Regulatory Impact Statement: Amending the Stock Exclusion Regulations and Intensive Winter Grazing Regulations through the Resource Management Act Amendment Bill 2024

Coversheet

Purpose of Document	
Decision sought:	*Approval to amend the Resource Management (Stock Exclusion) Regulations 2020 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020*
Advising agencies:	*Ministry for Primary Industries; Ministry for the Environment*
Proposing Ministers:	*Hon Todd McClay, Minister of Agriculture* *Hon Andrew Hoggard, Associate Minister for the Environment*
Date finalised:	*26 March 2024*

Executive Summary

The Government has established its priorities for resource management. It is taking a phased approach to reforming the resource management system [CAB-24-MIN-0473 refers].

The changes in this Regulatory Impact Statement (RIS) form part of this approach and provide for targeted legislative amendments to Resource Management Act 1991 (RMA) national direction. These changes deliver on the following Government priorities:

- Reforming the resource management system, including making targeted legislative amendments by the end of 2024
- Replace the National Policy Statement for Freshwater Management 2020 and the National Environmental Standards for Freshwater to better reflect the interests of all water users
- Deliver actions to cut red tape and supercharge the rural economy, including replacing one-size-fits-all rules with local decision making.

Ministers' and Cabinet direction have shaped policy options and direction. This, as well as the pace of reform, has limited this RIS and the ability of the Ministries' to explore all feasible options. The analysis is limited, with a focus on the impacts of each option. Wider impacts have not been considered.

The proposals in this RIS are targeted and address specific priorities. The evaluation of options is presented in the following parts:

Part A: Removing the low slope map for stock exclusion

Context

The Resource Management (Stock Exclusion) Regulations 2020 (the 'Regulations') require the exclusion of livestock from rivers wider than one metre ('rivers' for the purposes of this paper), lakes, and natural wetlands (water bodies). These requirements are intended to manage the environmental risks associated with stock entering water bodies, particularly in relation to sediment and Escherichia coli (E. coli), which can adversely impact freshwater ecosystems, human health, and cultural values.

The Regulations incorporate by reference a map of low slope land, which identifies land across New Zealand where beef cattle and deer must be excluded from water bodies from 1 July 2025 (or from 3 September 2020 on any new pastoral system). Low slope land was chosen at the time to act as a proxy for intensity, as more intensive farming is not generally done on higher-slope land.

Changes were made to the Regulations in 2023 to address issues with the map of low slope land unintentionally capturing lower intensity farming. Despite these changes, there are still broader concerns around using the map of low slope land as a proxy for intensity, as some lower intensity or extensive farms are still captured by the Regulations. Ministers have also expressed concerns with the low slope map being a blanket national tool that does not account for catchment or farm-level differences, which may create disproportionately high costs to comply relative to the environmental benefits.

Previous Cabinet decisions have influenced this proposal, including:

- reforming the resource management system, including by making targeted legislative changes to the RMA in 2024 [CAB-23-MIN-0473 refers]; and
- invitation to the Minister of Agriculture to provide papers on 'quick win' amendments to the resource management system on sloped land [ECO-24-MIN-0022 refers].

The Regulations in scope of this analysis are Regulations 14, 15 and 18, which pertain to the exclusion of stock in areas identified by the low slope map.

Engagement

No recent engagement has occurred on these proposals. However, previous engagement in 2023 sought feedback on proposals to address the capture of areas of lower intensity farming in the map by either defining lower intensity farming for the purpose of an exception from the map or using freshwater farm plans.

Submitters presented a range of views and suggestions addressing issues with the low slope map. Submissions from the primary sector generally supported the use of farm plans as an alternative to the low slope map, although there was also some support for a stocking rate exception or a hybrid approach that used both a stocking rate and farm plans to establish situations in which stock should be excluded.

In contrast, Environmental Non-Governmental Organisations (ENGOs) expressed a preference for keeping all livestock out of water bodies and to not make changes.

Treaty partners expressed a preference for keeping all livestock out of water bodies and achieving freshwater outcomes. Although they discussed the merits of the different proposals outlined in the discussion document, most of the submissions from Treaty partners did not believe the proposals would provide for Te Mana o te Wai.

We have limited information regarding current stakeholder and Treaty partner views about the proposal.

Treaty impact analysis

Due to the limitations and constraints on this analysis, it is difficult to assess (for both the proposal and policy development process):

- whether or not the Treaty principles of partnership and active protection have been met
- whether or not general engagement obligations contained in some Treaty settlements have been met
- whether or not processes provided for in certain settlements, such as for the Waikato and Whanganui rivers, have been met, and
- implications for the Crown's commitments on Māori freshwater rights and interests.

A Treaty impact analysis is provided for the proposal in Part A.

Findings

The options considered in this RIS are limited to consideration of removing the low slope map compared to the status quo.

Officials did not identify any other options in the time available and within the context of Cabinet and Ministerial direction. Officials previously assessed replacing the map of low slope with another tool to define intensity (i.e., stocking rate); however, this was found to be less effective than the status quo at the time and therefore has not been considered in this analysis.

Recommendation

Given the findings above, the limitations and constraints on the analysis, and the issues identified in the Treaty impact analysis, officials do not have a preferred option.

Part B: Removing the slope condition for intensive winter grazing

Context

Intensive winter grazing is a farming practice where large numbers of stock (cattle, sheep, deer) are confined over winter to small outdoor feeding, or grazing, areas planted with annual forage crops. It can have serious negative effects on both animal welfare and the environment, particularly freshwater. The slope of grazing areas is a key factor influencing sediment loss.

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) contain regulations to manage these activities. There are three compliance pathways:

- **Pathway 1:** As a permitted activity, comply with default conditions set out in the regulations relating to area, slope, setbacks, and critical source areas, in addition to standards relating to pugging and ground cover (details of these conditions and standards are set out below); or
- **Pathway 2:** As a permitted activity, obtain and comply with a certified freshwater farm plan (not available in most regions) under which any adverse effects in relation to intensive winter grazing are no greater than would be allowed for by the default conditions set out in Pathway 1; or
- **Pathway 3:** Apply for a resource consent (restricted discretionary) if unable to meet the default conditions or obtain a certified freshwater farm plan.

The intensive winter grazing regulations commenced on 1 November 2022 (after being deferred twice by the Government) and applied for the 2023 grazing season. Central

government monitored implementation and received regular information from a subset of key regions on resource consenting, compliance monitoring and enforcement and activities of primary sector industry bodies to support good practice and compliance among members. 278 resource consents were issued across five key councils as of 12 July 2023. Overall, there was minimal non-compliance identified and strong evidence of practice change.

Ministers wish to remove the slope condition, which must be complied with to undertake intensive winter grazing as a permitted activity. Minsters are concerned that:

- the slope condition is a one-size-fits-all national rule that does not account for catchment-level differences or enable local decision-making, and
- there are significant costs and efforts for farmers who need to obtain a resource consent due to grazing any land over 10 degrees, but who are generally undertaking good practice.

Previous Cabinet decisions have influenced this proposal, including:

- reforming the resource management system, including by making targeted legislative changes to the RMA in 2024 [CAB-23-MIN-0473 refers]; and
- invitation to the Minister of Agriculture to provide papers on 'quick win' amendments to the resource management system on sloped land [ECO-24-MIN-0022 refers].

