed at the individual regional level may lead to innovative methodologies for setting objectives and limits.

*Table 2: Status Quo assessment against objectives*

<b>Objective</b>	<b>Assessment against objectives</b>
Overall policy objective	Councils are left to interpret the NPS-FM requirements and implement the provisions as efficiently and effectively as possible. Risk that councils may implement too quickly - thereby reducing transparency and community buy-in while not undertaking sufficient analysis of the impacts or; they take too long and water bodies are further degraded.
Effective and consistent objectives and limits in place for all bodies of fresh water	Councils set objectives and limits based on the knowledge they currently have and are aided by further information they have the resources to acquire. Objective and limit setting is undertaken within a timeframe that allows each council to obtain technical information, develop objectives and limits and consult with the community.  Whilst some regions have resource and appropriate methodologies to inform their objective and limit setting process, capability and capacity vary heavily between regional councils. Some regional councils lack the resource and technical expertise to obtain the best available

<sup>6</sup> Note, this can extend beyond 2030

	information to properly inform this process. This takes away from national consistency and investment certainty.
Efficient and transparent process for limit setting	Councils set objectives and limits using a process that has community buy-in and that evaluates and informs communities of the costs and benefits of various options. There is the risk that this process will be tied up with time consuming and costly research followed by lengthy debate through the court on technical issues.
National values and tāngata whenua values reflected in regionally-set freshwater objectives and limits	Councils continue to engage and reflect tāngata whenua values as they have done with earlier plan processes. As illustrated, current planning processes are ineffective and inefficient and despite collaboration, final decisions are often made through court processes. As a result the desired outcomes are unlikely to be achieved according to iwi and community expectations.
NPS-FM bottom-lines given effect through regionally-set freshwater objectives and limits	Bottom lines are set that reflect regional objectives but which do not necessarily take into account the best available information, nor apply a robust methodology in setting objectives. This is likely to result in the balance of environmental and community outcomes not being adequately considered.
Environmental state and resource use monitoring and reporting that supports a limits-based approach	<p>Councils use existing monitoring data sets to inform the limit setting process and to review objectives and limits once set to ensure they are achieving the desired outcomes.</p> <p>As above, the limit setting process depends on the capability and capacity of the regional councils. Even those regional councils that may have the capacity to set limits may lack the capability to monitor, and report on how the limits are being met.</p>

### *Guidance option package*

40. This option would involve building on the existing guidance to provide councils by including a national objectives framework that could be used by councils to assist with choosing freshwater objectives. It would identify which values within the framework related to the narrative bottom-line objective in the NPS-FM and are expected to apply to all water bodies. An additional option would be to specify that objectives relating to human health are also expected to apply to all water bodies. It is anticipated this will speed up plan development processes and reduce the basis for appeals (if guidance was adopted).
41. The national objectives framework implemented through guidance is expected to have a large net benefit over the **longer** term, which derives primarily through increased guidance on how the NPS-FM is intended to be implemented to be effective. Setting national bottom lines through guidance is likely to have a range of benefits. National bottom lines will provide clarity as to the acceptable standard of a water body, and reduce debate in the planning process. National bottom lines will help to reduce and avoid major and unnecessary costs, including the cost of clean up once a water body has reached a tipping point. Further, providing guidance on national bottom lines will ultimately reduce risks to human health from freshwater recreational activities at a national level.
42. However, there is significant uncertainty as to these benefits as they are dependent on the level of uptake by councils. Additionally, the matters covered by guidance could

still be debated through appeals and potentially undermined. The ability for non-statutory guidance to be debated also means that there is less opportunity for administrative efficiency in the short to medium term while objectives and limits are being set in plans.<sup>7</sup>

43. Costs would fall to central government to develop, produce and facilitate the uptake of guidance and also to councils who may still have to defend the planning decisions made through hearing and court processes.

*Table 3: Impacts: costs and benefits unique to guidance as compared to the status quo*

<b>Costs</b>			
<b>Costs</b>	<b>Magnitude</b>	<b>Falls to</b>	<b>Rationale</b>
Guidance preparation	Low	Central government	Costs to prepare national guidance.
Consultation	Low	Stakeholders participating in consultation	Costs to participate in consultation on guidance.
Reduced opportunity for development	Large	Regional councils and resource users	Costs in terms of council uptake of guidance being low and objectives set that do not balance environmental and economic considerations and constrain development.
<b>Benefits</b>			
<b>Benefits</b>	<b>Magnitude</b>	<b>Falls to</b>	<b>Rationale</b>
Efficiency	Medium	Regional councils	Reduced scope of work needed at the regional level.
Certainty	Medium	Resource users	National consistency of set limits increases investor confidence and therefore contributes to economic growth.
Improved water management	Medium	Māori, communities general public, exporters and tourism sector	Enables better conversations that result in objectives that balance environmental and economic outcomes. Better water quality enhances or protects the 'clean green' brand New Zealand trades on and that New Zealanders value.

