

# Regulatory Impact Statement: Maintaining indigenous biodiversity under the Resource Management Act 1991

## Coversheet

Purpose of Document	
Decision sought:	Approval to release the NPSIB for gazettal
Advising agencies:	Ministry for the Environment
Proposing Ministers:	Associate Minister for the Environment (Biodiversity), Hon James Shaw
Problem Definition	
<p>Aotearoa New Zealand’s current biodiversity management system is failing to protect threatened species and halt the decline of indigenous biodiversity. As one of the key tools to manage indigenous biodiversity, particularly on private land, provisions in the Resource Management Act 1991 (RMA) lack national direction and are therefore subject to different interpretation, application and monitoring by councils. This has led to repeat litigation costs, confusion and uncertainty, and an undervaluing of indigenous biodiversity in decision-making. Inconsistent application of the RMA and inadequate regulatory protection are contributing to the loss of our indigenous biodiversity.</p>	
Executive Summary	
<p><b>Why government intervention is required</b></p> <p>Government intervention is the preferred approach to address the loss of indigenous biodiversity due to inconsistent application of the RMA, leading to inadequate regulatory protection depending on interpretation by local government. Government intervention would:</p> <ul style="list-style-type: none"> <li>• improve consistency in indigenous biodiversity management under the RMA</li> <li>• improve alignment between district and regional councils and clarify their roles and responsibilities</li> <li>• reduce debate and litigation at a local level over time, and improve certainty for landowners</li> <li>• clarify minimum standards required to maintain biodiversity</li> <li>• raise the value and profile of indigenous biodiversity in decision-making.</li> </ul> <p>The collective impact would contribute to improved protection, maintenance and restoration of indigenous biodiversity in Aotearoa New Zealand.</p>	
<p><b>Options considered</b></p> <p>We have considered six options for addressing the key problem that the <b>provisions addressing biodiversity protection under the RMA lack national direction</b> and are being applied inconsistently:</p> <ul style="list-style-type: none"> <li>• <b>Option 1:</b> Relying on the existing regulatory framework, including changes proposed through resource management reform (status quo)</li> </ul>	

- **Option 2:** Guidance, funding and support for councils and landowners (preferred option alongside option 5)
- **Option 3:** Amend the RMA to provide more direction on planning requirements relating to indigenous biodiversity
- **Option 4:** National Environmental Standards to require consistent approach to biodiversity provisions in the RMA
- **Option 5:** National Policy Statement similar to the Biodiversity Collaborative Group recommendation (preferred option alongside option 2)
- **Option 6:** National Policy Statement using habitat classification approach

Addressing the key problem will contribute to the long-term policy objective of reversing the decline of indigenous biodiversity in Aotearoa New Zealand.

### **Preferred option**

We recommend a National Policy Statement (option 5) alongside guidance, funding and support for councils and landowners (option 2) (together the Preferred Option). The provision of national direction will improve protection for indigenous biodiversity throughout Aotearoa New Zealand.

Two rounds of public consultation were held. The first was held in 2019-20, and sought feedback on the proposals. Following this, changes were made to the draft as a result of submissions received, and an exposure draft was provided for public consultation in June 2022, seeking feedback on the workability of the draft. It is intended that the NPSIB will be provided to Cabinet and recommend for gazettal. Gazettal of the instrument will release tagged funding for implementation provided in Budget 2022.

In the short term, implementing the NPSIB will impose additional costs particularly for councils, tangata whenua and landowners (actual implementation costs will vary depending on existing measures, relationships and processes in place). These short-term costs will help to realise long-term benefits for indigenous biodiversity itself, and the benefits that indigenous biodiversity provides for New Zealanders. Secured tagged budget will help to offset the impact of short-term costs via funding to support councils, tangata whenua and landowners throughout implementation, and additional support measures will be introduced following gazettal as detailed in the Implementation Plan.

The NPSIB responds to concerns from tangata whenua expressed at hui and engagement and takes into account the principles of te Tiriti o Waitangi. The NPSIB strengthens the role of tangata whenua as partners in the management of and decision making for indigenous biodiversity, enables councils and tangata whenua and owners of Māori land to work in partnership to manage indigenous biodiversity on Māori lands and provides pathway for tangata whenua to identify and protect their taonga species. Risks arise where tangata whenua may lack the necessary capacity and resources to proactively exercise their kaitiaki role or partner as it is anticipated through these provisions. We anticipate these risks will be mitigated to some extent through actions and support proposed by the iwi/Māori implementation plan, which is being developed by Māori, for Māori. To address concerns regarding management of indigenous biodiversity on Māori lands (which includes Treaty Settlement land, compared to general land), provisions allow greater flexibility for development to occur.

The NPSIB does not conflict with and will not impede the implementation of these (or any other existing) post-settlement legal frameworks:

- The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Te Ture Whaimana o Te Awa o Waikato / the Vision and Strategy for the Waikato River;
- Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 and Te Awa Tupua status and the four Tupua te Kawa intrinsic values for the Whanganui River; and
- Ngāti Rangi Claims Settlement Act 2019 and Te Mana Tupua and the four Ngā Toka Tupua intrinsic values of Te Waiū-o-Te-Ika / Whangaehu River.

## Limitations and Constraints on Analysis

### **Ministerial direction for the stakeholder-led Biodiversity Collaborative Group**

In 2016 the then Minister for the Environment, Dr Nick Smith, established the stakeholder-led Biodiversity Collaborative Group (BCG) to develop a draft NPSIB, which was released in 2018. In 2019, following refinement by officials to improve clarity, consistency, and practical application, the then Associate Minister of the Environment, Hon Nanaia Mahuta, directed officials to progress the development of the NPSIB for consideration by Cabinet and the public. With support from Cabinet, wide public consultation took place from late 2019 to early 2020 on the NPSIB. Cabinet subsequently agreed to release an exposure draft NPSIB for targeted consultation in June 2022. The exposure draft process enabled those with a keen interest in the NPSIB to see changes that had been made since public consultation and to make further submissions on its workability. The final NPSIB takes into account that submissions process.

### **Scope of the NPSIB**

The scope of the NPSIB is focused on terrestrial biodiversity and aspects of wetlands for all land tenures, as a result of a Ministerial decision based on officials' advice. Management of biodiversity in the coastal marine and freshwater domains is addressed through other instruments and are out of scope.

### **Focus on addressing issues with the RMA to protect biodiversity**

This Regulatory Impact Statement (RIS) sets out a range of possible options to address the identified problem definition. Note that these options were presented in a previous RIS published as part of consultation material in late 2019/early 2020. This version provides an update on the development of this work and relevant contextual changes.

### **Certainty of evidence base and analysis**

The evidence base supporting the problem definition is robust. The need for government regulatory intervention to address the problem definition has been recognised repeatedly over the last 20 years, in local and central government reports, independent publications and texts produced by non-government organisations. The evidence supporting the problem definition also favours the development of the Preferred Option to address the problem. Considering that an NPSIB was drafted under Ministerial direction by the BCG, other regulatory and non-regulatory options weren't explored in the same level of detail.

The Cost Benefit Analysis (CBA) builds on an earlier indicative CBA that was released alongside other material for the consultation that took place from November 2019 – March 2020. The revised CBA has been updated based on changes following recent consultation

on the exposure draft, and now includes a wider scope of costs and benefits. To undertake the assessment, the CBA uses a combination of high-level national analysis, district-level case studies, theoretical property-level examples, and literature reviews to assess the costs and benefits of the NPSIB for different stakeholders.

Monetising non-market values is complex, particularly with regards to the values of indigenous biodiversity. Estimating costs on different parties is also complex, given the level of variability in current biodiversity management, the uncertainty around how the NPSIB will be translated into plan provisions, unknowns with regards to landowner and industry intentions in terms of subdivision, use and development of land, and the challenges in establishing the status quo. There is limited reliable or transferrable data available to draw on in the assessment of benefits. The updated CBA includes scenarios and further information on opportunity costs for landowners but does not conclude in a national level Benefit Cost Ratio (BCR) as set out in the Treasury guidance. This is due to the unique nature of the cost and benefits arising from the NPSIB which do not lend themselves to practicable or robust quantification in monetary terms.<sup>1</sup>

It should also be noted that the CBA assumes that local authorities will give effect to the NPSIB within five years of commencement to make all changes in alignment with the requirement to identify and map Significant Natural Areas (SNA). However, the NPSIB provides for updates to plans and policy statements to be made within eight years, and regional biodiversity strategies within ten. The CBA does not consider potential opportunity costs for local authorities impacted by direct expenditure required for NPSIB implementation, or ongoing administration costs for local authorities.

It should also be noted that the management and protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna are existing requirements as matters of national importance under the RMA.

We acknowledge that there is some uncertainty around the costs and benefits of the preferred option, due to the many variables listed above.

The CBA discusses how the benefits of indigenous biodiversity can be expressed according to the ecosystem services that indigenous biodiversity delivers, relying on existing research on the value of ecosystem services delivered by indigenous biodiversity – both quantified and qualified.

Our section 32 and CBA reports support the preliminary conclusion that the aggregate, long-term and cumulative benefits of implementing the NPSIB will, on balance, outweigh the expected aggregate and generally short-term costs.

The benefits of the NPSIB will take time to be realised. They are long-term, cumulative effects that are critical for the wellbeing of current and future generations of all New Zealanders. In comparison, the costs of implementing the NPSIB involve short-term administrative costs and potential opportunity costs for specific stakeholders.

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<sup>1</sup> Cost Benefit Analysis: <https://environment.govt.nz/publications/national-policy-statement-for-indigenous-biodiversity-cost-benefit-analysis>

These costs will be offset in part by funding to support implementation received through Budget 2022, which secured funding to support biodiversity protection management and restoration.

### Responsible Manager

Hayden Johnston  
Director – Water and Land Use Policy  
Ministry for the Environment



16 May 2023

### Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for the Environment
Panel Assessment & Comment:	<p>The Ministry for the Environment’s Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) “Maintaining indigenous biodiversity under the Resource Management Act 1991”. The panel considers the document meets the quality assurance criteria for regulatory impact analysis.</p> <p>The paper clearly sets out the options available and provides a strong analysis of the reasons for the gazettal of a National Policy Statement Indigenous Biodiversity.</p>

# Section 1: Diagnosing the policy problem

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

### Uniqueness of New Zealand’s indigenous biodiversity

As detailed in Environment Aotearoa 2022<sup>2</sup>, Te Mana o te Taiao<sup>3</sup>, and Biodiversity in Aotearoa 2020<sup>4</sup>, our indigenous biodiversity is unique and distinctive. Many of our indigenous species, particularly our animals, come from old lineages – a result of millions of years of geographic isolation. Species and ecosystems are internationally distinctive, with 84 percent of vascular plants and 91 percent of animal species<sup>5</sup> occurring nowhere else in the world (see figure 1).