The Regulations in scope of this analysis are Subpart 3 of the NES-F (Regulations 26-31).

Engagement

No recent engagement has occurred on these proposals. However, there has been previous consultation in 2019 on the *Essential Freshwater Package* (which included intensive winter grazing) and in 2021 on amendments to the intensive winter grazing.

We have limited information on current stakeholder and Treaty partner views. However, some primary sector stakeholders have expressed concerns regarding the current regulatory requirements imposed on farmers, and a desire to review and repeal aspects of the *Essential Freshwater Package*, including intensive winter grazing requirements.

Treaty impact analysis

Due to the limitations and constraints on this analysis, it is difficult to assess (for both the proposal and policy development process):

- whether or not the Treaty principles of partnership and active protection have been met
- whether or not general engagement obligations contained in some Treaty settlements have been met
- whether or not processes provided for in certain settlements, such as for the Waikato and Whanganui rivers, have been met; and
- implications for the Crown's commitments on Māori freshwater rights and interests.

A Treaty impact analysis is provided for the proposal in Part B.

Findings

Three options were assessed against the status quo. Two of the three options were assessed to be suitable at achieving the policy objectives. However, both of these options generate trade-offs with freshwater quality, particularly due to the risks of grazing on steep

slopes and the potential for these risks to not be adequately managed through other regulatory (e.g., regional plans; freshwater farm plans) or non-regulatory mechanisms.

Recommendation

Given the findings above, the limitations and constraints on the analysis, and the issues identified in the Treaty impact analysis, officials do not have a preferred option.

Limitations and Constraints on Analysis

The analysis in this RIS is limited by:

- *Previous Cabinet decisions, Ministerial decisions and Government commitments:* As detailed in Section 1, the coalition Government outlined its priorities in the 100-day plan and coalition agreements made in December 2023. These commitments are a key driver and have been supported by Cabinet and Ministerial decisions as the policies, problems and options have been developed.

- *Pace of reform:* Ministers are proposing to Cabinet to make these policy changes through the Resource Management Act Amendment Bill, which is expected is to gain Royal Assent prior the end of 2024. This limits the identification of options, level of analysis, collation, and review of evidence. The desired pace also means there is no ability to meaningfully engage with iwi/Māori and stakeholders ahead of policy decisions being taken by Ministers and Cabinet. However, there will be an opportunity for consultation through the Bill Select Committee process.

- *Inability to collect data and evidence on the impact:* Officials have limited information about the extent of the issue to identify and quantify the problems and collect data and evidence to understand the impact of the options. The ability to gain additional insights was further restricted due to the inability to engage with, and receive feedback from, stakeholders, Treaty Partners and councils.

Responsible Director(s)/Manager(s)

Charlotte Denny *Director* *Natural Resources Policy* *Ministry for Primary Industries*  *26 March 2024*	*Nik Andic* *Manager* *Natural Environment Policy* *Ministry for the Environment*  *26 March 2024*

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry for Primary Industries
Panel Assessment & Comment:	The Ministry for Primary Industries Regulatory Impact Analysis (RIA) Panel has met and reviewed the Regulatory Impact Statement (RIS) *Amending the Stock Exclusion Regulations and Intensive Water Grazing Regulations through the Resource Management Act Amendment Bill 2024 (Amending the Stock Exclusion Regulations and Intensive Water Grazing Regulations)*.

	The document sets out thorough explanations of the existing regulations, and the trade-offs in the proposed changes. The panel acknowledges the limitations and constraints on the problem definitions, options analysis, and consultation due to the available timeframes and ministerial direction. Due to these limitations and constraints, the RIA panel considers that the *Amending the Stock Exclusion Regulations and Intensive Water Grazing Regulations* RIS only ***partially meets*** the RIA criteria.

Section 1: Context

1. The resource management system governs how people interact with natural resources, with the Resource Management Act 1991 (RMA) regulating land use, the use of natural resources, and the provision of infrastructure.

2. National direction instruments[1] support local decision-making under the RMA. National environmental standards (NES) enable the Government to make regulations that prescribe standards for activities controlled under the RMA.[2] Section 360 Regulations are made for various purposes, including to prescribe measures for the purpose of excluding stock from waterbodies.[3]

Drivers for change

3. In December 2023, the Government began its reform of the resource management system with the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act, which repealed the Natural and Built Environment Act and the Spatial Planning Act.

4. A phased approach to resource management reform is being taken [CAB-23-MIN-0473]:

    - phase one: repeal the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) (now complete);
    - phase two: introduce a fast-track consenting regime within the first 100 days, make targeted legislative changes to the Resource Management Act 1991 (RMA) in 2024; develop new, or amend existing, national direction under the RMA; and implement the Going for Housing Growth work package;
    - phase three: replace the RMA with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes.

5. The changes considered in this Regulatory Impact Statement (RIS) form part of 'phase two' of this approach and provide for targeted legislative amendments to national direction under the RMA. The changes are intended to support the delivery of the following Government priorities:

    - reform the resource management system, including making targeted legislative changes to the RMA in 2024 [CAB-23-MIN-0463]
    - replace the National Policy Statement for Freshwater Management 2020 (NPS-FM) to better reflect the interests of all water users [CAB-23-MIN-0468]
    - replace the National Environmental Standards for Freshwater (NES-F)[4]
    - deliver actions to cut red tape and supercharge the rural economy, including replacing one-size-fits-all rules with local decision making.[5]

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1 National direction can be either: national policy statement (NPS), national environmental standards (NES), national planning standards or section 360 regulations.

2 Refer Part 3 of the RMA.

3 Refer section 360(1)(hn) of the RMA

4 Coalition Agreement – New Zealand National Party and New Zealand First Party

5 Point 36 – New Zealand National Party *100-point economic plan* (adopted by the New Zealand National Party and ACT New Zealand Coalition Agreement and the New Zealand National Party and New Zealand First Party Coalition Agreement). The 19 actions referred to in Point 36 are from the New Zealand National Party *Getting Back to Farming* manifesto document and include "replace the winter grazing low slope map and low slope rules for stock exclusion with more effective catchment-level rules to accommodate regional differences."

6. Cabinet has invited the Minister of Agriculture to submit papers to the Cabinet Economic Policy Committee (ECO) as soon as practicable on 'quick win' amendments that could be made to the resource management system on sloped land [ECO-24-MIN-0022 refers].

7. To give effect to this invitation, the 'quick win' amendments have been narrowly focused on the coalition and manifesto commitment to: "Replace the winter grazing low slope map and low slope rules for stock exclusion with more effective catchment-level rules to accommodate regional differences." No other Manifesto or coalition commitments specifically relate to sloped land.

Scope of the Resource Management Act Amendment Bill (the Bill) and consideration of options

8. This RIS is an analysis of the impacts of two related proposals, which are intended to be included within the Resource Management Act Amendment Bill (the Bill). This Bill seeks to make targeted legislative amendments to the RMA, and to existing national direction, by the end of 2024.