*Table 4: Assessment against objectives - for guidance compared to status quo*

<b>Objective</b>	<b>Assessment against objectives</b>
Overall policy objective	Slightly better than the status quo because councils have guidelines and guidance clarifying the intent of the NPS-FM methods of achieving its objectives and policies.
Effective and consistent objectives and limits in place for all bodies of fresh water	Slightly better than the status quo as councils have guidelines and options to choose from. Some gains are expected in terms of effectiveness and transparency through use of the framework to set objectives, but are generally uncertain due to the lack of prescription.
Efficient and transparent process for limit setting	Slightly better than the status quo as councils have guidelines with which to progress objective and limit setting. Councils can then set objectives using a process that has community buy-in and that reduces likelihood of debate through the planning process and court system.

<sup>7</sup> The NPS-FM requires limits to be in place for all water bodies by December 2030.

National values and tāngata whenua values reflected in regionally-set freshwater objectives and limits	Better than the status quo due to increased guidance on how to reflect tāngata whenua values.
NPS-FM bottom-lines given effect through regionally-set freshwater objectives and limits	Slightly better than the status quo councils have guidelines which provide transparency for communities.  Some gains are expected in terms of transparency, as communities will have a way to measure whether water quality is being 'maintained or improved', but gains are generally limited due to the lack of prescription eg uncertain uptake.
Environmental state and resource use monitoring and reporting that supports a limits-based approach	Better than the status quo as councils have an early indication of what the Government is expecting in terms of monitoring and some guidelines of how to undertake it.  Improves practicality by being clear about how councils should use monitoring data in objective and limit setting.

#### Key assumptions and risks

44. The key assumption across the guidance emphasis package is that the guidance assists with effective implementation of the NPS-FM at the local level. The key risk is that the guidance gets insufficient uptake, thereby weakening potential gains where the guidance is not accepted. Also, even though this likelihood is reduced, the matters it covers can still be debated through planning submissions and appeals to the Environment Court.

#### Regulatory option package

45. Under this option the national objectives framework and national bottom-lines are progressed through regulation. The detail of the components of a regulatory package – that is, the suitability of which instrument is best, and any supporting requirements - needs further analysis. The components may include: amending the existing NPS-FM, introducing supporting mechanisms such as NES, section 360 regulations or another NPS. This may also extent to an amendment to the RMA to address any overlap between the national framework and Schedule 3, or: to provide an alternative, more suitable mechanism under the RMA with which to implement the framework. Exploring these options will be the focus of detailed proposal work to come.
46. Implementing the framework through regulation will provide greater certainty that benefits will be achieved. This is through the reduced need for science and technical information, including information on economic impacts, undertaken by each region. These are all matters that could become the subject of time-consuming and costly science, evidence and debate through regional council planning processes, under a guidance package. Using the national objectives framework, regions (councils, in conjunction with iwi and communities) still get to select which objective and values apply to each water body but the choices available would be prescribed by the regulation.
47. Regulation results in a transfer of costs from regional councils to central government, with more overall efficiency gains in the short to medium term while objectives and

limits are being set in plans.<sup>8</sup> This is due to further reductions in the scope of regional level decisions and debate.

*Table 5: Impacts: costs and benefits unique to regulation as compared to the status quo*

<b>Costs</b>			
<b>Costs</b>	<b>Magnitude</b>	<b>Falls to</b>	<b>Rationale</b>
National instrument development	Medium	Central government	Costs to prepare national instruments and guidance for those instruments.
Consultation	Low	Stakeholders participating in national instrument development	Costs to participate in consultation on national instruments and guidance.
<b>Benefits</b>			
<b>Benefit</b>	<b>Magnitude</b>	<b>Falls to</b>	<b>Rationale</b>
Efficiency and transparency	Large	Regional councils	Reduced scope of work needed at the regional level and reduced scope for debate through submissions and appeals.
Efficiency	Large	Stakeholders participating in plan making	Reduced scope for debate through submissions and appeals.
Reduced costs to restore water quality	Very large	Central government, Regional councils, Māori and general public	Reduced scope for further degradation avoids future costs that would result if water bodies reach tipping points and no longer provide opportunities for human use.
Certainty	Very large	Resource users	National consistency in objective setting increases investment confidence and contributes to economic growth.
Improved health	Very large	Central government and general public	Less water-borne illness due to water bodies being better managed.
Transparency	Very large	Māori, general public, exporters and tourism sector	Higher baseline of water quality enhances or protects the 'clean green' brand New Zealand trades on and that New Zealanders value.