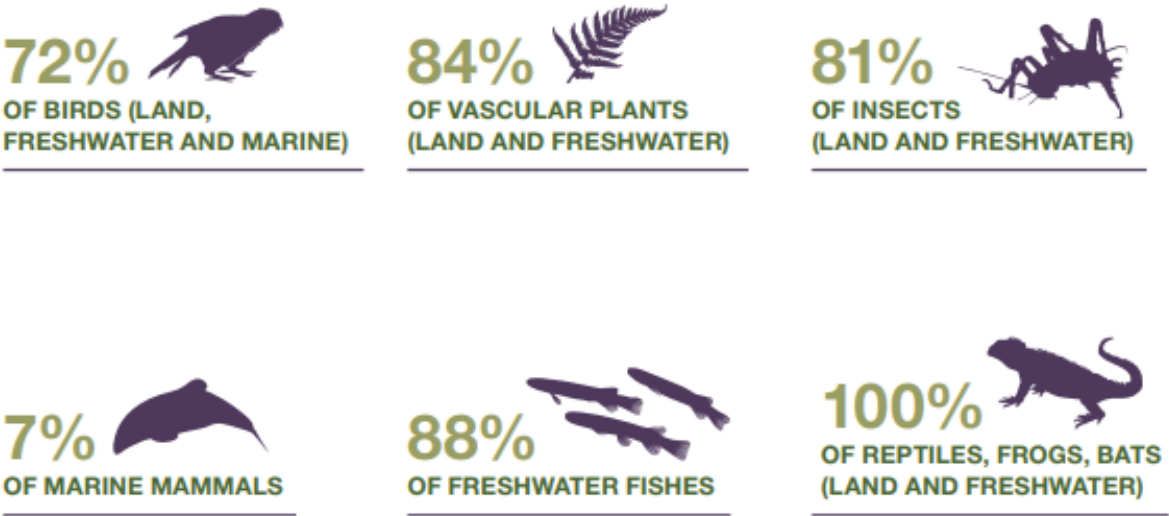


Figure 1: Proportion of New Zealand’s indigenous species found nowhere else on Earth (Image from Biodiversity in Aotearoa, 2020)

As an international biodiversity hotspot<sup>6</sup> Aotearoa New Zealand has the challenge of protecting globally unique and increasingly threatened flora and fauna. Species lost to Aotearoa New Zealand are lost to the world.

### How we value New Zealand’s indigenous biodiversity

Our identity as New Zealanders is closely linked to our indigenous biodiversity. Our natural landscapes are our backyards and our playgrounds, which support our ‘brand’ on the global stage and are a significant drawcard for international visitors. Indigenous biodiversity (from genetic to ecosystem diversity) provides supporting, provisioning and regulating services,

<sup>2</sup> <https://environment.govt.nz/assets/publications/environment-aotearoa-2022.pdf>  
<sup>3</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020.pdf>  
<sup>4</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020-biodiversity-report.pdf>  
<sup>5</sup> Ministry for the Environment and Stats NZ. 2018. New Zealand’s Environmental Reporting Series: Our land 2018. Retrieved from [www.mfe.govt.nz](http://www.mfe.govt.nz) and [www.stats.govt.nz](http://www.stats.govt.nz).  
<sup>6</sup> Mittermeier, R.A., Robles-Gil, P., Hoffmann, M., Pilgrim, J.D., Brooks, T.B., Mittermeier, C.G., Lamoreux, J.L. and Fonseca, G.A.B. 2004. Hotspots Revisited: Earth’s Biologically Richest and Most Endangered Ecoregions. CEMEX, Mexico City, Mexico.

such as carbon sequestration, climate regulation, nutrient recycling, resistance to weeds and pests, pollination and commercial products such as Mānuka honey - all of which underpin our economic, social and cultural wellbeing. A study in 2013 concluded that the total economic value of all land-based ecosystem services in Aotearoa New Zealand is worth \$57 billion a year.<sup>7</sup>

In te ao Māori, people are kaitiaki for biodiversity. Tangata whenua and plants have a common origin in the Māori story of creation with plants as the link between humans and the sacred ancestors Papatūānuku and Ranginui. Indigenous species enable, inform and inspire customary practices including mahinga kai, rongoā, waiata, and whaikōrero.<sup>8</sup>

Conservation is important to New Zealanders<sup>9</sup>, with a significant portion of land legally protected, an increase in active management of these areas and increasing public involvement in conservation.<sup>10</sup> At the same time, many New Zealanders consider the state and management of our indigenous biodiversity as 'adequate' or 'good', when in fact Aotearoa New Zealand's indigenous biodiversity has long been declining.<sup>11</sup>

### **National policy framework for biodiversity management**

Biodiversity management is technically complex and New Zealand has a range of tools to manage biodiversity across different land tenures. There is a strong system for legal protection of public conservation areas, however a significant portion of under-represented and at-risk habitats are located outside of these areas, predominantly on private land. The key pieces of legislation providing for biodiversity management are:

- the Conservation Act 1987
- the Resource Management Act 1991 (RMA)
- the Wildlife Act 1953.

The Conservation Act 1987, administered by the Department of Conservation (DOC), provides for biodiversity management on public conservation land. The Act protects in perpetuity approximately a third of New Zealand's land area and grants DOC responsibilities for management of public conservation land, preservation of indigenous freshwater fisheries and a conservation advocacy role. A range of statutory plans under the Act set out how public conservation land is intended to be managed.

The purpose of the RMA is to promote sustainable management of New Zealand's natural and physical resources including air, soil, freshwater and the coastal marine area. Administered by the Ministry for the Environment, the RMA regulates land use including the location of infrastructure, with almost all forms of resource use affecting biodiversity, and is a

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<sup>7</sup> Patterson, M.G, and Cole, A.O. 2013. "Total economic value" of New Zealand's land-based ecosystems and their services. In Dymond JR ed. Ecosystem services in New Zealand – conditions and trends. Manaaki Whenua Press, Lincoln, New Zealand.

<sup>8</sup> Ministry for the Environment and Stats NZ, 2018.

<sup>9</sup> Hughey, K.F.D., Kerr, G.N. and Cullen, R. 2016. Public Perceptions of New Zealand's Environment: 2016. EOS Ecology, Christchurch, New Zealand.

<sup>10</sup> Brown, M., Stephens, R.T.T., Peart, R. and Fedder, B. 2015. Vanishing Nature: facing New Zealand's biodiversity crisis. Environmental Defence Society, Auckland, New Zealand.

<sup>11</sup> Hughey, 2016.

key tool to regulate land use (noting there are different mechanisms in place for the conservation estate).

The RMA is largely implemented through local government, and provides for biodiversity in several ways:

- requiring the protection of areas of significant vegetation, significant habitats of indigenous fauna to be recognised and provided for
- outstanding natural features as a matter of national importance
- having regard to the intrinsic values of ecosystems, and the maintenance and enhancement of the quality of the environment
- outlining functions and responsibilities of regional councils and territorial authorities in relation to the maintenance of indigenous biodiversity and managing effects of the use, development or protection of land in an integrated way.

The RMA also provides for mechanisms that can be used by the Crown and councils to assist with the maintenance of biodiversity. These include national policy statements (NPS), national environmental standards (NES), national planning standards, regional policy statements, regional plans and district plans.

The Wildlife Act 1953 regulates the keeping and killing of wild birds and other animals, including some fishes and invertebrates but excluding marine mammals. All species are protected unless scheduled as game, unprotected or subject to the Wild Animal Control Act.

In addition to the RMA, the Conservation Act 1987, and the Wildlife Act, a range of other legislation exists to, or has provisions to, manage indigenous biodiversity throughout Aotearoa New Zealand. These are listed in Appendix 1.

### **The wider biodiversity management system**

The wider biodiversity management system involves a range of government-led strategies and initiatives, along with significant community-led initiatives to protect and restore indigenous biodiversity.

Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 (Te Mana o te Taiao) is a key anchor of the wider system, setting out a strategic framework for the protection, restoration and sustainable use of biodiversity from 2020 to 2050. Work to develop and implement this strategy is led by the Department of Conservation (DOC) as a requirement under the United Nations Convention on Biological Diversity.

Te Mana o te Taiao identifies that the key pressures driving the loss of biodiversity in Aotearoa New Zealand are historical and ongoing impacts of invasive species, changes in land and sea use, direct exploitation of species, climate change, and pollution<sup>12</sup>. Te Mana o te Taiao identifies that the current system for protecting, maintaining, and restoring biodiversity is complex, and that several aspects of this system, including decision-making and regulatory processes, are acting as barriers to protecting and restoring biodiversity. It also noted that the regulatory framework for protecting biodiversity is inconsistent and disjointed, contributing to a failure to achieve many biodiversity outcomes.

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<sup>12</sup> Ibid



The NPSIB is identified as a key tool to give effect to the strategy, which draws together existing work being undertaken by central and local government. The strategy will also provide the basis for further work to develop structures and systems that will support ongoing implementation across the whole biodiversity system.

The wider biodiversity management system also involves Aotearoa New Zealand's engagement with international conventions, national, regional and local initiatives, science and innovation, non-regulatory measures e.g. contestable funds, and an increasing number of iwi, hapū, private and community led conservation projects (as listed in Appendix 2).

### **The decline of indigenous biodiversity in Aotearoa New Zealand**

While current initiatives have gone some way to addressing the biodiversity crisis in Aotearoa New Zealand, the health of our indigenous biodiversity continues to decline.

Ecosystems which were once widespread (e.g., wetlands and sand dunes) continue to decline in extent with almost two-thirds of rare and naturally uncommon ecosystems now threatened, most of these in coastal and lowland environments. Of our remaining terrestrial indigenous biodiversity, 80 percent of our bat species, 84 percent of reptile species, 74 percent of terrestrial bird species and 75 percent of frog species are currently threatened with, or at risk of extinction. This is in addition to 46 percent of our vascular plant species, 23 percent of mosses, hornworts and liverwort species and 10 percent of lichen species.

Biodiversity in Aotearoa 2020 concluded that *“Along with the rest of the world, Aotearoa is currently experiencing a biodiversity crisis... Papatūānuku (Earth Mother), Ranginui (Sky Father) and their offspring are in serious trouble.”* The report found that the current state demonstrates an overall trend of ongoing decline, to varying extents between domains, ecosystems and species. Between 2012 and 2018, indigenous land cover area decreased by 12,869 hectares. These changes have seen the extinction of 81 animal and plant species, including 62 bird species<sup>13</sup>. 28 (31 percent) of marine bird species have been identified as ‘Threatened’ and 53 (60 percent) are ‘At Risk’<sup>14</sup>. Previous reports showed that the extinction risk worsened for 86 land, freshwater and marine species in the 15 years prior to Environment Aotearoa 2019.<sup>15</sup> The decline is consistent with international trends identifying that *“nature and its vital contributions to people, which together embody biodiversity and ecosystem functions and services, are deteriorating worldwide.”*<sup>16</sup>

Continual loss is a result of the impacts of human activities such as habitat clearance, degradation and fragmentation; pollution from sediment, heavy metals and nutrients; development pressures and resource use; and the introduction of pests and diseases.<sup>17</sup>

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<sup>13</sup> Environment Aotearoa 2022 (<https://environment.govt.nz/assets/publications/environment-aotearoa-2022.pdf>)

<sup>14</sup> Te Mana o te Taiao (Aotearoa New Zealand Biodiversity Strategy 2020 (<https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020.pdf>))

<sup>15</sup> Ministry for the Environment and Stats NZ, 2019.

<sup>16</sup> IPBES Global Assessment Report on Biodiversity and Ecosystem Services, 2019.

<sup>17</sup> Ministry for the Environment and Stats NZ. 2019. New Zealand's Environmental Reporting Series: Environment Aotearoa 2019. Available from [www.mfe.govt.nz](http://www.mfe.govt.nz) and [www.stats.govt.nz](http://www.stats.govt.nz).

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES<sup>18</sup>) Global Assessment 2019 outlined five key pressures on biodiversity:

- historical and ongoing impacts of invasive species
- changes in land and sea use
- direct exploitation of species
- climate change, and
- pollution.