9. The scope of options evaluated has been influenced by Cabinet direction and the desired pace for regulatory intervention, particularly Cabinet decisions and Government priorities to:

    a. replace the NPS-FM within the parliamentary term

    b. replace the NES-F

    c. deliver "actions to cut red tape and supercharge the rural economy, including replacing one-size-fits-all rules with local decision making."

    d. reform the resource management system, including making targeted legislative changes to the RMA by the end of 2024

    e. consider papers from the Minister of Agriculture on 'quick win' amendments to the resource management system relating to sloped land [ECO-24-MIN-0022].

10. The Stock Exclusion Regulations and NES-F could be amended without primary legislation, using a standard regulation-making process (in the case of the Stock Exclusion Regulations) or using the process for amending an NES in Part 5 of the RMA. Cabinet decisions and Government priorities (including the desired pace to make these changes) have determined that these changes will be delivered through primary legislation.

Part A: Removing the low slope map and its associated regulations from the Stock Exclusion Regulations

Background

11. Livestock entering water bodies cause a range of environmental effects, including increased contaminant losses (e.g., pathogens, sediment) and damage to the banks and beds of water bodies. These effects can adversely impact freshwater ecosystems, human health, and cultural values.

12. Some operative regional plans require stock to be excluded from waterways, but these are highly variable in scope and effectiveness, meaning there is inconsistency in where stock are being excluded. Industry initiatives (e.g., Sustainable Dairying: Water Accord[6]) have increased voluntary stock exclusion in recent years. The 2021 Rural Decision Makers Survey indicates many major streams on sheep and beef farms are stock excluded.[7] This highlights that steady progress is being made on fencing and excluding stock from waterways, although there are still stretches of waterways that do not have stock excluded.

13. In August 2020, as part of the *Essential Freshwater Package*, the Resource Management (Stock Exclusion) Regulations 2020 (the Regulations), developed under Section 360 of the Resource Management Act (RMA), were gazetted. These require the exclusion of livestock from rivers wider than one metre ('rivers' for the purposes of this paper), lakes, and natural wetlands (collectively referred to as water bodies), and were put in place to manage the environmental risks associated with stock entering water bodies.

14. The Regulations took immediate effect in 2020 for new pastoral systems, with compliance for existing farms required by mid-2023 or mid-2025 depending on stock type and practices:

    a. dairy cattle and pigs must be excluded from lakes and rivers by 1 July 2023, regardless of land slope;

    b. dairy support cattle must be excluded from lakes and rivers by 1 July 2025;

    c. beef cattle and deer must be excluded from lakes and rivers by 1 July 2025, on low slope land as mapped;

    d. beef cattle and deer intensively grazing on any terrain must be excluded from lakes and rivers by 1 July 2023;

    e. all cattle, deer and pigs must be excluded from natural wetlands identified in an operative regional plan, district plan, or regional policy statement as at 3 September 2020, by 1 July 2023; and

    f. all cattle, deer and pigs must be excluded from natural wetlands that support a population of threatened species, or natural wetlands more than 500m2 in area on low slope land, by 1 July 2025.

15. Requirements to exclude stock under the Regulations are a minimum requirement for stock exclusion. Regional councils have the ability to set their own additional rules

[6] https://www.dairynz.co.nz/regulation/policy/sustainable-dairying-water-accord/

[7] https://www.landcareresearch.co.nz/discover-our-research/environment/sustainable-society-and-policy/survey-of-rural-decision-makers/srdm-2021/information-sheet-restricting-stock-from-waterways/

regarding stock exclusion in their regional plans, based on local circumstances and level of risk.

16. The Regulations incorporate by reference a map of low slope land, which identifies land across New Zealand where beef cattle and deer must be excluded from water bodies from 1 July 2025 (or from 3 September 2020 on any new pastoral system). Low slope land was chosen to act as a proxy for intensity, as more intensive farming is not generally undertaken on higher-slope land.

17. Following initial gazettal of the Regulations, feedback received from councils, industry, and the public expressed concerns that the map of low slope land:

    a. was inaccurate due to the way it averaged slope across land parcels; and

    b. captured lower intensity hill country farms, contrary to the intention when introducing the Regulations that lower intensity farms would not be captured.

18. As a result, changes were made to the map of low slope land to improve how the map identifies low slope land, and to exclude lower intensity farming in the high country, which took effect on 5 January 2023. The current map identifies low slope land as land with a slope between 0 and 5 degrees with an altitude threshold of 500 metres above sea level. It is estimated that the map captures an estimated 372,976 hectares of lower intensity farming area.[8]

19. While those changes improved how the map identifies low slope land and excluded lower intensity farming in the high-country, the map is still likely to capture some areas of lower intensity farming at lower slopes and altitudes. Approximately six percent of the area identified by the map as 'low slope' is low producing grassland, which is often grazed on in lower intensity beef cattle and deer farms.

20. To consider these issues, there was further consultation on an exception for lower intensity farms. As a result, further changes were made to:

    a. create an exception from the definition of low slope land for Department of Conservation (DOC) or Land Information New Zealand (LINZ) land where a stocking rate is already set in a grazing licence or lease;

    b. amend the Regulations to make it clear that low slope land does not include land that exceeds 10 degrees in slope despite being included the map of low slope, and that slope is to be determined by measuring the slope over any 20-metre distance of the land; and

    c. exempt the Upper Taieri Scroll Plains from Regulations 14, 15 and 18.

Residual concerns with the low slope map

21. Despite these changes, broader concerns remain around using the map of low slope land as a proxy for intensity, as some lower intensity and/ or extensive farms continue to be captured by the Regulations.

22. Ministers have also expressed concerns related to the low slope map being a blanket national tool that does not account for catchment or farm-level differences, and that this may create disproportionately high costs to comply relative to its environmental benefits.

23. Reflecting these concerns, Cabinet has issued an invitation to the Minister of Agriculture to provide papers on 'quick win' amendments to the resource management system on sloped land [ECO-24-MIN-0022 refers]. Also relevant is the Cabinet decision

[8] ris-options-to-amend-stock-exclusion-regulations-to-enable-more-flexibility-for-lower-intensity-farms.pdf (environment.govt.nz)

to reform the resource management system, including by making targeted legislative changes to the RMA in 2024 [CAB-23-MIN-0473 refers].

Scope of analysis

24. The Regulations in scope of this analysis, as invited by ECO-24-MIN-0022 references above, are Regulations 14, 15 and 18, which pertain to the exclusion of stock captured by the low slope map. Regulation 4[9] is also in scope as it contains the definition of low slope land (where the map of low slope land is incorporated by reference).

25. No other provisions of the Regulations, or any other legislation or regulations, are in scope of this analysis.

26. This RIS assesses the impacts of progressing changes to remove the low slope map and associated regulations, within the context of the above decisions and scope.

What is the policy problem or opportunity?

27. The Regulations risk driving inefficient outcomes for some lower intensity farms.

28. The slope of land is an imperfect proxy for intensity and there is a risk the Regulations will still require stock exclusion despite it being inefficient to do so in some cases (i.e., where the cost of exclusion is disproportionate to the environmental benefits). It is estimated that approximately six percent of the map's current area is low producing grassland, which is often grazed on in lower intensity beef cattle and deer farms.