*Table 6: Assessment against objectives - for regulation compared to the status quo*

<b>Objective</b>	<b>Assessment against objectives</b>
Overall policy objective	Better than the status quo due to the intent of the NPS-FM being clarified, providing councils and communities with certainty as to how to implement. Planning costs, including those for litigation, are reduced and there is national consistency in the way it is implemented
Effective and consistent objectives and limits in place for all bodies of fresh water	Substantially better than the status quo particularly in the short term. Provides a transparent framework for those councils progressing quickly – a reference point for discussion with communities and a platform for those councils that may not yet have acquired the technical information. Risk that the regulation does not allow the flexibility to amend the framework as scientific and technical

<sup>8</sup> The NPS-FM requires limits to be in place for all water bodies by December 2030.

Objective	Assessment against objectives
	information evolves – though specific regulation could be developed that has a mechanism to allow for this.
Efficient and transparent process for limit setting	Substantially better than the status quo as communities know which process will be used to set objectives and limits. Councils set limits using a process that community supports by having first achieved joint agreement on the objectives. Reduces the opportunity for time consuming litigation. Reduces the timeframe by which objectives and limits become operative in plans
National values and tāngata whenua values reflected in regionally-set freshwater objectives and limits	Better than the status quo as councils will be required to engage where they may not have done (effectively) previously.  Providing for tāngata whenua values within regulation is considered to be difficult, due to designing a workable mandatory tool that accounts for variability in iwi and hapū perspectives.
NPS-FM bottom-lines given effect through regionally-set freshwater objectives and limits	Slightly better than the status quo as it provides another layer of protections for water bodies. There is national consistency and transparency in setting objectives and limits as well as efficiency gains in the planning process – particularly in terms of gathering the scientific and economic to inform the debate around what limits should be set and where.
Environmental state and resource use monitoring and reporting that supports a limits-based approach	Better than the status quo due to clear requirements for monitoring conveyed to councils early, providing them with time to build capacity to undertake the required monitoring.  Although this has some gains, it is considered to have some risks as the requirements could be beyond the capacity of some councils and the prescriptive approach could prevent councils from tailoring monitoring and reporting to their communities' needs. This can be mitigated by a phased in approach to monitoring and ensuring the requirements are fit for purpose and not excessive.

#### *Key assumptions and risks of the regulation package*

48. The key assumptions associated with regulation are that: regional councils choose a timeframe to meet the set limits that optimise net present benefit consistent with NPS-FM requirements and that the costs of adjustment are significantly outweighed by the on-going benefits of a higher level of water quality.
49. The key risks identified with regulation are that:
- there are risks that the science that informs the national objectives framework will evolve and be refined over time and this will need to be reflected (as it occurs) in the regulations
  - using the framework bottom lines, more water bodies are considered over-allocated and require long adjustment periods i.e. beyond 2030 thereby constraining development. However, our initial analysis is that councils are generally setting objectives at least as stringent as what the national bottom-lines would potentially be.
  - or that prescriptive regulation will prevent regional councils from innovating.

- there are risks that some iwi and hapū could consider that a strong regulatory approach to the use of mātauranga Māori in objective and limit setting does not adequately provide for their specific perspectives or local relationships.

## Consultation

50. Through the Land and Water Forum and the National Objective Reference Group, stakeholders from industry groups, environmental and recreational NGOs, iwi, scientists and other organisations with a stake in freshwater and land management have led the development of policy options for Government's consideration. In addition there was significant public consultation on the Forum's first report, reflected in the findings of the second, upon which the recommendation for the national objectives framework and national bottom-lines, is based.
51. The following agencies have been consulted in the development of this RIS: The Treasury; State Services Commission; Ministry of Business, Innovation and Employment; Department of Conservation; Office of Treaty Settlements; Te Puni Kōkiri; Department of Internal Affairs; Ministry of Health. The Department of Prime Minister and Cabinet was informed.