These global environmental pressures put further stress on Aotearoa New Zealand's indigenous biodiversity. For example, climate change has the potential to destabilise indigenous species' distribution and population patterns through increasing ambient temperatures, extreme weather events and sea level rise. In addition, due to the connectedness of ecosystems, the decline or degradation of biodiversity and ecosystems on land can have negative impacts on marine and freshwater environments, and vice versa.

### **Reform of the Resource Management Act**

The Government is planning to repeal the RMA and replace it with the following three pieces of legislation:

- Natural and Built Environment Act (NBE)
- Spatial Planning Act (SPA)
- Climate Adaptation Act (CAA)

The Natural and Built Environment Bill was introduced in November 2022. A key focus of the NBE is on promoting positive outcomes, which would guide national direction, strategies and plans, supporting decision-making regarding resource consent applications. While management of adverse effects would still be important, the focus on positive outcomes would be a significant shift in the resource management system.

The policy intent of existing national direction will be transitioned through to the new system, for example – in the case of the NPSIB, the effects management hierarchy and provisions relating to the protection of Significant Natural Areas will be reflected in the NBE. A proposed National Planning Framework (NPF) is the tool in the NBE that the Government would use to provide integrated strategic direction on the management of the environment, and consistent regulation.

The NBE would work in tandem with the Spatial Planning Act, which will seek to coordinate and integrate decisions made under relevant legislation by requiring the development of long-term Regional Spatial Strategies (RSS). Regional Biodiversity Strategies to be developed under the NPSIB will complement improved spatial planning at the regional level. In addition, the Climate Adaptation Act will seek to address complex issues associated with managed retreat from climate change effects.

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<sup>18</sup> Established by Governments in 2012, IPBES is an independent intergovernmental body comprising over 130 member Governments to provide policymakers with objective scientific assessments about the state of knowledge regarding the planet's biodiversity, ecosystems.

## Māori interest in indigenous biodiversity management

As Treaty partners, kaitiaki and landowners, the issue of biodiversity decline is of particular interest to Māori. The need for mātauranga Māori and Te Tiriti o Waitangi to be appropriately considered in resource management decision-making has been repeatedly emphasised. The findings of the Waitangi Tribunal report on Wai262 (relating to law and policy affecting Māori culture and identity) and the need for government regulation to reflect its recommendations was often raised.

A key message was that iwi, hapū and whānau needed to be actively included at every level of the local decision-making process. National regulation needs to allow for local priorities and knowledge to be applied. Resourcing and capacity building were noted as essential to supporting their role in resource management decision-making.

The iwi and hapū we engaged with all expressed a strong desire to see New Zealand's indigenous biodiversity restored. As landowners, they expressed differing aspirations for the use of land. The provisions within the draft NPSIB which recognise the under-development of Māori land due to historic and cultural reasons, the high proportion of Māori land in indigenous cover, and therefore provide for flexibility from the management framework, were acknowledged and appreciated.

In addition, iwi, hapū and Māori have repeatedly identified the need for mātauranga Māori and Te Tiriti o Waitangi to be appropriately considered in resource management decision-making, as well as concern about council processes and potential impact on development opportunities.

## 1.2 What is the policy problem or opportunity?

### What is the nature, scope and scale of the problem?

Aotearoa New Zealand's current biodiversity management system is failing to protect threatened species and halt the decline of indigenous biodiversity. Inconsistent application of the RMA and therefore inadequate regulatory protection are contributing to the loss of our indigenous biodiversity.

#### *Inconsistent application of the RMA due to lack of detail and clarity*

The specific policy problem to address in this proposal relates to the current regulatory regime, specifically the RMA and how it is applied by councils in the regulation of land use, particularly on private land. The key problem is that the **provisions addressing biodiversity protection under the RMA lack national direction** and are therefore subject to different interpretation, application and monitoring by councils. In particular, there is:

- a lack of clarity about what the requirement to maintain indigenous biodiversity means
- inconsistent/inadequate identification of sites with significant biodiversity value on private land and no definition of what "significant" means
- regional variation over how to manage the effects of development on biodiversity
- lack of clarity around roles and functions, monitoring, and links to climate change
- a need to better incorporate mātauranga Māori and take into account the principles of te Tiriti o Waitangi.

This problem has led to repeat litigation costs and effort as each jurisdiction individually interprets RMA provisions, confusion around roles and functions and resulting inaction/duplication and uncertainty for industry, iwi and hapū and stakeholders undertaking activities affecting biodiversity. Ultimately it has led to indigenous biodiversity being undervalued in decision-making and inadequate regulatory protection for indigenous biodiversity resulting in biodiversity loss.

Although the government intends to replace the RMA with a new package of legislation, existing national direction will be integrated into this, and establishing a clear and consistent framework for managing biodiversity is necessary to prevent further loss of indigenous biodiversity.

#### *Ambiguity around maintenance function*

The RMA requires councils to maintain indigenous biodiversity (sections 6, 7, 30 and 31). It requires indigenous biodiversity to be considered in a wide range of resource management decision-making contexts and through a range of functions (e.g. land use, discharges, abstractions). There is some confusion about whether the biodiversity maintenance function can be adequately exercised by simply protecting significant indigenous biodiversity as SNAs under section 6(c) or whether a wider approach is required. Some plans only contain biodiversity provisions in relation to section 6(c) areas.<sup>19</sup> The ambiguity around what the biodiversity maintenance function entails has resulted in a highly variable approach to biodiversity management and uncertainty, debate and repeat costly litigation.

#### *No definition of "significance" and the protection of section 6(c) sites*

One key area of confusion and resulting variation is the determination of what a "significant" site or habitat is and therefore whether it is identified and protected. This determination is crucial given the RMA requirement to ensure the "*protection of areas of significant vegetation and significant habitats of indigenous fauna*" under section 6(c) and to some extent the "*maintenance of biodiversity*" under section 30. The RMA provides no definition of "significance" or how to identify areas of significance, and so assessments currently vary widely across the country.

Ambiguity around what defines "significant" has been demonstrated to favour development interests by resulting in an underestimation of conservation values.<sup>20</sup> The devolution of what constitutes significance has resulted in three key impacts: debate is confined to a local context and not at the more visible national level; local needs tend to take precedence over national goals; and multiple definitions across the country make it difficult and costly for everyone involved.<sup>21</sup>

Defining significance involves defining a set of ecological significance criteria. An analysis of regional and district plans in late 2018<sup>22</sup> identified that 64 percent of district and regional

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<sup>19</sup> Myers, S. C. 2018. A Biodiversity Planning Snapshot – How Well Are Councils Protecting Biodiversity? NZ Ecological Society Conference, Wellington 2018.

<sup>20</sup> Brown, 2016.

<sup>21</sup> Brown, 2016.

<sup>22</sup> Myers, 2018.

plans have significance criteria. Of those that do have criteria, variation in criteria and methodology has implications for biodiversity management. It means councils and central government can't obtain baseline or trend data and compare sites, a pre-requisite to ensuring biodiversity is recognised and valued in decision-making.

Currently, some plans have ecological descriptions of the values and criteria that have been met, others only list the criteria that have been met. Some assessments are based primarily on desktop analysis whereas other are based on surveys in close consultation with landowners. A number of plans rely solely on criteria in a plan at the time of consent (if criteria exist). Identification of sites with significant indigenous biodiversity value is vital for their protection, maintenance and enhancement.

#### Lack of direction on how to manage impacts on biodiversity

RMA section 5(2) sets out that adverse effects of activities on the environment must be avoided, remedied or mitigated. This approach, plus the additional RMA options of 'offsetting' and 'compensating' effects are being used inconsistently and sometimes inappropriately across the country, contributing to the loss of indigenous biodiversity.<sup>23</sup>

Case law and best practice guidance<sup>24 25</sup> both provide a hierarchy in how these tools should apply – avoid/remedy/mitigate, then offset and then compensate. Stepping through this mitigation hierarchy is essential to protecting biodiversity as the impacts or loss of biodiversity increase the further you go down the hierarchy. Some councils have set out this mitigation hierarchy in their plans and defined terms and expectations. However, the approach is still inconsistent and inadequate across the country.<sup>26</sup>

#### Lack of clarity around roles and functions

Both regional and district councils have a statutory responsibility under the RMA to maintain indigenous biodiversity. This has been cited as problematic in that the objective of "maintenance" is embedded within the function and the means to achieving the objective are spread across a range of agencies.<sup>27</sup> Some of the tools required to maintain indigenous biodiversity are beyond the role of regional and district councils (e.g. species management). The fulfilment of the function is also dependent, in large part, on the exercise of powers, which are, and according to local government<sup>28</sup> must remain, at the discretion of councils. There is a need for clarity around what *must* be done by councils and what *could* be done by councils in order to fulfil their indigenous biodiversity maintenance function.

Additional clarity is required on division of responsibilities between regional and district councils. The responsibilities of regional councils (section 30) and district councils (section

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<sup>23</sup> Brown, 2016.

<sup>24</sup> Maseyk, F., Ussher, G., Kessels, G., Christensen, M and Brown, M. 2018. Biodiversity offsetting under the Resource Management Act: a guidance document. Prepared for the Biodiversity Working Group on behalf of the BioManagers Group. New Zealand.

<sup>25</sup> New Zealand Government. 2014. Guidance on good practice biodiversity offsetting in New Zealand. Available at <https://www.doc.govt.nz/about-us/our-policies-and-plans/guidance-on-biodiversity-offsetting/>.

<sup>26</sup> Brown, 2016.

<sup>27</sup> Local Government New Zealand. 2017. Addressing the biodiversity challenge: A regional council think piece on the future of biodiversity management in New Zealand. Enfocus, New Zealand.

<sup>28</sup> Willis, G. 2014. Biodiversity: Roles and functions of regional councils. Enfocus. New Zealand.

31) with regards to biodiversity maintenance under the RMA overlap. Riparian management and wetlands are key examples where councils have overlapping functions. Section 62 was added in 2003 to address this by requiring a Regional Policy Statement (RPS) to specify which council was responsible for controlling the use of land to maintain indigenous biodiversity (section 62(1)(i)(iii)). A variety of approaches exists in how responsibilities are allocated. Confusion around functions has resulted in inaction in some cases or doubling up in other cases.

#### *No direction about managing climate change and biodiversity*

Under the RMA, all persons exercising functions and powers are required to have particular regard to the effects of climate change. There is currently no direction on how to achieve this as part of planning and decision-making in a sustainable management framework, and in particular, what this means for maintenance of indigenous biodiversity. Climate change is an emerging threat for indigenous biodiversity, and conserving biodiversity also contributes to climate change mitigation and adaptation. The interaction of climate change and biodiversity is a technically challenging, nationally important issue with significant cost ramifications.

#### *Lack of guidance around biodiversity monitoring*

Under RMA section 35 every council shall monitor the state of the environment of its region or district in order to carry out its functions – maintenance of biodiversity being one of these. The extent to which this function is fulfilled and how is highly variable.<sup>29</sup> This makes understanding the state and threats to indigenous biodiversity and the success of management interventions fraught.

#### *Lack of clarity around mātauranga Māori and taking into account the principles of te Tiriti o Waitangi in relation to biodiversity management*

There are a range of provisions in the RMA that recognise and give effect to relationships of tangata whenua with te taiao (e.g. sections 6(e), 7(a), 8, 33 and 188). The implementation of these provisions has been inconsistent, unmonitored and in some cases non-compliant with legislation. This was documented in the recommendations for change made by the Waitangi Tribunal's report on the Wai 262 claim.