29. The Regulations also do not vary in response to catchment of farm-level differences that might have a material impact on these costs or environmental benefits (e.g., whether a waterbody or catchment's current state or type means it is, or is not, sensitive to the effects of stock access).

What objectives are sought?

30. The policy objectives sought are to:

    a. Deliver 'quick win' amendments relating to sloped land

    b. Improve regulatory quality by replacing one-size fits all rules with local decision-making

    c. Reduce regulatory burden in terms of cost, time and resources needed for regulated parties.

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

31. The criteria in Table 1 below were used to assess whether the option will achieve the policy objectives.

Table 1: Evaluation criteria

Criteria	Explanation
Efficient	Does the option reduce regulatory burden in terms of cost, time and resources needed for regulated parties?
Effective	Will the option improve regulatory quality by removing one-size-fits-all rules and enabling local decision making?

[9] Regulation 4 – Interpretation

Practical	Does the option provide farmers with flexibility to implement solutions that are appropriate to the specific characteristics of their farm?
Safeguards environmental and human health	Does the proposal allow for environmental and human health to be protected?

Feedback received during previous engagement

32. No engagement has been undertaken for these specific proposals. However, previous engagement in 2023 related to these Regulations and the issues that are in scope of this RIS. Stakeholder and iwi/Māori views that are relevant to these proposals are summarised below.

Primary sector, local government and environmental non-governmental organisations ENGOs

33. The 2023 engagement sought feedback on proposals to address the capture of areas of lower intensity farming in the low slope map by either defining lower intensity farming for the purpose of an exception from the map or using freshwater farm plans. Public consultation was held over four weeks and was supported by a discussion document and targeted online workshops with Treaty partners and stakeholders.[10]

34. There was broad recognition that the low slope map is an imperfect tool and likely captures lower intensity farms.

35. Primary sector industry bodies undertook an analysis, using a stocking rate of 8 stocking units per hectare (SU/ha), across both low and medium slope land.[11] This did not provide us with an accurate estimate of the scale of the issue on low slope land but did identify 592 lower intensity farms that could be captured by the low or medium slope map. The Regulations only require stock to be excluded from low slope land, meaning that this analysis is likely to have overestimated the number of farms affected.

36. Submitters presented a range of views and suggestions to address issues with the low slope map. Submissions from the primary sector generally supported the use of freshwater farm plans as an alternative to the low slope map, although there was also some support for a stocking rate exception or a hybrid approach that used both a stocking rate and farm plans to establish situations in which stock should be excluded.

37. In contrast, Environmental Non-Governmental Organisations (ENGOs) expressed a preference for keeping all livestock out of water bodies and to not make changes to the Regulations.

38. Some submissions noted that non-compliance with the Regulations is likely to be an issue in the short term, regardless of any changes made to refine exclusions. This was due to the cost, challenges in accessing materials, and time required to implement stock exclusion methods.

Iwi/Māori

39. During the 2023 consultation, four written submissions were received from iwi/Māori and Treaty partners including:

[10] https://consult.environment.govt.nz/freshwater/low-slope-map-for-lower-intensity-farming/

[11] ris-options-to-amend-stock-exclusion-regulations-to-enable-more-flexibility-for-lower-intensity-farms.pdf (environment.govt.nz)

- Te Tumu Paeroa – the Office of the Māori Trustee;
- Te Rūnanga o Ngāi Tahu; and
- representatives for three of the 18 papatipu rūnaka of Te Rūnanga o Ngāi Tahu (Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga).

40. Officials also held an online workshop with Te Rūnanga o Ngāi Tahu and Te Ao Mārama.

41. To inform their submissions, the West Coast Regional Council consulted with their iwi partners, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu), who are mana whenua on the West Coast/Tai Poutini.

42. Overall, Treaty partners generally expressed a preference for keeping all livestock out of water bodies and not making any changes at that time as:

- the proposed approaches were not considered to provide for Te Mana o te Wai or achieve the objectives of the *Essential Freshwater* reforms
- they considered there was insufficient time to consider the proposals, and that further analysis and more time was needed, and
- the proposed approaches were not seen to provide efficiencies or certainty for the public, farming community, councils or Ngāi Tahu Whānui.

43. While their overall preference was to maintain the regulations and keep stock out of waterways, they did provide feedback in relation to the specific proposals consulted on, including:

- Te Tumu Paeroa partially supported an exception based on stocking rate if it was able to account for regional diversity and seasonality in developing stock unit thresholds. It considered stocking rates are best evaluated and managed through the certified freshwater farm plan process.
- Te Rūnanga o Ngāi Tahu were concerned about freshwater farm plans replacing regulatory requirements, the certification and auditing standards they will be subject to, how they will work in practice, and whether they will achieve the freshwater outcomes sought.
- Hokonui Rūnanga saw freshwater farm plans as an appropriate way to ensure compliance with stock exclusion regulations, including the flexibility to look at alternative options to protect or enhance the mauri of water bodies where stock exclusion is impractical or very costly.
- Te Rūnanga o Makaawhio wanted to see the waterways in its takiwa kept free of stock. It is aware of the fencing issues for the South Westland ‘run of the river’ low intensity farmers, and recognised the low impact of very low intensity grazing.

44. Te Rūnanga, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga also suggested an alternative approach that would allow for an exception in particular cases, with input from mana whenua.

45. This alternative approach would retain the status quo (i.e., the map and associated requirements to exclude stock continue to apply) but provide a pathway for stock owners to apply for an exception. It would require parameters around when they could apply for an exception, what must be considered, evidence that may be used, and include input from mana whenua.

46. They indicated this could occur through a consenting process (preferred) or freshwater farm plans where a regional council makes a determination (i.e., rather than a certifier or auditor). Officials note that the regulation-making powers under section 360(1)(hn) of the RMA are limited, in that it must be clear on the face of it whether a requirement to

exclude stock applies. For example, it is not possible to allow regional councils to be more permissive through their regional plan, in the same way that a NES could.

How has feedback influenced the policy proposal?

47. As noted previously, there has not been scope for specific consultation on the proposal to occur.

48. However, the previous consultation feedback summarised above has influenced the current policy proposal. The primary sector feedback that areas of lower intensity farming will continue to be captured by the map has been particularly influential in proposal design.

49. Although the 2023 changes partially addressed this concern for some farms, broader changes to the low slope map and associated regulations were not made. The previous RIS identified the option to remove the low slope map and rely on freshwater farm plans and/or regional plans as suitable.[12]

50. There will be opportunities at the Select Committee stage of the Bill process for interested stakeholders, iwi/Māori, ENGOs, and others to submit on these proposals.

What options are being considered?

51. The options considered in this RIS are limited to consideration of removing the low slope map compared to the status quo. Officials did not identify any other options in the time available and within the context of Cabinet and Ministerial direction. As such, this analysis is largely limited to assessing the impacts of the proposed option.

52. Officials previously assessed replacing the map of low slope with another tool to define intensity (i.e., stocking rate). However, this option was found to be insufficient due to difficulties in defining a stocking rate that reflects an acceptable level of intensity, inability to account for situations where stock exclusion is needed to provide for values (e.g., sensitive waterbodies; cultural sites) and it would be difficult to monitor and enforce for regional councils.[13]

53. While there are no other options being assessed, it is worth noting there are other RMA mechanisms, such as regional planning or freshwater farm planning, which could require stock to be excluded from waterways in the absence of specific national regulations. This is discussed further in paragraphs 68-70.