## Conclusions and recommendations

52. In summary the recommended method for implementation that should be progressed in the 2013 discussion document is a regulated national objectives framework (see summary table below). As can be seen from that table progressing the national objectives framework through regulation has the greatest **net** benefits (benefits less costs) when **compared** to the status quo.
53. A national objectives framework implemented by regulatory means will provide certainty that benefits will be achieved. It would provide a transparent basis for discussion from which councils, together with iwi and communities can decide on the values to be protected in their region. It will promote efficiency by reducing the need for each individual council to collect the scientific information and conduct the required analysis on impacts of various options.
54. These are all matters, which under a guidance package have the potential to be the subject of time-consuming and costly debate through regional council planning processes. In using the national objectives framework, councils will still be able to select objectives and values for each water body, but the menu of objectives would be prescribed by regulation. Setting national bottom line objectives through regulation would allow greater national consistency and transparency in the objective and limit setting process resulting in fewer planning delays and minimising future clean up costs.

## Implementation

55. Would be through an RMA regulatory instrument (e.g. a national policy statement and/or national environmental standard, 360 regulations etc). Detailed analysis on the form of the instrument will be developed in conjunction with the development of the regulation content. Development of the regulation would involve the preparation of detailed proposals (including analysis of different design options) and a draft section 32 evaluation considering alternatives, benefits and costs as required by the RMA. The proposal would be publically consulted on. Following consultation, final regulation would be prepared and accompanied by a RIS and section 32 report.

### **Monitoring, evaluation and review**

56. As this RIS seeks approval to progress a national objective framework through regulation but does not attempt to define the regulatory mechanism, a plan for monitoring, evaluation and review at this stage is premature. One will be progressed in conjunction with any regulation as it is developed.