### **Why government intervention is warranted**

The complex problem that is indigenous biodiversity decline can be linked to a collective action and market failure issue. Protection of biodiversity, and benefits from the ecosystem services it provides, are realised over long timeframes and aren't typically valued in decision-making frameworks. The cost of biodiversity loss is borne by communities and future generations, and the cost of avoiding impacts on biodiversity falls on individuals. This market failure has not been adequately addressed through the national policy framework (it is also a global problem), as it is not robust or clear enough to address the challenges of coordination and market failure. This is particularly the case for private land which is predominately managed through the RMA and is not explicit enough about indigenous biodiversity management.

The management of biodiversity outside public conservation land is primarily devolved to local authorities under the RMA. Section 6(c) of the RMA clearly identifies biodiversity as a

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<sup>29</sup> Brown, 2015.

matter of national importance, while sections 30 and 31 identify maintenance of biodiversity being explicit functions of local authorities. While the decline of indigenous biodiversity has been known for some time, action is challenging because of the complexity of the issue, the inability to explicitly value biodiversity and competing priorities for the development of land.

There is a need for a higher order document to provide immediate direction to local authorities on how to manage indigenous biodiversity to address this issue. In summary, reasons warranting government regulation include:

- the issue of biodiversity decline is of national importance and some decisions should be made nationally
- local variation makes it harder to monitor and report biodiversity outcomes nationally
- in some regions/districts practice is poor and biodiversity outcomes are compromised
- the issue involves significant national benefits or costs, including litigation costs
- the issue is technically complex and central government may have better access to resources required to address it
- the issue relates to Government obligations (including to Tiriti o Waitangi and international obligations).

National regulation, specifically in the form of a National Policy Statement for Indigenous Biodiversity (NPSIB), was recommended in the *Biowhat?*<sup>30</sup> Report in 2000, the NZBS in 2000<sup>31</sup> and the review of the strategy in 2006<sup>32</sup>. There have been several attempts to develop one but until the BCG draft, it had not been possible to find consensus amongst key stakeholders.

### 1.3 What objectives are sought in relation to the policy problem?

The primary policy objective sought in relation to the problem is to maintain indigenous biodiversity so that there is no further overall loss. The delivery of this objective should also:

1. recognise the mana of tangata whenua as kaitiaki of indigenous biodiversity
2. recognise people and communities, including landowners as stewards of indigenous biodiversity
3. protect and restore indigenous biodiversity as needed for overall maintenance, and
4. support the social, economic and cultural wellbeing of people and communities now and in the future.

The following outcomes are sought:

1. raising the value and profile of indigenous biodiversity in decision-making
2. improving the regulatory controls for the management of indigenous biodiversity
3. improving alignment between district and regional councils and clarifying roles and responsibilities
4. establishing criteria and approaches required to give indigenous biodiversity management appropriate weight in decision-making.

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<sup>30</sup> Ministry for the Environment. 2000. *Bio-what? Addressing the effects of private land management on indigenous biodiversity*. Ministry for the Environment. Wellington, New Zealand.

<sup>31</sup> Department of Conservation, Ministry for the Environment and Ministry of Agriculture and Forestry. 2000 *The New Zealand Biodiversity Strategy*. Wellington, New Zealand.

<sup>32</sup> Green, W. and Clarkson, B.D. 2006. *Turning the tide? A review of the first five years of the New Zealand biodiversity strategy – the synthesis report*. Report to the Biodiversity Chief Executives. Wellington, New Zealand.

These objectives and outcomes seek to support the achievement of Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020.

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

### 2.1 What criteria will be used to compare options to the status quo?

The criteria seek to assess whether the option or proposal will deliver on the intended outputs and outcomes, is aligned with statutory framework, and whether the benefits outweigh the costs.

1. **Clarity** - Roles, responsibilities and functions under the RMA are clarified, leading to better decision-making and biodiversity management by councils.
2. **Consistency** - Provides a high-level mechanism that enables consistent application of RMA provisions for indigenous biodiversity maintenance at a national level, where a standardised approach will result in the best outcome for indigenous biodiversity.
3. **Flexibility** - Provides for an appropriate level of local flexibility in management approaches, where this will result in the best outcome for indigenous biodiversity (while keeping within scope of RMA requirements)
4. **Implementable** - Able to be developed and implemented in a reasonable timeframe without placing undue costs on central government, councils, tangata whenua, landowners and other key stakeholders.
5. **Acceptability** - Consistent with community expectations and outcomes, consistent with tangata whenua outcomes and fulfils Crown te Tiriti o Waitangi obligations.

The criteria seek to assess whether the option or proposal will deliver on the intended outputs and outcomes and whether the benefits outweigh the costs. It is important to recognise how the criteria interact. For example, there is some interaction between criteria 2 and 3, which are both considered essential to assess which option best addressed the identified problem – there is a need to achieve the right balance in terms of providing national direction for biodiversity maintenance, but sufficient flexibility in regional and local management approaches in application of such national direction, to take the local context into account.

### 2.2 What scope will options be considered within?

The scope of the options being considered has been influenced by direction from previous Ministers and Cabinet. The stakeholder-led BCG was established because previous attempts to develop an NPSIB failed in part due to divergent stakeholder views. The BCG were commissioned under ministerial direction to:

- develop a draft National Policy Statement on Indigenous Biodiversity (NPSIB) and
- make recommendations on supporting and complementary measures to address agreed issues and opportunities for biodiversity.



Following public consultation on the draft NPSIB developed by the BCG, further engagement and consultation with stakeholders has focused on progressing this work. Stakeholder feedback has generally supported this approach, with refinements being made as the work progresses. Further detail on engagement and feedback received is outlined under discussion of the preferred option.

### 4.3 What options are being considered?

We have considered six options for addressing the key problem that **provisions addressing biodiversity protection under the RMA lack national direction** and are therefore being applied inconsistently by councils:

**Option 1:** Relying on the existing regulatory framework, including changes proposed through the resource management reform (Status quo)

**Option 2:** Guidance, funding and support for councils and landowners (preferred option alongside option 5)

**Option 3:** Amend the RMA to provide more direction on planning requirements relating to indigenous biodiversity

**Option 4:** National Environmental Standards to require consistent approach to biodiversity provisions in the RMA

**Option 5:** National Policy Statement similar to the Biodiversity Collaborative Group recommendation (preferred option alongside option 2)

**Option 6:** National Policy Statement using habitat classification approach

The option of using **planning standards** was not considered as it was a relatively new instrument (first introduced in 2019) and focused on regional and district plan structure and definitions.

#### Option 1: Status quo

The status quo is described in [section 1.1](#). Although some of the identified problems can (and will be) addressed through upcoming resource management reform, the key risk associated with maintaining the status quo in the interim is that the lack of national direction relating to biodiversity management in the RMA will mean continued inconsistent application, resulting in continued litigation costs and effort, continued confusion around roles and functions, lack of clarity for resource users, indigenous biodiversity being undervalued in decision-making and inadequate regulatory protection for indigenous biodiversity resulting in continued biodiversity loss.

#### Option 2: Guidance, funding and support for councils and landowners (preferred option alongside option 5)

Under this option, the Government would provide non-regulatory support to assist councils and landowners to achieve better outcomes for indigenous biodiversity. This is likely to

involve the production of appropriate guidance on how to give effect to provisions in the RMA relating to biodiversity management, funding and support to increase capacity and expertise for councils, or funding to assist landowners to maintain indigenous biodiversity on private land. If national direction is progressed (option 5) then guidance, funding and support for councils and landowners would assist with implementation of the national direction.

A benefit of this option is that non-regulatory guidance, funding and technical assistance would address some of the regularly cited gaps within the system, and also support landowners and councils to achieve better outcomes for indigenous biodiversity. This option would be straightforward to implement in the sense that (in isolation) it would not require changes to legislation. However, depending on the level of ongoing support required, there may be a need for consistent central government funding to sustain these support measures in the long-term.

### **Option 3: Amend the RMA to provide more direction on indigenous biodiversity management**

This option would amend the RMA to provide clearer direction on how councils should undertake indigenous biodiversity management. Amendments could define 'maintenance' and provide direction on planning requirements for maintaining indigenous biodiversity and use of established ecological criteria to identify Significant Natural Areas. Amendments could also specify the roles of regional councils versus district councils in more detail, including clarifying roles where responsibilities overlap and how to take into account the principles of te Tiriti o Waitangi.

This option would provide clear unambiguous direction; however, it would be hard to implement as it is at odds with the existing RMA framework which generally sets out processes and principles rather than prescribing matters of technical detail. Legislative change takes a long time and legislation cannot be easily amended to take account of new information (e.g. ecological context). In addition, there will not be any further changes to the RMA given the upcoming reform of the resource management system, as outlined above.

### **Option 4: National Environmental Standards to require consistent approach to biodiversity provisions in the RMA**

National Environmental Standards (NES) are regulations issued under section 43 of the RMA, prescribing technical standards, methods or requirements. Local authorities must observe and enforce an NES through planning and decisions on resource consents. Unless local authorities are allowed more stringent or more lenient rules, they must amend their plans to remove any duplication or conflict between an NES and their own rules<sup>33</sup>. If councils need to amend a plan to remove duplication or conflict, they can do this without using the standard plan change process<sup>34</sup>. An NES can apply generally, or to a specified region, district or part of Aotearoa New Zealand.

An NES for indigenous biodiversity could provide greater certainty, consistency and clarity in the protection and management of indigenous biodiversity. For example, by:

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<sup>33</sup> <https://environment.govt.nz/publications/understanding-national-direction/about-national-direction/> accessed on 4 November 2022

<sup>34</sup> Ibid

- setting nationally consistent requirements and methods to identify section 6(c) sites
- providing a nationally consistent set of resource consent requirements and conditions for proposed activities within section 6(c) sites
- setting out requirements for monitoring indigenous biodiversity.

A benefit of an NES is that they can take effect immediately upon gazettal and can prevail over district and regional plan rules to provide increased certainty and consistency in implementation. This could see immediate improved outcomes for indigenous biodiversity, particularly where current practice and plan provisions are poor. The upfront implementation costs of an NES for councils tend to be lower than for a National Policy Statement (NPS) as councils do not need to go through a formal process to amend their plans.

Key limitations and risks associated with an NES for indigenous biodiversity include:

- it cannot provide objectives or policies, so it may not provide clear direction on the outcomes sought (noting that Te Mana o te Taiao provides this to some extent in a broader context)
- it could undermine existing plan rules established through case law that are more stringent - this could be managed through stringency and leniency provisions
- there are likely to be significant complexities, long timeframes and extensive costs to develop an NES that is fit-for-purpose with certainty it will not result in (potentially significant) unintended outcomes. This would result in further delay to the introduction of national intervention which poses further risk to, and loss of, Aotearoa New Zealand's indigenous biodiversity.

#### **Option 5: National Policy Statement (NPS) informed by BCG recommendation (preferred option alongside option 2)**

National Policy Statements (NPS) provide for national direction issued under the RMA<sup>35</sup>. An NPS sets objectives and policies on matters of national significance and may include more specific direction on how to apply these.

The RMA requires local authorities to give effect to an NPS by amending planning documents (regional policy statements, proposed plans, plans and variations) or taking other actions (like publishing information) to meet the requirements. Decision-makers on resource consent applications must also have regard to an NPS when making decisions. A territorial authority must have particular regard to an NPS when making a recommendation on a notice of requirement for a designation.