Option One – The low slope map and associated regulations are unchanged (status quo)

54. Under option one, the low slope map and Regulations 14, 15 and 18 are unchanged. This would mean the current map is retained, and all beef cattle and deer farms captured by the map, including lower intensity farms, must exclude stock from water bodies from 1 July 2025 (or 3 September 2020, for new pastoral systems). The Regulations will not apply to land located within the Upper Taieri Scroll Plains or where a stocking rate is already set in a grazing licence or lease administered by LINZ or DOC.

55. People who own or control stock would need to make the relevant decisions and investments to comply with these requirements by 1 July 2025. Regional councils would be responsible for any compliance monitoring and enforcement of the Regulations.

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[12] ris-options-to-amend-stock-exclusion-regulations-to-enable-more-flexibility-for-lower-intensity-farms.pdf (environment.govt.nz)

[13] ris-options-to-amend-stock-exclusion-regulations-to-enable-more-flexibility-for-lower-intensity-farms.pdf (environment.govt.nz)

56. This option will work towards improving water quality through excluding beef cattle and deer in areas identified by the map. This is estimated to be 163,751 hectares of land and 22,258 kilometres of rivers (excluding the Upper Taieri Scroll Plains and DOC and LINZ lease arrangements).

57. Livestock entering water bodies contaminate the water directly and can damage the banks of the water body, causing economic, environmental and social issues. Published research shows that fencing and riparian planting can improve water quality and ecosystem health, and when implemented well improve water quality and ecosystem health, including over time when maintained and implemented well.[14][15][16] However, the application of the Regulations to lower intensity farms is not an efficient means of improving water quality. Lower intensity farms tend to be stocked at lower rates, and the marginal environmental benefit of excluding stock from accessing waterways in these areas is lower, for higher cost (i.e., per unit of stock excluded).

58. The Government has no direct data on the number of lower intensity farms captured by the low slope map, but estimates that approximately 6 percent of the map's current area is low producing grassland, which is often used for lower intensity beef cattle and deer farms.

59. While fencing is not the only method of excluding stock from waterways, it is one of the most common. Estimated fencing costs vary by fence type and region (see Table 2).[17]

Table 2: 2022 Fencing costs by region and fence type[18]

Region	Fencing costs/m		
	Sheep & Beef 8-wire (not applied to Table 3)	Beef Cattle/ Dairy 2-wire electric	Deer
Auckland	$20.95	$7.12	$29.74
Bay of Plenty	$17.32	$5.31	$24.30
Canterbury	$15.50	$4.75	$21.65
Gisborne	$20.11	$7.26	$30.30
Hawkes Bay	$18.85	$6.84	$27.09
Manawatu-Whanganui	$17.04	$6.14	$22.76
Marlborough	$18.57	$6.00	$24.58

[14] McDowell 2022, The longevity of fencing out livestock as a method of decreasing contaminant concentrations in a headwater stream, Journal of Environmental Quality· September 2022

[15] R.W. McDowell, K.A. Macintosh & C. Depree 2023, Linking the uptake of best management practices on dairy farms to catchment water quality improvement over a 20-year period, Science of the Total Environment 895 (2023) 164963.

[16] McDowell 2022, The longevity of fencing out livestock as a method of decreasing contaminant concentrations in a headwater stream, Journal of Environmental Quality · September 2022

[17] Appendix 5: Stock Exclusion Regulations: Fencing Costs associated with amendments to the Stock Exclusion low slope land map: https://environment.govt.nz/assets/publications/ris-changes-map-low-slope-land-in-stock-exclusion-regulations.pdf

[18] Appendix 5: Stock Exclusion Regulations: Fencing Costs associated with amendments to the Stock Exclusion low slope land map: https://environment.govt.nz/assets/publications/ris-changes-map-low-slope-land-in-stock-exclusion-regulations.pdf

Nelson	$18.57	$6.00	$24.58
Northland	$17.18	$6.84	$24.58
Otago	$17.87	$5.73	$27.65
Southland	$14.24	$5.03	$21.65
Taranaki	$18.01	$5.87	$27.79
Tasman	$18.57	$6.00	$24.58
Waikato	$18.99	$6.14	$27.51
Wellington	$18.85	$8.66	$26.95
West Coast	$21.09	$7.40	$27.09

60. In 2022, using fencing costs for 2 wire electric fencing and deer fencing, it was estimated that the total fencing costs for the map of low slope land area comes to $239.1 million. These costs are attributable to the Regulations.[19] This cost accounts for the percentage of rivers already fenced or subject to stock exclusion requirements. If the cost of 8-wire non-electric fencing was retained, total national costs would increase to $623.3 million.

61. The present value of total costs over the 2023-2050 period is calculated at $374m under a 5% discount rate. This spreads the fencing cost ($239.1m) out over 25 years (assuming it is wholly loan funded at an interest rate of 6%), equating to an estimated principal and interest payment of $18.7m per annum across the country. Note an annual opportunity cost for excluded grazing land ($7.4m/annum) is also applied to years 2023 to 2050.

Table 3: Total National Fencing Costs for beef cattle and deer farms captured by Stock Exclusion Regulations[20]

Criteria	Beef Cattle	Deer	Total
Total estimated kms of river requiring fencing under the Regulations	25,474		
Implied kms of river requiring fencing by stock type (excluding dairy)	16,815 km	724 km	17,575 km
Implied kms of fence length (i.e. double)	33,702 km	1,447 km	35,150 km
Fence price per metre	*Refer to regional figures in Table 2*		

[19] Appendix 5: Stock Exclusion Regulations: Fencing Costs associated with amendments to the Stock Exclusion low slope land map: https://environment.govt.nz/assets/publications/ris-changes-map-low-slope-land-in-stock-exclusion-regulations.pdf

[20] Appendix 5: Stock Exclusion Regulations: Fencing Costs associated with amendments to the Stock Exclusion low slope land map: https://environment.govt.nz/assets/publications/ris-changes-map-low-slope-land-in-stock-exclusion-regulations.pdf

Implied fence Cost ($m)	$204.4 m	$34. 7 m	$239.1 m

62. Other significant costs of excluding stock from lakes and rivers for these beef cattle and deer farms would include:[21]

    - stock water reticulation, although it is not known how many of New Zealand's waterways are currently used as a source of stock drinking water; and
    - the opportunity costs of retiring productive land because of fencing, which was previously estimated at a total of $7.4 million per annum ($7.1 million for beef cattle, $0.3 million for deer).[22]

Option Two – Removing the low slope map and rely on other mechanisms to manage stock exclusion

63. Under this option, Regulations 14, 15 and 18 would be removed, alongside the definition of low slope land in Regulation 4. This would mean that stock exclusion for beef cattle and deer on low slope land, and stock exclusion from wetlands more than 500m2 in area for all cattle, deer and pigs would not be a regulatory requirement. Stock exclusion in these areas would instead be managed through other mechanisms, such as good practice and voluntary action, industry initiatives, farm planning or regional planning.