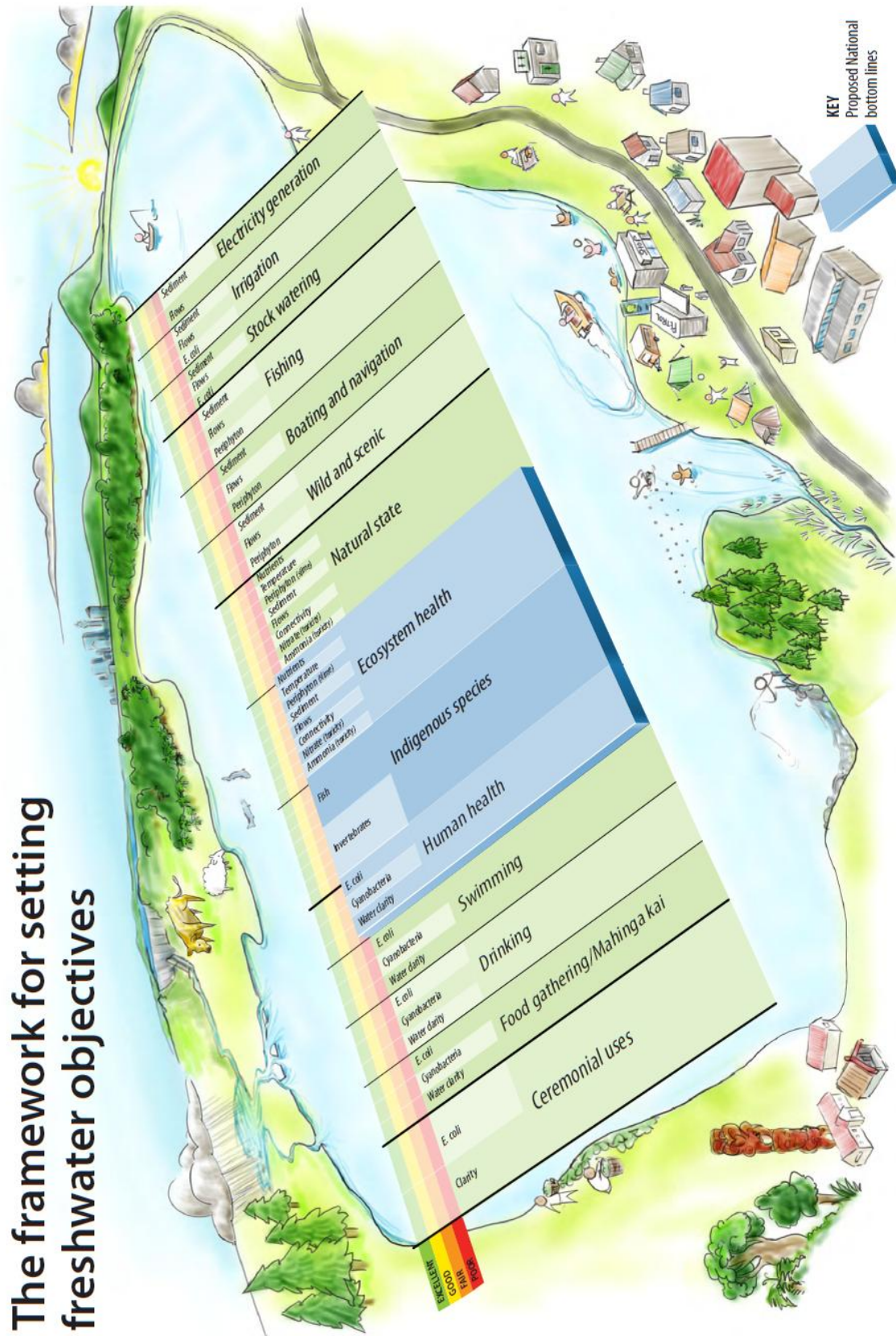


Reform implementation approach	Net impact	Performance against Objectives					Key points
		Effective and enforceable objectives and limits in place for all bodies of fresh water	Efficient and transparent process for limit setting	National and tāngata whenua values	NPS-FM bottom-lines	Monitoring and reporting	
Status quo	Medium benefit (low certainty)	+	0	+	0	+	<ul style="list-style-type: none"> <li>• Risks that the implementation of the NPS-FM is inefficient and ineffective</li> <li>• Risk that objectives are not set to achieve an appropriate balance between environmental and economic outcomes</li> <li>• Risk that there is unwarranted variation in the level of objectives set to provide for similar values.</li> </ul>
Guidance Emphasis	Large benefit (medium certainty)	+	+	++	+	++	<ul style="list-style-type: none"> <li>• Risk of insufficient uptake by regional councils and, where it is used, that it is undermined through appeals.</li> </ul>
Regulatory Emphasis	Very large benefit (high certainty)	+++	+++	++	+++	++	<ul style="list-style-type: none"> <li>• Implementation of the NPS-FM will be more efficient, with some matters decided once through a national process</li> <li>• There will be national consistency in the level of objective set to provide for similar values</li> <li>• Risk that a strong regulatory approach may not adequately provide for specific iwi and hapū perspectives or regional differences.</li> </ul>

**Table 7: Summary Table for implementing the national objectives framework**

# Appendix 1: National Objectives Framework

## The framework for setting freshwater objectives



## Appendix 2: Description of Reform Options to support effective implementation of the NPS-FM

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a) **national objectives framework** to support regional objective setting -

A national objectives framework is a matrix of values-based objectives supported, where possible, by science-based numeric values that may be adopted, after consultation with the community for all water-bodies, and will support consistency and transparency in objective and limit-setting (see also Appendix 1). Further work is required to populate some aspects of the framework and determine how exceptions, if required, to the framework might be provided for.

b) a limited number of **national bottom-line objectives** to apply to all freshwater bodies–

The NPS-FM already contains a narrative national objective that applies to all freshwater bodies- to safeguard the life supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of freshwater (objective A1 and B1). However, this requirement is open to wide interpretation and so it is proposed to support the existing objectives with more detailed narrative and numeric bottom lines that could apply to all water bodies.

c) **national processes, methods and toolkits** to support regional objective and limit setting –

Detailed guidance on the process to set objectives and limits and the provision of information and decision-support tools that will assist in providing certainty, transparency and national consistency in objective and limit setting

d) **national expectations for monitoring and reporting** against objectives and limits –

Monitoring and reporting on the state of the environment by regional councils, as well as the effectiveness of planning documents, is a requirement under the Resource Management Act 1991. Early guidance on the expectations by central government on the minimum requirements for monitoring will ensure consistency and enable national level State of the Environment analysis and reporting to be undertaken.

e) **national expectations for the management of outstanding water bodies and/or significant values of wetlands** –

The NPS-FM requires outstanding water bodies and significant values of wetlands to be protected. The potential for wide interpretation means there are risks too many (leading to missed development opportunities), or too few are considered outstanding to adequately protect regional and national interests. This would be supported by the use of the national objectives framework banded structure to clearly identify, using a nationally consistent guideline, those water bodies and wetlands that fall into that category.