Two different approaches to using an NPS have been identified under option 5 and option 6. Option 5 builds on the stakeholder-led BCG recommendation. The BCG spent 18 months, from March 2017 until October 2018, developing a draft NPSIB and recommendations for supporting measures.<sup>36</sup> Since then, Government officials continued to develop the NPSIB, with public consultation between November 2019 – March 2020. The consultation was

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<sup>35</sup> Section 45-55 of the RMA.

<sup>36</sup> [Report of the Biodiversity Collaborative Group October 2018](#)

supported by a draft Regulatory Impact Statement<sup>37</sup> and Section 32 Evaluation and Cost Benefit Analysis.<sup>38</sup>

The NPSIB will require councils to:

- consistently identify and map areas with significant indigenous vegetation and habitats of significant indigenous fauna (SNAs) using criteria set out in the NPSIB;
- include provisions in their plans and policy statements to:
  - maintain indigenous biodiversity and avoid or manage adverse effects of new development, use and activities on indigenous biodiversity within SNAs
  - manage the impacts on indigenous biodiversity outside of SNAs, and
  - record areas outside of SNAs that are highly mobile fauna areas
- set out the significant effects that need to be avoided in SNAs and provide a consenting pathway for addressing other effects through the effects management hierarchy
- promote restoration of degraded SNAs, threatened and rare ecosystems and prepare regional biodiversity strategies and plan for increasing indigenous vegetation cover, and
- undertake monitoring of indigenous biodiversity.

A key limitation of this approach is the focus on SNA identification/mapping and the cost of this. The identification and mapping of SNAs requires field surveys to verify ecological value. These field surveys and the process of working with landowners is costly and time-consuming. The cost is ongoing as the NPSIB requires councils to regularly check for and schedule any new SNAs. Landowner goodwill and provision of access is also key.

The NPSIB provides a balance between flexibility and the need for clear direction around national minimum standards for indigenous biodiversity maintenance. A limitation of the NPSIB is that it only focuses on terrestrial indigenous biodiversity and some aspects of wetlands. It means indigenous biodiversity management is heavily reliant on the NPSIB being well integrated with other government regulation in the coastal marine and freshwater environments. This approach risks misalignment with the te ao Māori worldview that the environment is intrinsically linked, and that indigenous biodiversity should be managed in an integrated and holistic manner.

### **Option 6: National Policy Statement using habitat classification approach**

An alternative use of an NPS could be centred around use of a habitat classification approach. This approach has been developed and implemented by Horizons Regional Council (Horizons RC). It has been upheld by the Environment Court as a way of giving effect to section 6(c) RMA.<sup>39</sup>

Horizons RC uses a schedule of habitat types classified as either 'Rare', 'Threatened' or 'At Risk'. Habitat types were identified using a combination of statistical predictive models,

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<sup>37</sup> <https://environment.govt.nz/assets/Publications/ris-improving-indigenous-biodiversity-management-under-RMA.pdf>

<sup>38</sup> [Section 32 evaluation and cost-benefit analysis for the proposed National Policy Statement for Indigenous Biodiversity | Ministry for the Environment](#)

<sup>39</sup> NZEnvC 182 (2012), Part 3

national research projects and expert opinion and are afforded different levels of protection depending on the classification. Consent is required for any activity that has an adverse environmental effect on a scheduled area.

In addition to the schedule of habitat types, this approach includes a set of significance criteria which are used in the following ways:

- The assessment of significance (done remotely, at a habitat-type level (Rare and Threatened habitat types automatically qualify as significant) and through field assessment at the site level (particularly for At Risk habitat types))
- The identification of site values during the decision-making process for a resource consent application. Indigenous habitats classified as having no threat category (all habitat types) are assessed on a case-by-case basis. Where an activity may have an effect, these habitats are assessed using ecological significance criteria.

A key benefit of this approach is that it can support regions and districts in setting priorities for restoration and protection (several councils already use habitat maps for this, e.g. Waikato and Auckland). Another key benefit is that it is cost effective as field inspections of ecological values are not required to the same degree that they are in SNA identification and mapping. The habitat classification approach also provides continued protection when the spatial extent of habitat changes over time.

A key limitation of this approach is that, without clear demarcation on maps showing where ecologically significant areas are, it is less clear to resource consent applicants what restrictions apply where (and restrictions will still apply). The habitat classification approach also focuses on rare and threatened habitats rather than representativeness (what is typical of the character of an ecological district). It tends to undervalue regenerating and successional habitats that are important for functioning and maintenance of indigenous biodiversity, and other ecological significance criteria such as diversity and pattern are only marginally dealt with. To an extent these are assessed when a consent application comes in, but this is limited as many of the criteria can only be appropriately assessed in the context of the whole region.

## 2.4 What do stakeholders think?

As detailed earlier, the need for greater national direction under the RMA on indigenous biodiversity was identified in 2000 with the *Biowhat? Report*<sup>40</sup>. There have been numerous engagements and consultation with stakeholders and sectors which are summarised below.

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<sup>40</sup> Ministry for the Environment, 2000.

2011	<p>Consultation on a NPSIB found that:</p> <ul style="list-style-type: none"> <li>- 55 percent of all submitters supported the need for an NPSIB<sup>41</sup></li> <li>- the greatest level of support came from NGOs and professional organisations</li> <li>- the bulk of opposition came from private landowners, business and industry, who were concerned about costs; extended constraints on private property rights; lack of funding and financial compensation or incentives to support regulation; and economic impacts on agencies, industry (e.g. electricity generators) landowners and the private sector.</li> </ul>
2017	<p>Development of the draft NPS by the stakeholder-led BCG. The group was set up in 2017 under ministerial direction to enable progress on issues with divergent views. The BCG, led by Forest and Bird and Federated Farmers as trustees, also included representatives from iwi/Māori, industry, ENGOs and council observers. The BCG delivered a draft NPSIB to the Government in October 2018.</p>
2018 - 2019	<p>Government officials undertook early engagement with councils and iwi and hapū on the BCG's draft NPSIB. It was found that:</p> <ul style="list-style-type: none"> <li>- councils emphasised that the NPSIB is only one tool of many needed to address the ongoing indigenous biodiversity decline, along with, for example, Te Mana o te Taiao</li> <li>- councils desired to see the NPSIB delivered along with a package of supporting measures, to assist implementation. These measures should include resourcing and funding assistance for councils and funding and incentives for landowners.</li> </ul>
2019 - 2020	<p>Public consultation on the NPSIB. Individual response and report on the findings can be found on the Ministry for the Environment website. A summary of findings is provided below.</p>
June – July 2022	<p>Exposure draft testing.</p>

The need for government regulation (and non-regulatory support) to address the problem definition is further justified through the commitment of key stakeholders (BCG) to a collaborative process which resulted in a draft NPSIB and recommendations for system improvements and non-regulatory support, presented in October 2018<sup>42</sup>

Further detail on what was found in submissions, and changes that were made based on feedback is outlined below in the discussion of the Preferred Option.

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<sup>41</sup> Ministry for the Environment. 2011. Proposed National Policy Statement on Indigenous Biodiversity: Summary of submissions. Wellington, New Zealand.

<sup>42</sup> [Report of the Biodiversity Collaborative Group 2018](#)

## 2.5 How do the options compare to the status quo/counterfactual?

	Option 1: Status quo	Option 2: Guidance and support	Option 3: RMA amendments	Option 4: NES	Option 5: NPSIB (BCG approach)	Option 6: NPS habitat classification
Criteria 1: Clarity	0	++ Would provide clear direction	+ Would provide clear direction at high level only as RMA doesn't prescribe technical matters	+ Would provide clear detailed direction on some aspects of problem definition through methods and rules	++ Would provide clear direction on all aspects of problem definition	++ Can provide clear direction on all aspects of problem definition
Criteria 2: Consistency	0	0 Consistent application can only be encouraged not enforced	+ Supports consistent application at a high level only as RMA doesn't prescribe technical matters. Lack of consistent approaches risks poor outcomes.	++ Supports consistent application through methods and rules	++ Supports consistent application through detailed objectives and policies	++ Supports consistent application through objectives and policies
Criteria 3: Flexibility	0	+ Flexibility inherent as management approaches non-mandatory. Too much flexibility risks poor outcomes for biodiversity	++ Flexible management possible because RMA can only provide high level direction.	- Providing for local flexibility possible but limited if also intending to provide for consistency	++ Provides flexibility in methods and rules and ability to adapt to local contexts	++ Provides flexibility in methods and rules and ability to adapt to local contexts
Criteria 4: Implementable	0	+ Has stakeholder and iwi and hapū support but would require sourcing additional funding	-- Not in keeping with level of detail in RMA. Legislative change takes a long time	- Likely to be significant complexities, long timeframes and extensive costs to develop a NES that is fit-for-purpose with certainty it will not result in (potentially significant) unintended outcomes	- Potentially high costs for councils, iwi and hapū and resource users	-- New approach for many. Significant cost and timeframes implications in changing from the status quo
Criteria 5: Acceptable	0	- There is appetite and a need for regulation. This option would be expected by stakeholders and tangata whenua alongside regulation	+ Ensures principles of te Tiriti o Waitangi are taken into account but can only provide high level direction so risks not meeting stakeholder expectations	- Prescriptive nature of an NES risks undermining goodwill of key stakeholders, existing relationships and biodiversity initiatives. Difficult to fulfil te Tiriti o Waitangi/the Treaty of Waitangi obligations at this level of prescription	+ Supported by key stakeholders. Would take into account principles of te Tiriti o Waitangi/the Treaty of Waitangi within scope. Domain constraint does not support te āo Maori worldview	- New approach for many that would require significant change from the status quo. Not endorsed by key stakeholders. Can take into account principles of te Tiriti o Waitangi
Overall assessment	0 Status quo	+ Better than the status quo in relation to most criteria	+ Better than the status quo in relation to most criteria	0 Overall about the same as the status quo	++ Much better than the status quo in relation to most criteria	+ Better than the status quo in relation to most criteria

### Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo

- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

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

We recommend the NPSIB (option 5) alongside guidance, funding and support for councils and landowners (option 2) (together the Preferred Option).

Key factors determining preference for options 5 and 2 over other options include:

Status quo	The status quo is not acceptable because we recognise that inconsistent application of the current regulatory system will lead to further loss of our indigenous biodiversity. While the reform of the resource management system may help to mitigate this, it is necessary to take action now to prevent further loss of indigenous biodiversity.
Option 3 – RMA amendments	This option has not been considered further given the time involved in amending primary legislation, and that there will be no further changes to the RMA given upcoming reform of the wider resource management system. In addition, this approach would be inconsistent with the current RMA approach which sets out processes and principles rather than prescribing matters of technical detail.
Option 4 - NES	<p>This option won't necessarily provide the direction required given the limitation on providing objectives or policies, it could undermine existing plan rules and there are likely to be significant complexities and considerable timeframes involved in developing this option, which could extend the status quo period and mean more loss for indigenous biodiversity compared to other options. While an NES can have immediate effect, this may be challenging for councils and transitional provisions may be more realistic and achievable for councils to comply with.</p> <p>A NES could provide increased prescription in the form of rules, for instance for the protection of significant indigenous biodiversity, however this increased prescription risks limited local flexibility to respond to local ecological and social circumstances.</p>
Option 6 – NPS habitat classification	While habitat classification has advantages, the SNA identification and mapping approach (as proposed in option 4) is the most widely used approach to giving effect to RMA section 6(c). It has the support of the Environmental Institute of Australia and New Zealand (EIANZ) and DOC. SNA identification and mapping provides greater certainty for landowners than a habitat classification approach; allows councils to proactively manage adverse effects; supports better monitoring of the state and trend of indigenous biodiversity and already has the buy-in of a wide range of stakeholders (e.g. BCG).