64. This option would result in cost savings to regulated parties who no longer need to exclude beef cattle and deer identified by the low slope map. This benefit would be particularly realised by lower intensity beef and deer farmers who are captured by the map, and for whom the cost of fencing is disproportionate to the environmental benefits of excluding stock.

65. In terms of wetlands, we acknowledge this change is broader and affects a requirement to exclude other stock types, not just non-intensively grazed beef cattle and deer. However, the survey of rural decision-makers reports that dairy farmers are fencing many wetlands on their properties, especially in Taranaki, Southland and Northland, where 95% or more of the extent of wetlands on farms is now fenced.[23]

66. For the avoidance of doubt, other exclusion requirements would remain in force that apply to dairy cattle and pigs on any terrain, beef cattle and deer that intensively graze, and for stock to be excluded from natural wetlands identified in an operative plan or that supports a population of threatened species.

67. As the Regulations require beef cattle and deer to be excluded from waterways by 1 July 2025, removing the Regulations could result in potential delays in environmental improvements where stock are not currently excluded from waterbodies on low slope land. However, other mechanisms to exclude stock from waterways, such as regulatory mechanisms (e.g., certified freshwater farm plans), voluntary action (e.g., catchment

[21] For more detailed information on the benefits and costs of excluding stock from water bodies, see Ministry for the Environment, Ministry for Primary Industries. 2016. National Stock Exclusion Study: Analysis of the costs and benefits of excluding stock from New Zealand waterways. MPI Technical Report No: 2016/55. Wellington: Ministry for Primary Industries. See also Semadeni-Davies A, Haddadchi A, Booker D. 2020. Modelling the impacts of the Draft Stock Exclusion Section 360 Regulations on river water quality: E. coli and Sediment. Prepared for the Ministry for Primary Industries and Ministry for the Environment by the National Institute of Water & Atmospheric Research. Wellington: Ministry for the Environment and Ministry for Primary Industries

[22] Appendix 5: Stock Exclusion Regulations: Fencing Costs associated with amendments to the Stock Exclusion low slope land map: https://environment.govt.nz/assets/publications/ris-changes-map-low-slope-land-in-stock-exclusion-regulations.pdf

[23] https://www.landcareresearch.co.nz/discover-our-research/environment/sustainable-society-and-policy/survey-of-rural-decision-makers/srdm-2021/information-sheet-restricting-stock-from-waterways/

groups) or industry-led initiatives (e.g., industry assurance programmes) could fill this gap.

68. For example, as freshwater farm plans are rolled out across New Zealand, they could be used as a potential alternative to the map and associated requirements to exclude stock. Farm plans could be used as a mechanism to:[24]

    - assess the risk of stock entering water and whether exclusion is needed in different contexts (e.g., in lower intensity farms, between different catchments and/or beef and deer farms, and where one part of a farm is more intensively grazed);
    - identify sensitive water bodies and assess the risk of stock entering them and whether exclusion or additional protection is needed irrespective of low stocking rates; and
    - assess the risk posed by stock entering wetlands, and whether it is desirable to exclude them on lower intensity farms.

69. As freshwater farm plans are still to be rolled out across the majority of New Zealand, and this is expected to take several years, a gap could be left in environmental protection until these are fully implemented.

70. Removing the Regulations would also mean stock exclusion requirements can be tailored to the farm or region. Regional councils would still maintain the ability to establish their own requirements depending on their regional context and the level of risk presented to waterways as a result of stock access. Some councils already have rules, or are considering making rules, for stock exclusion. For example, the Proposed Regional Plan for Northland has classified the access of livestock to rivers, lakes, and wetlands as a discretionary activity, meaning a resource consent would be required to enable this.[25]

Previous feedback on the option of removing the map of low slope land and associated requirements

71. Freshwater farm plans were previously identified as a potential alternative to identify farms requiring stock exclusion rather than the low slope map. This was supported by most primary sector stakeholders and some regional councils who submitted during the 2023 consultation. They identified that this pathway provides more flexibility for lower intensity farms which are captured by the map, enabling the development of bespoke mitigations to manage stock exclusion.

72. However, analysis of submissions at the time also found that removing the low slope map entirely and relying solely on freshwater farm plans to manage stock exclusion was not a preferred option. The map was identified as a useful tool to help inform whether stock should be excluded and guide risk assessments on stock exclusion.

73. Some Treaty partners, ENGOs, and some of the Regional Councils had concerns around using freshwater farm plans as an alternative to the low slope map. Issues identified through submissions included the timing of the freshwater farm plan rollout, the lack of certainty provided to farmers on whether they need to exclude stock, concern the current freshwater farm plan thresholds will mean smaller farms will not be required to exclude stock, and that this option would not result in improved freshwater outcomes.

74. Removing the map and associated requirements would remove the 1 July 2025 stock exclusion requirement for higher intensity beef and deer farms captured by the map, as

[24] The coalition agreements outline a commitment to reviewing farm plans to ensure they are cost-effective and pragmatic for farmers, meaning it is not certain what will be required in future farm plans.

[25] New Regional Plan - Northland Regional Council (nrc.govt.nz)

well as the lower intensity beef and deer farms. As the freshwater farm plan system rollout is expected to occur across several years, this could mean potentially delaying investment in stock exclusion measures and environmental improvements for the farms captured by the low slope map and not captured by other Regulations (the map captures approximately 163,751 hectares of land).

How do the options compare to the status quo?

Criteria	Option One Status quo	Option Two Remove low slope map
Efficient	0 The Regulations and incorporated map are likely to capture some lower intensity farms on low slope land. This presents a regulatory burden for lower intensity farms where the cost, time and resources required to exclude stock outweigh the environmental benefits.	+ Removing the Regulations is more efficient than the status quo as the Regulations will only fall on farms captured by Regulations 9-13, 16 and 17, meaning lower intensity beef cattle and deer farms currently captured by the map of low slope land, and which present lower environmental risks, will not be captured by the Regulations.
Effective	0 The Regulations and incorporated map provide a one-size-fits-all rule for where beef cattle and deer need to be excluded from lakes and wide rivers, and al stock from natural wetlands over 500m2. The slope of land is an imperfect proxy for intensity and there is a risk the Regulations will still require stock exclusion despite it being inefficient to do so in some cases (i.e., where the cost of exclusion is disproportionate to the environmental benefits. I The Regulations also do not vary in response to catchment of farm-level differences that might impact these costs or environmental benefits (e.g., ether a waterbody or catchments current state or type means it is more or less sensitive to the effects of stock access).	+ This option removes a nationally applicable, one-size-fits-all rule and enables more local decision making which can take into account local values, circumstances and aspirations. More localised mechanisms (e.g., regional planning, farm plans, catchment groups would instead be used to support stock exclusion. Removing the map of low slope land will improve regulatory quality because the inclusion of the map acts as a proxy for farming intensity, which is not always an accurate indicator of intensity.
Practical	0 The Regulations and incorporated map specify where stock need to be excluded from water bodies, providing no flexibility for differing farm characteristics. The Regulations do not specify how stock must be excluded, providing some flexibility on how farmers choose to exclude stock.	+ This option is more practical than the Regulations as it enables more flexible and localised mechanisms to be used to manage stock exclusion (e.g., farm plans, regional plans). This option would also reduce the overall compliance burden for farmers by aligning with other regulatory requirements.