The NPSIB would provide clarity, consistency and flexibility for regulated parties and for wider government. The NPSIB clearly sets out what is required to maintain indigenous



biodiversity under the RMA, and who is responsible for undertaking what function. The NPSIB balances providing local flexibility in management approaches with clear direction on minimum standards where consistency in management is vital for indigenous biodiversity maintenance.

Development of the NPSIB is largely informed by the BCG draft. Given the BCG's commitment to developing an NPSIB to address the problem, and the NPSIB's consistency in intent with the Group's draft NPSIB, the NPSIB is considered the most acceptable option to progress.

A key advantage of the NPSIB is that it builds on the extensive work and consensus achieved by the BCG. This work also enables national direction to be in place in a relatively short timeframe while ensuring that the NPSIB follows a robust policy process that meets statutory obligations for public consultation, feedback and refinement. This, alongside the fact that the NPSIB addresses key gaps and inconsistencies in the management of indigenous biodiversity under the RMA. It also provides the right balance between flexibility and the need for clear direction makes this option the preferred option.

It is also likely the most acceptable option because it incorporates an existing approach to giving effect to section 6(c). SNA identification and mapping provides greater certainty for landowners; allows councils to proactively manage adverse effects; supports better monitoring of the state and trend of indigenous biodiversity, has the buy-in of a wide range of stakeholders, and is supported by DOC and the Environment Institute of Australia and New Zealand Incorporated.

Regarding option 2, incentives, guidance and support are necessary to meet a clear gap in the system, however, guidance is not mandatory. Without clarifying requirements through regulatory intervention, option 2 alone is not likely to address the issue of inconsistent application of RMA provisions and inadequate regulatory protection for indigenous biodiversity. Feedback from stakeholders also firmly supports this non-regulatory option sitting alongside and complementing the regulatory approach.

We recognise that the NPSIB will result in implementation costs that will significantly impact some parties. Recognising the costs and effort that would be involved in implementing option 5, along with the limitations of guidance (option 2) in terms of addressing inconsistent application, the preferred approach is that option 5 and option 2 are implemented alongside each other. Option 5 will provide the direction and clarity needed for more consistent protection of indigenous biodiversity, and option 2 will strengthen delivery and effectiveness through the provision of implementation support.

### **Development of the preferred option based on stakeholder engagement**

Broad public consultation took place from November 2019 to March 2020 on the NPSIB, seeking feedback from the public and also through a series of hui targeting different stakeholders.

Submitters from a range of categories mentioned that financial support is vital to the implementation of the NPSIB. The analysis also noted that a number of submitters

expressed the view that incentives would be needed to make it economically viable for landowners to protect SNAs on their properties.

A total of 7,305 written submissions were received during that consultation - 90 percent of these were form submissions via a Forest and Bird campaign. Given the significant volume of form submissions, the table below summarising the level of support is split to show views from all submitters and unique submitters separately.

Overall, the level of support by all submitters and unique submitters for the NPSIB, broken down by percentage were as follows:

Level of support	All submitters %	Unique submitters %
Oppose	1.9	18.8
Oppose in part	1.2	12.5
Support	92.2	22.1
Support in part	3.3	32.9
Unclear/not stated	1.4	13.8

*Note: Percentages may not add to 100% as they have been rounded to one decimal place*

The unique submissions were received from a range of sectors and perspectives. Each sector had varying levels of support for the NPSIB, as shown the table 2.

**Table 2: Level of support by unique submitters for the proposed NPSIB (by submitter category)**

Submitter category	Oppose	Oppose in part	Support	Support in part	Unclear/not stated	Total
Business/industry	38	29	7	33	17	124
Crown/public organisation	2	1	12	5	2	22
Individual (land owner)	65	33	21	125	38	282
Individual (other)	11	11	65	22	15	124
Iwi/Māori	12	4	9	10	4	39
Non-government organisation (NGO)	3	5	24	10	4	46
Professional body	2	3	6	7	7	25
Regional/unitary council	0	1	5	6	4	16
Science/research organisation	1	2	3	4	2	12
Territorial authority	3	2	9	18	8	40
<b>Total</b>	<b>137</b>	<b>91</b>	<b>161</b>	<b>240</b>	<b>101</b>	<b>730</b>

The full Summary of Submissions<sup>43</sup> is available on the Ministry for the Environment website.

<sup>43</sup> [A proposed National Policy Statement on Indigenous Biodiversity, Summary of Submissions 2020](#)

### Changes made following substantive consultation

Following this substantive consultation, changes were made to:

- include a new and separate Māori land provision requiring councils to work in partnership with iwi, hapū and Māori landowners to develop locally specific provisions for managing indigenous biodiversity and development on Māori land
- clarify that councils must involve tangata whenua in the management of taonga species
- clarify roles and responsibilities for identifying and mapping SNAs, remove the high/medium split for SNAs and amend the assessment principles
- clarify requirements to manage adverse effects in plantation forests, adverse effects on biodiversity outside SNAs, and a specific approach to manage adverse effects on geothermal ecosystems
- provide for management approaches in relation to specific activities/locations, such as pastoral farming, and consenting pathways for other activities as appropriate
- update appendices 3 and 4 which set out frameworks for the use of biodiversity offsets and biodiversity compensation, and specifying what species are highly mobile fauna
- extend timeframes requiring regional biodiversity strategies.

These changes were reflected in the exposure draft.

### Exposure draft consultation

Final consultation on the exposure draft of the NPSIB took place in mid-2022, seeking feedback to improve workability. Changes made to improve workability, and alignment with other statutes, national direction/government guidance and documents include:

- amendments to the effects management hierarchy and offsetting and compensation
- clarification of exceptions to the management of adverse effects of new subdivision, use and development on SNAs, including infrastructure for housing growth areas, and sustainable harvesting of indigenous trees according to a forest management plan or permit
- assessing areas that qualify as SNAs (including changes to the process for Public Conservation Land)
- the definition of Māori lands
- providing a less stringent management framework for plantation forestry to ensure plantation forestry activities can continue.
- Te Rito o te Harakeke has been removed as a fundamental concept, and reframed as decision making principles that will inform the NPSIB and its implementation
- clarified that there are circumstances where development may prevail over indigenous biodiversity on Māori land
- strengthened the requirement for partnership with tangata whenua across the NPSIB
- clarification of how SNAs and significant indigenous biodiversity are to be managed in the interim
- recognition of the role that covenants and kawenata established through other mechanisms play in protecting biodiversity
- other corrections, including to definitions, to provide clarity, improve workability and consistency with other national direction.

Further detail on these, and other changes made following substantive consultation can be found in the Recommendations Report<sup>44</sup>.

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<sup>44</sup>[Recommendation and Decisions Report on the National Policy Statement for Indigenous Biodiversity](#)

## 2.7 What are the marginal costs and benefits of the option?

The following table has been completed in relation to the preferred option 5 (NPSIB) along with option 2 (guidance and implementation support), informed by the Cost Benefit Analysis (CBA). The CBA has been completed by Market Economics. It builds on the previous indicative CBA that was prepared to accompany the 2019/2020 consultation material. New content in the updated CBA includes an outline of scenarios to demonstrate applicability of the NPSIB (and therefore costs), and opportunity costs to landowners.

Affected groups	Comment	Impact	Evidence Certainty.
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups - Owners of land containing indigenous biodiversity	One-off time and other costs to provide access to council representatives to confirm SNA boundaries and description	\$32,400,000* (\$264 per landowner)	Medium
	Possible additional costs if they contest SNAs defined on their land	Low	Medium
	Increased transaction costs (mainly ecological assessment costs) when new or expanded activities require a consent and have adverse effects on indigenous biodiversity	Low	Medium
	Increased compliance costs from conditions of consents to manage effects on indigenous biodiversity	Medium	Medium
	Opportunity costs (and reductions in land value) from constraints on potential use or changes to existing activities on land containing SNAs, where that SNA precludes or limits what could otherwise be done (beyond current rules).	Medium	Medium

Affected groups	Comment	Impact	Evidence Certainty.
Regional councils	<p>Costs of mapping highly mobile fauna areas, mapping vegetation cover, developing targets, developing a regional biodiversity strategy and monitoring plan, developing new provisions implementing a plan change(s)</p> <p>Costs to deliver a regional monitoring programme</p> <p>Minor potential additional costs to</p> <ul style="list-style-type: none"> <li>• establish active engagement processes with tangata whenua</li> <li>• manage additional data</li> <li>• meet increased demand for biodiversity funding/incentives</li> <li>• increased planting and pest control.</li> </ul> <p>These costs are a mix of one-off and ongoing costs, some of which might be funded by regional councils or central government.</p>	<p>Low</p> <p>\$818,000 - \$2,149,000 per council*</p> <p>Low</p>	<p>Medium</p> <p>High</p> <p>Medium</p>
Unitary authorities	As above combined, with some cost efficiencies	\$1,263,000 - \$4,695,000 per authority*	Medium
Central government	<p>NPSIB administration, support and guidance (Excludes funding to local authorities and tangata whenua - included in as costs relevant sections)</p> <p>Most of these costs will be incurred in the first four years</p>	\$3,591,000 – \$5,132,000*	High
Tangata whenua	Opportunity cost of time and travel costs for training and active engagement with local authorities on district plans and regional policy statements, regional biodiversity strategies and regional monitoring plans, and spatial analysis of highly mobile fauna areas and taonga	Low	Medium
NGOs (e.g. Forest & Bird, QEII National Trust, sectoral organisations (farming, forestry, mining) and local advocacy groups)	<p>Costs to actively participate in NPSIB implementation by local authorities and public consultation and hearings.</p> <p>Opportunity costs of time of staff/representatives participating in NPSIB implementation processes</p>	Low	Medium

Affected groups	Comment	Impact	Evidence Certainty.
Wider community	Increases in council rates if council income is not sufficient to cover additional NPSIB implementation and administration costs	Low	Medium
	(Included in regulators' costs)		
	Opportunity costs for alternative uses of (primarily public) land in areas to be restored/enhanced under the NPSIB	Low	Medium
	Opportunity cost of time and travel costs for community members participating in council activities to implement the NPSIB (e.g. district plan changes and other consultation processes)	Low	Medium
Total monetised costs		-	-
Non-monetised costs		Medium	Medium

Affected groups	Comment	Impact	Evidence Certainty.
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups - Owners of land containing indigenous biodiversity	Ecosystem services delivered by indigenous biodiversity including: <ul style="list-style-type: none"> <li>• shelter/shade</li> <li>• visual screening / noise mitigation</li> <li>• biodiversity reservoirs (including refuges for natural enemies of pests and pollinators)</li> <li>• sources of food and raw materials</li> <li>• erosion control, nutrient cycling and soil formation, regulating water quality and air quality</li> <li>• recreation, leisure, and learning experiences</li> <li>• aesthetic value, cultural value, intrinsic value, sense of identity</li> <li>• option/future use value and bequest value (for future landowners).</li> </ul>	High	Medium
	These are permanent benefits to landowners Net benefits from opportunities for development/occupation of Māori land (particularly Treaty Settlement Land), from flexible and enabling provisions for new use, development and occupation that may adversely affect indigenous biodiversity	Medium	Medium
Regulators All councils	Greater efficiency in managing indigenous biodiversity	Low	Medium
	Reduced litigation costs in plan making and resource consents	Low	Medium
	Better and more informed decision-making through clear policy guidance, with potential costs savings on these processes	Low	Medium
	Better relationships and partnerships with tangata whenua and landowners	Low	Medium
Territorial authorities	Greater certainty on location and attributes of SNAs and indigenous biodiversity outside of SNAs, with possible cost savings on relevant processes	Low	Medium



Affected groups	Comment	Impact	Evidence Certainty.
Central government	Greater long-term evidence and certainty about the status of and trends in indigenous biodiversity. May lead to greater effectiveness and efficiency of central government biodiversity-related operations	Low	Medium
Tangata whenua	Enhanced capacity and capability to participate in resource management processes	Low	Medium
	Enhanced ability for representatives to express cultural identity	Low	Medium
	Improved aspirations and wellbeing where these are directly linked to ecosystem services delivered by indigenous biodiversity and ecosystems, including those related to traditional medical practices. Māori knowledge, and food and resource gathering, are maintained and enhanced in restoration areas.	Low	Medium
NGOs (e.g. Forest & Bird, QEII National Trust, sectoral organisations (farming, forestry, mining) and local advocacy groups)	Long-term improvement in the wellbeing of organisations and their representatives through an ability to express views and share information/experiences in NPSIB processes	Low	Medium
	Greater certainty about where effects on indigenous biodiversity need to be managed (and how) and actions being undertaken. May allow greater coordination and efficiency of operations in the long-term	Low	Medium
NGOs (e.g. Forest & Bird, QEII National Trust, sectoral organisations (farming, forestry, mining) and local advocacy groups)	Reduced advocacy and litigation costs through greater consistency of SNA mapping and regulation	Low	Medium
	Possible increased funding for restoration projects, some of which will be directed to NGOs, sustaining more paid and unpaid roles in restoration and pest control.	Low	Medium

Affected groups	Comment	Impact	Evidence Certainty.
Wider community	<p>Ecosystem services delivered by indigenous biodiversity, mostly on public land, including:</p> <ul style="list-style-type: none"> <li>• shelter/shade</li> <li>• visual screening / noise mitigation</li> <li>• biodiversity reservoirs (including refuges for natural enemies of pests and pollinators)</li> <li>• sources of food and raw materials</li> <li>• erosion control, nutrient cycling and soil formation, regulating water quality and air quality</li> <li>• recreation, leisure, and learning experiences</li> <li>• aesthetic value, cultural value, intrinsic value, sense of identity.</li> <li>• option/future use value and bequest value (for future landowners).</li> </ul> <p>These are permanent benefits to communities.</p>	High	Medium
	Potential increases in tourism income and employment by maintaining attractiveness of areas of indigenous biodiversity and New Zealand's 'clean green' image. Flow-on effects across multiple sectors with employment and income benefits.	High	Medium
	Potential increases in the value of exports through higher product prices arising from positive perceptions of New Zealand's environmental stewardship. Flow-on effects across multiple sectors with employment and income benefits.	High	Medium
	Greater awareness of the state of indigenous biodiversity. Better understanding of the benefits of indigenous biodiversity leads to improved stewardship/kaitiakitanga of the land.	Medium	Medium
	Greater certainty about areas identified for protection, enhancement, and restoration, and actions being taken there. Potential increase in volunteering opportunities contributing to social wellbeing and cohesion.	Medium	Medium
	Long-term positive change in the wellbeing of communities through an enhanced ability to express views and share information/experiences from participation in NPSIB processes.	Medium	Medium
Total monetised benefits		-	-
Non-monetised benefits		Medium	Medium

Overall, based on a comprehensive assessment of key provisions, the Cost Benefit Analysis (CBA) developed by Market Economics (M.E) considers that the anticipated long-term social, economic, cultural and bio-physical benefits (including non-market values) of implementing the NPSIB will outweigh the anticipated, primarily economic and social, short-term costs. Despite the challenges and limitations of assessing the anticipated costs and benefits of the NPSIB, M.E also considers that the provisions of the NPSIB, as a bundle, are an efficient way to achieve the objective of the NPSIB.

The NPSIB is expected to generate long-term cultural, social and economic wellbeing net benefits for tangata whenua. These arise from increased capacity and capability to participate in resource management processes, increased opportunities to express cultural identity, a clearer role of tangata whenua in decision making and as kaitiaki, incorporation of tikanga Māori in the management of indigenous biodiversity, better outcomes for the development of Māori lands, and ensuring customary use rights are acknowledged and protected while maintaining, protecting and restoring indigenous biodiversity.

The RMA Section 32 evaluation of the NPSIB objective concludes that the NPSIB is the most appropriate way to achieve the purpose of the RMA based on an assessment of the objective against selected criteria.

The evaluation concludes that the NPSIB will be highly effective in assisting local authorities to carry out their RMA statutory functions and addressing key gaps in existing national direction relating to indigenous biodiversity in the terrestrial environment. In particular, the NPSIB objective and implementing provisions will help local authorities carry out the following RMA functions:

- the protection of Significant Natural Areas
- recognising tangata whenua values and interests, having particular regard to kaitiakitanga and taking into account the principles of the Treaty of Waitangi
- maintaining indigenous biodiversity diversity.

Further information can be found in the full CBA<sup>45</sup> and Section 32 Evaluation<sup>46</sup>.

### **Significance of costs and benefits**

In conclusion, the environmental benefits of the NPSIB will be widespread and will be felt by current and future generations. The costs are primarily associated with implementing a more spatially explicit and stringent planning framework to protect SNAs and maintain indigenous biodiversity. While these costs are potentially significant for some councils, they are mostly faced in the short term, and it is expected that the ongoing implementation costs of the NPSIB will reduce substantially over time. There may be some opportunity costs to a small portion of landowners and developers and, in some cases, the NPSIB policies to “avoid” specific adverse effects may constrain or prevent subdivision, use and development. These costs are likely to be distributed over a relatively minor share of total properties, depending on the status quo at the district and property level. There are some financial implications to Government in identifying significant natural areas (SNAs) on Public Conservation land held and administered by DOC. These costs are expected to be modest. An approach has been developed that

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<sup>45</sup> [National Policy Statement for Indigenous Biodiversity Cost Benefit Analysis](#)

<sup>46</sup> [National Policy Statement for Indigenous Biodiversity Section 32 Evaluation Report](#)

reduces costs to councils and DOC of full identification, but still maintains the benefit of national consistency regarding the presence, management and restoration of SNAs.

### **Risks and uncertainties**

A key finding of the CBA is that there is a high level of variability in how the NPSIB will impact each council. Not only is the type, scale, geography and tenure of indigenous biodiversity highly varied throughout Aotearoa New Zealand, but the extent to which councils already provide for indigenous biodiversity protection in district plans and regional policy statements is also highly varied. This presents challenges for estimating costs for any one council, and in aggregate across Aotearoa New Zealand.

Strong guidance and support from central government will be needed for implementation of the NPSIB given that some of the requirements will be new for councils, some policies (such as those around climate change) are more complex, and the capacity of councils and tangata whenua to effectively implement the NPSIB requirements (e.g. map SNAs) is highly varied.

Initial implementation costs will be offset in part by funding secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package (further detail is outlined in section 3.1 below).

## Section 3: Delivering an option

### 3.1 How will the new arrangements be implemented?

#### Implementation of the Preferred Option

The NPSIB (option 5) will need to be given effect to by councils through their resource management plan provisions and given weight to by councils when considering resource consents. The NPSIB contains transition provisions to ease implementation, however some provisions will apply upon gazettal to provide a level of protection for existing indigenous biodiversity prior to identification and mapping of SNAs. Specific timeframes relate to identification of SNAs (within five years of commencement), changes to policy statements and plans (within eight years), and completion of regional biodiversity strategies (within ten years).

Land holding Crown agencies – DOC, Land Information New Zealand, the New Zealand Transport Agency and the New Zealand Defence Force – will need to play a role in identifying SNAs on public and agency owned land. All interested stakeholders, community and iwi and hapū will be involved in the development of regional biodiversity strategies (led by regional councils and unitary authorities) and in indigenous biodiversity conservation work resulting from the NPSIB.

A draft Implementation Plan to support delivery of Option 2, informed by the BCG's work on complimentary and supporting measures, was published for feedback along with the exposure draft.

Further engagement has resulted in consideration of additional support measures and informed more detailed internal planning and development of specific implementation support measures to prepare for operational delivery of the NPSIB. A final Implementation Plan has been drafted on this basis, outlining what central government support will be provided. The Implementation Plan outlines a suite of new support measures, including:

- guidance developed with stakeholders as needed, which may include technical guidance and case studies
- funding to support indigenous biodiversity protection, maintenance and restoration on private land
- support to assist councils with SNA identification and mapping
- pilots of new biodiversity incentives/support measures and the exploration of further measures
- further work to explore market-based incentives.

A separate iwi/Māori implementation plan will consider support measures to assist iwi/Māori to engage with NPSIB processes.

Funding has been secured through the Biodiversity Protections and Incentives Budget 2022 initiative to help provide the implementation package. The initiative provides \$19.46 million towards supporting the implementation of the NPSIB. \$17.42 million of this is dependent on gazettal of the NPS, and the other \$2.04 million is available for the development of biodiversity incentives.

The biodiversity incentives work programme, funded initially by the Prime Minister's Emerging Priorities Fund, also supports the delivery of the package and is being used to establish pilot

projects. \$695,000 was committed to investigate ways to incentivise additional action from landowners and communities to protect, restore and enhance biodiversity (GOV-21-MIN-0052 refers).

A separate iwi/Māori Implementation Plan is in development and will consider support measures to assist iwi/Māori to engage with NPSIB processes. The process to develop this plan has begun, with an expectation that an iwi/Māori implementation plan will be delivered – by the end of 2023.

Councils and other organisations are likely to deploy additional measures to support implementation of the NPSIB. Additionally, it is expected that the Te Mana o Te Taiao work programme will deliver broader biodiversity support measures in the medium- to long-term (e.g. a comprehensive national monitoring framework).

This support will be critical to successful implementation of the NPSIB. Relationships in place across different agencies and with iwi partners will also be critical to successful implementation. Central government/MfE can support and enable this also and build on some of the existing regional networks and partnerships established through Jobs for Nature projects.

## **3.2 What are the implementation risks?**

### **Drafting and timeframes**

The NPSIB includes some terms that are not defined in the instrument itself. There is a risk that this will lead to inadequate compliance with the NPSIB. This risk will be mitigated by defining these terms in guidance alongside the NPSIB and by setting out a process for councils to work through to demonstrate substantive compliance.

The NPSIB sets out a process for identifying SNAs in which councils must work closely with landowners. Doing this well will take time and effort and will rely on positive relationships with landowners. The NPSIB requires district councils to identify, map and schedule SNAs within five years of the NPSIB coming into force. Councils have told us that, depending on how complete their current SNA schedules are and how well current schedules conform with the NPSIB, this could take up to 10 years in some cases. There is a risk that some councils may undertake a substandard process if not granted enough time or support.