Safeguards environmental and human health	0 The Regulations and incorporated map provide specific rules for determining where stock must be excluded from water bodies to avoid, remedy, or mitigate the effects on freshwater.	- This option allows more stock than under the status quo to be exempted from exclusion requirements, meaning that there may be a greater impact on freshwater. Contaminants entering waterways as a result of not excluding stock could have negative impacts on the health of waterways, and people (e.g., recreational swimmers coming into contact with water with elevated E. Coli levels). Risks to freshwater may be mitigated by voluntary action, industry initiatives, regional plan rules or farm plans. The roll out timeframes of both a national farm plan system and regional freshwater plans could mean effective stock exclusion will be in place later than the status quo, and further degradation of water bodies could continue until plans are implemented. Smaller farms are also currently not required to have a farm plan, meaning stock may not be required to be excluded, even if there are environmental risks.
Overall assessment	0	+

Key for Qualitative assessment:

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

Treaty Impact Analysis

Treaty Settlements

75. Some Treaty settlements, and related accords and relationship agreements, contain early engagement obligations on decision-makers when considering changes to national direction or legislation,[26] or policies relating to specific areas, such as freshwater, where an iwi area of interest is impacted.[27] These obligations relate to engagement requirements when developing policy and provides directives about matters that need to be considered when making decisions.

76. Some Treaty settlements also require local authorities to give effect to[28] or recognise and provide[29] for vision, policies or outcomes in particular documents developed under Treaty settlement arrangements. In some cases, this may still lead local authorities to develop or maintain planning requirements like those proposed to be changed.

Crown-Māori relationships and Māori rights and interests

77. The proposals in this paper largely affect Māori freshwater rights and interests.[30] For these policy proposals, the likely relevant Treaty principles are partnership and good faith,[31] and the Crown's duty of active protection to Māori in respect of freshwater, which is a taonga.[32] The Waitangi Tribunal found that, in respect of freshwater, the principle of partnership may require a collaborative agreement between the Crown and Māori in respect of the making of law and policy.[33]

Engagement

78. Previous engagement on matters related to the proposals in this paper may have raised expectations of engagement on these proposals. Lack of engagement may have relationship implications. While there is not time to engage with iwi/Māori prior to the Bill's introduction, officials have recommended to Ministers that Post-Settlement Governance Entities (PSGEs) and Māori entities are written to and informed of the changes being proposed ahead of introduction.

79. Although there has been no specific engagement with iwi (settled and unsettled) or Māori groups on these proposals in their current form, there has been previous engagement, as recently as 2023, which considered connected matters. The feedback

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[26] For example, the commitments in the Waikato River settlement arrangements; and specific engagement requirements in the Kingitanga Accord in relation to the development of policy and new legislation affecting the Waikato River and its catchment. Ngāti Maru's Relationship Agreement with the Ministry for the Environment also requires the Ministry to consult with Ngāti Maru when proposing to amend legislation administered by the Ministry and provide opportunities for the Trust to have input.

[27] For example, the relationship agreement between the Minister and Secretary for the Environment and Te Nehenehenui.

[28] For example, schedule 1 s4 Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

[29] For example, s 137 Ngāti Rangitihi Claims Settlement Act 2022.

[30] Engagement with Māori between 2014-2018 resulted in freshwater rights and interests being grouped under broad categories, including water quality, recognition of relationships with water bodies, governance and decision-making, and access and use for economic development.

[31] These principles were articulated by the Court of Appeal in the Lands case in 1987, New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641.

[32] The Te Tau Ihu Waitangi Tribunal stated that the Crown's duty of active protection is 'not merely passive and extends to active protection of Māori people in their use of their lands and waters to the fullest extent practicable'. It notes that this requires honourable conduct by, and fair processes from, the Crown, and full consultation with those whose interests are to be protected (Waitangi Tribunal, Te Tau Ihu Report, Vol 1, page 4).

[33] Waitangi Tribunal 2019 Stage 2 Report Wai-2358.

through the four submissions received by Treaty partners can provide some insight into the previous views shared on this matter. A summary of these submissions is provided in paragraphs 39-46.

80. There has been general support from iwi/Māori for the stock exclusion regulations throughout the policy development and implementation process under the previous Government. Previous engagement indicates Māori may have concerns about the implications of these changes for the health of freshwater bodies. The potential impacts on the natural environment, and freshwater specifically, and how they can be addressed will need to be worked through.

What option is likely to best achieve the policy objectives?

81. Removing the low slope map and associated regulations and relying on other mechanisms is a more effective option to achieve the policy objectives than the status quo. It fully meets the efficient, effective and practical criterion.

82. Removing the low slope map does not meet the safeguarding natural resources criterion. The proposal therefore creates a potential trade-off between achieving administrative objectives (e.g., reducing regulatory burden; lowering costs) and environmental objectives (namely maintaining and improving freshwater quality). By prioritising administrative objectives and efficiency, there is a reliance on devolved decision-making to address environmental risk. Conversely, prioritising environmental objectives is likely to drive inefficient outcomes in some cases. This trade-off will materialise to the extent that uptake of stock exclusion is delayed due to relying on other regulatory or voluntary mechanisms.

83. Any potential delay to stock exclusion may have impacts on the broader policies in the NPS-FM, for example achieving the 2040 national target for water quality improvements at primary contact sites.[34] However, the NPS-FM policies could also drive councils to include stock exclusion rules within their regional plans to manage sediment and E.coli.

84. There are other mechanisms outside of the stock exclusion regulations which could manage the impacts of these activities on freshwater. For example:

- freshwater farm plans can assess the costs and benefits of excluding stock in different on-farm contexts (e.g., intensity; practicality)
- councils already have or are considering setting stock exclusion rules in their regional plans (e.g., Proposed Regional Plan for Northland).

85. Due to the limitations and constraints on this analysis, and findings in the Treaty impact analysis, officials do not have a preferred option.

[34] See Policy 12 and Appendix 3 of the NPS-FM 2020.

What are the costs and benefits of the preferred option?

Affected groups	Comment	Impact	Evidence certainty.
Additional costs of the preferred option compared to taking no action			
Regulated groups	No additional costs to regulated groups above the status quo.	Low	Medium
Regulators	There may be additional costs to regional councils, if they decide to develop local rules to manage stock exclusion to manage activities that were captured by these regulations.	Medium	Low
Wider government	N/A	Low	Low
Iwi//Māori	Refer to the Treaty impact analysis.		
Total monetised costs	N/A		
Non-monetised costs (e.g., environmental, social)	There may be a greater likelihood of stock entering waterbodies as a result of this option. This could have environmental impacts due to potential increases in contaminants in waterways, and social and health impacts due to higher contaminants making waterways unsafe to swim in.	Medium	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Cost savings to farmers who would have had to make the necessary investments (financial and time) to comply with exclusion requirements on low slope land by 1 July 2025. Potential savings of $239.1m in fencing costs.	High	Low
Regulators	Lower cost to Regional Councils regarding compliance monitoring and enforcement.	Low	Low
Wider government	Lower cost of monitoring and maintaining national regulations.	Low	Low
Iwi/Māori	Refer to the Treaty impact analysis.		