### **Inclusion of restoration and enhancement**

Regional councils provided joint feedback on policy direction in the NPSIB during early and exposure draft engagement. In their feedback regional councils expressed concern with the inclusion of restoration and enhancement and protection. There is a risk that by including restoration and enhancement, the NPSIB expects too much of councils and that this may affect timeframes for compliance with the NPSIB. This includes the development of a regional biodiversity strategy. Iwi, hapū and councils may be so focused on other requirements in the NPSIB (namely SNA identification) in the first few years that they will have trouble engaging meaningfully in the development of a strategy. Regional councils acknowledged that restoration can be appropriate as protection, but that protection should be prioritised in the NPSIB.

Several of the implementation support measures outlined in the Implementation Plan will assist landowners with maintenance, restoration and enhancement of SNAs, including guidance and financial assistance. In addition, the NPSIB has been amended to clarify that the key objective is maintenance of indigenous biodiversity.

### **Working with tangata whenua and incorporating mātauranga**

Another part of the NPSIB that we recognise as an implementation risk is the emphasis on councils to work together with tangata whenua and incorporate mātauranga Māori into plans, monitoring and decision-making. This may place requirements, particularly on local iwi and hapū, that they don't have the capacity to meet. It is expected that implementation support measures will be considered for inclusion in the iwi/Māori implementation plan.

### **Monitoring**

Monitoring is another aspect of the NPSIB that may be challenging for councils to implement. While monitoring the state of the environment is part of a council's responsibilities under the RMA, the extent to which this function is currently fulfilled is highly variable. The NPSIB monitoring policy potentially represents a shift in current practice and councils will likely need support. It is possible that this policy might be viewed as 'jumping the gun' as biodiversity monitoring roles and methods are a whole of system issue that will be addressed through Te Mana o te Taiao.

The Implementation Plan includes further work on system development to meet data requirements, including monitoring and reporting.

### **Highly mobile fauna**

Another part of the NPSIB that is potentially challenging for councils to implement is the highly mobile fauna policy. While consistent with council responsibilities set under the RMA, it is perceived by councils as a shift in current practice for species protection.

### **Non-regulatory support**

Councils, iwi and hapū, during early engagement, all noted non-regulatory implementation support as key to ensuring the NPSIB is implemented successfully. This support would need to include guidance to support effective implementation of policies (noted by councils as a 'must have'). Funding support was also regularly called for by both iwi and hapū and councils, particularly to support SNA identification and to support landowners with SNA maintenance costs. Provision of technical expertise, improved monitoring, information and knowledge are all other suggestions to support implementation that have come out of early engagement.

To mitigate this, the Implementation Plan signals support measures, including:

- support for iwi/Māori (to be addressed through the iwi/Māori Implementation Plan)
- supporting landowners, land managers and forest owners to maintain indigenous biodiversity
- direct support to assist councils with SNA identification and mapping
- pilots of new biodiversity incentives / support measures to incentivise and support protection on private land
- exploration of further market incentives.

## **Capacity and capability**

Successful implementation of the NPSIB will be determined by the capacity and capability of councils, iwi and hapū and others to play their roles. Feedback through submissions has consistently highlighted the likely challenge for councils to maintain sufficient resource and skillsets to implement the NPSIB. In some cases, this is a matter of cost, but national availability of expertise is also an issue for specific skillsets such as ecologists, planners and scientists.

The Implementation Plan includes support for councils, including financial assistance for councils to undertake SNA identification. This will include securing sufficient expertise to undertake the process. Further to this, additional support measures are being explored to address pressures on the national pool of expertise to ensure access to the resources needed to implement the NPSIB.

Strong feedback has also highlighted the challenge for iwi/hapū to maintain sufficient capacity to engage in NPSIB processes, especially considering the increasing demand on time across the whole resource management system. Iwi/hapū will engage in NPSIB processes as they wish, although there must be sufficient opportunities to enable them to do so. Development of the Iwi/Māori Implementation Plan is expected to further explore and address support for capacity.

## **National direction integration**

There is a risk that that multiple instruments of national direction could make implementation difficult for councils. There has been substantive effort in drafting the NPSIB, to assess interactions with other national direction instruments and resolve any risks. This has been communicated in the discussion document and we will continue to work with other agencies to address this in terms of policy integration and implementation. A specific focus of this, given the terrestrial focus of the NPSIB, is integration with coastal marine and freshwater related national direction and work programmes. Implementation support material will provide further guidance where there may be overlap between instruments.

## **Political decision-making**

The political nature of local government may present a risk. Funding and resource is committed (or not) based on political decision-making with community input. If councils determine that they have other priorities, it may not be implemented fully, or lack sufficient resources required to implement it effectively. Te Mana o te Taiao and the NPSIB will both raise the profile of indigenous biodiversity in decision-making, which should assist in giving it visibility at a local government level.

## **Non-compliance**

Non-compliance with the NPSIB is a significant risk. Well-designed, tested policy, that has collective buy-in, and sufficient non-regulatory support will help mitigate this risk. Non-compliance can be addressed through enforcement mechanisms in the RMA. Government is currently undergoing a wider work programme on compliance, monitoring and enforcement as this is a wider system issue.



### **Addressing land use changes that may remove indigenous biodiversity values prior to implementation of the NPSIB**

There is the potential risk of a perverse outcome in that the NPSIB may lead to adverse impacts for indigenous biodiversity in the interim, as a result of clearer direction on what is required to protect and maintain indigenous biodiversity and stakeholders attempting to avoid these requirements. This risk may be more severe in regions that currently don't have comprehensive biodiversity protection provisions in their council plans. This risk will be managed through careful policy drafting, testing and a well-drafted, well-executed stakeholder engagement and communications plan.

## Section 4: Monitoring, evaluation and review

### 4.1 How will the impact of the new arrangements be monitored?

As a resource management tool, the NPSIB will be administered by MfE. MfE is responsible for monitoring and supporting the implementation of the NPSIB and reviewing the effectiveness of national direction under the RMA.

In terms of compliance and enforcement, data on implementation and operational issues, including enforcement, is already collected at a local level by council compliance teams and to some degree at a national level by DOC and MfE. A consistent and robust nation-wide approach is needed to support national reporting.

To measure progress on the ground, the NPSIB directs that regional councils work together with district councils, relevant agencies and tangata whenua to develop a monitoring plan that monitors key aspects of the NPSIB. Mātauranga Māori and tikanga Māori monitoring methods should be considered if possible, where agreed by tangata whenua. The policy is deliberately high level and does not set out monitoring methods or timeframes, although consistent methodology will likely need to be developed to ensure consistent implementation and data outputs.

Te Mana o te Taiao specifies that a national monitoring framework will be developed. Several initiatives to develop a set of achievable national indicators are already in the pipeline. The NPSIB points to these developments and notes that as these parameters are developed so too will councils be required to use them as part of their monitoring frameworks, that will help to inform evaluation of effectiveness of the overall policy.

### 4.2 When and how will the new arrangements be reviewed?

Monitoring is a key component of the Implementation Plan, which identifies implementation progress review milestones at the end of years one, five and ten following gazettal of the NPSIB. The final review will consider effectiveness of the NPSIB.

In addition, the number of plan changes identifying Significant Natural Areas will indicate how councils are progressing in implementation of the NPSIB. Stakeholders will have the opportunity to raise concerns regarding implementation initially through the Schedule 1 process as local authorities initiate plan changes to give effect to the NPSIB. By monitoring the outcome of these implementation policy statement and plan changes and understanding the details of key submissions, Government will be able to ascertain if there are any key issues requiring the NPSIB to be reviewed.

# Appendix 1: Relevant biodiversity legislation

Key legislation relating to biodiversity:

- Biosecurity Act 1993 - gives regional councils the responsibility to undertake pest control and prepare regional pest management strategies
- Conservation Act 1987 - the key piece of legislation guiding biodiversity management on public conservation land. It protects in perpetuity approximately a third of Aotearoa New Zealand's land area. A range of statutory plans under the Act set out how DOC and its Treaty partner intend to manage public conservation land
- Local Government Act 2002 (LGA) - allows councils to purchase parks and reserves. Long term and annual plans under the LGA deliver non-regulatory components of biodiversity maintenance and enhancement, primarily through funding allocation.
- Wildlife Act 1953 - regulates the keeping and killing of wild birds and other animals, including some fishes and invertebrates but excluding marine mammals. All species are protected unless scheduled as game, unprotected or subject to the Wild Animal Control Act

Other biodiversity-related legislation includes:

- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- Fisheries Act 1996
- Marine Mammals Protection Act 1978
- Marine Reserves Act 1971
- National Parks Act 1980
- Native Plants Protection Act 1934
- Queen Elizabeth II National Trust Act 1977
- Reserves Act 1977
- Trade in Endangered Species Act 1989
- Wild Animal Control Act 1977.

## Other national direction under the RMA

### **National policy statements and environmental standards under the RMA**

At a national level, we currently have in place the following National Policy Statements:

- New Zealand Coastal Policy Statement (NZCPS) which includes direction on national priorities for biodiversity in the coastal environment (primarily through policy 11)
- NPS for Freshwater Management (NPSFM) which includes direction around ecosystem health
- NPS for Renewable Electricity Generation (NPSREG)
- NPS on Electricity Transmission (NPSET)
- NPS on Urban Development Capacity (NPSUDC)
- NPS on Highly Productive Land (NPSHPL)
- NPS on Urban Development (NPSUD).

In addition to the NPS, the following National Environmental Standards are in force:

- NES for Freshwater, which sets requirements for carrying out certain activities that pose risk to freshwater and freshwater ecosystems

- NES for Plantation Forestry, which include some requirements around the protection of specific indigenous biodiversity and habitats within plantation forests
- NES for Electricity Transmission (NESET).

# Appendix 2: Other initiatives and work programmes

## The wider biodiversity management system

The biodiversity regulatory system is part of a wider biodiversity management system which includes:

- Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020
- New Zealand’s engagement with international conventions (e.g. Convention for Biological Diversity, Bonn Convention on the Conservation of Migratory Species and the Ramsar Convention on Wetlands of International Importance)
- initiatives run by the Department of Conservation (DOC)
- national initiatives (e.g. Predator Free 2050, wilding conifer management and the One Billion Trees programme)
- science and innovation (e.g. the National Science Challenge and the Biodiversity Conservation Science Prospectus)
- regional and local initiatives (e.g. Iwi Environmental Management Plans and regional biodiversity strategies)
- non-regulatory measures (e.g. contestable funds like the DOC Community Fund, Nature Heritage Fund, and covenanting bodies like the Queen Elizabeth the II Trust and Ngā Whenua Rāhui for the protection of indigenous biodiversity on private and Māori land)
- an increasing number of iwi, hapū, private and community led conservation projects
- \$1.219 billion Jobs for Nature programme, managing funding across multiple agencies to benefit the environment, people and the regions.

## Other central government work programmes

Other central government work programmes which have the potential to interact and synergise with the proposal include:

- climate change (Zero Carbon targets, ETS reform and Just Transitions work programme, renewable electricity targets)
- mining reforms (reform of Crown Minerals Act; no new mining on conservation land)
- land use support and incentives (Green Investment Fund, projects for Māori Land, Provincial Growth Fund, 1 Billion Trees programme)
- KiwiBuild and the provision of land and supply of aggregate for housing
- Biodiversity work programmes (Implementation of Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy, Predator Free 2050, threatened species work, marine work programme)
- Resource Management Act reforms and comprehensive Resource Management System reforms, as outlined earlier.