Affected groups	Comment	Impact	Evidence certainty.
Total monetised benefits	Not available	N/A	N/A
Non-monetised benefits (e.g. environmental, social)	Alleviate immediate cost pressures for farmers, potentially supporting employment and economic returns.	N/A	N/A

Part B: Removing the slope condition from the intensive winter grazing regulations

Background

86. Intensive winter grazing is a farming practice where large numbers of stock (cattle, sheep, deer) are confined over winter to small outdoor feeding areas planted with annual forage crops (e.g., swedes, kale and fodder beet).

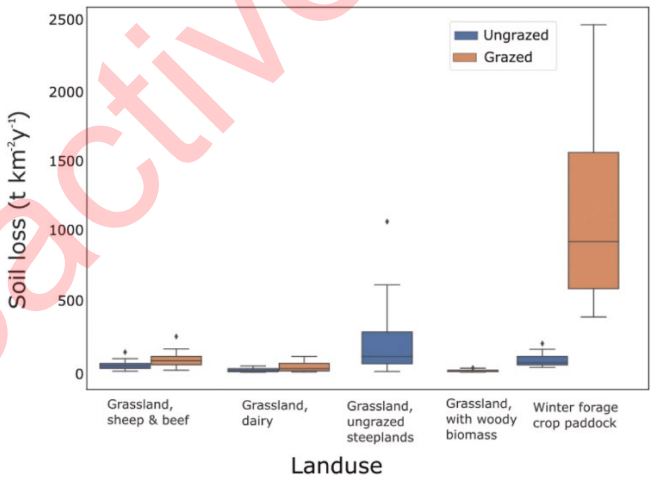
87. Winter forage crops are an important part of some pastoral farm production systems. They provide feed when there is no or low pasture growth, contribute to pasture renewal rotations for improved production, and provide weed and pest control.

88. If done poorly or too extensively, winter grazing can have serious negative effects on both animal welfare[35] and the environment, particularly freshwater and estuary health. It can increase the discharge of nutrients, sediments and microbial pathogens into surface water and groundwater, by stripping the land of its vegetative cover.

89. In particular, the slope of grazing is a key factor influencing sediment loss. For example, surface erosion rates for grasslands grazed by sheep and beef cattle are generally higher than compared to those grazed by dairy cattle (Figure 1).[36] This difference largely reflects the steeper slopes underlying sheep and beef grasslands, rather than grazing management. Across all pastoral grasslands, the same study found that grazing increased mean soil losses by approximately 85% compared to the ungrazed equivalent. This was even more pronounced with grazing on winter forage-crop paddocks, which increased mean annual soil losses by roughly 1200% compared to the same land being left in a typical pasture grazing scenario.

90. Grazed winter forage paddocks also exhibit much higher surface erosion rates (1,100 t km−2 yr−1) compared to any other grazed or ungrazed land in New Zealand.

Figure 1. Soil loss from grasslands and grazed lands of New Zealand, including forage crop paddocks.[37]



91. Intensive winter grazing activities have become more prevalent over recent decades as stock numbers have increased. As of 2022, it is estimated that 222,697 ha of land was

[35] Note that animal welfare considerations are out of scope of this analysis as animal welfare is managed through a different regulatory framework.

[36] Impacts of grazing on ground cover, soil physical properties and soil loss via surface erosion: A novel geospatial modelling approach, Journal of Environmental Management, Volume 287, 2021.

[37] Blue boxplots reflect the range of modelled soil losses under ungrazed conditions, while orange boxplots are the grazed equivalents after applying the treading and grazing model to soil and cover factors. The range of rates are compiled from 22 catchments across the North and South Island of New Zealand.

used for winter grazing.[38] This equates to approximately 2.2% of New Zealand's agriculture and horticultural land area. Areas where intensive winter grazing are most prevalent include Southland, Canterbury and Otago.

92. In August 2020, as part of the *Essential Freshwater Package,* the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 (NES-F) were gazetted.

93. The NES-F sets requirements for carrying out certain activities that pose risks to freshwater and freshwater ecosystems. Subpart 3 (Intensive winter grazing) of Part 2 (Standards for farming activities) contains the regulations for undertaking intensive winter grazing (including permitted activities).[39] Individual farmers must comply with these regulations, with responsibility for compliance monitoring and enforcement resting with regional councils.

94. The compliance pathways in the NES-F for intensive winter grazing activities are:

- **Pathway 1:** As a permitted activity, comply with default conditions set out in the regulations relating to area, slope, setbacks, and critical source areas, in addition to standards relating to pugging and ground cover (details of these conditions and standards are set out below); or
- **Pathway 2:** As a permitted activity, obtain and comply with a certified freshwater farm plan under which any adverse effects in relation to intensive winter grazing are no greater than would be allowed for by the default conditions set out in Pathway 1; or
- **Pathway 3:** Apply for a resource consent (restricted discretionary) if unable to meet the default conditions or obtain a certified freshwater farm plan.

95. **Pathway 1** is set out in Regulation 26, under which the use of land for intensive winter grazing (and consequential discharges into or onto land) is a permitted activity if the default conditions in Regulation 26(4) are met. Those default conditions are:

- the area of the farm used for intensive winter grazing is no greater than 50 ha or 10 percent of the farm area, whichever is greater; and
- the slope of any land under an annual forage crop that is used for intensive winter grazing must be 10 degrees or less, determined by measuring the slope over any 20 m distance of the land; and
- livestock must be kept at least 5 m away from the bed of any river, lake, wetland, or drain (regardless of whether there is any water in it at the time); and
- on and from 1 May to 30 September of any year, in relation to any critical source area that is within, or adjacent to, any area of land that is used for intensive winter grazing on a farm:
  - the critical source area must not be grazed; and
  - vegetation must be maintained as ground cover over all of the critical source area; and
  - maintaining that vegetation must not include any cultivation or harvesting of annual forage crops.

96. **Pathway 2** is also set out in Regulation 26, which provides that intensive winter grazing is permitted if the farm has a certified freshwater farm plan that applies to the winter

[38] Maanaki Whenua - National winter forage – intensive winter grazing map for winter 2021

[39] Note that some of these conditions were amended in 2022. https://environment.govt.nz/assets/publications/intensive-winter-grazing-regulations-regulatory-impact-statement.pdf

grazing, and a certifier has certified that any adverse effects allowed for by the plan in relation to the winter grazing are no greater than those allowed for by the default conditions (i.e., Pathway 1).[40]

97. A person doing intensive winter grazing in accordance with Regulation 26 (i.e., Pathway 1 or 2) must also comply with the standards set out in Regulation 26A and 26B, which are to:

- take all reasonably practicable steps to minimise adverse effects on freshwater of any pugging; and
- ensure that vegetation is established as ground cover over the whole area of that land as soon as practicable after livestock have finished grazing.

98. **Pathway 3** is set out in Regulation 27, under which intensive winter grazing is classified as a restricted discretionary activity. The discretion of consent authorities is restricted to the following matters:

- adverse effects on ecosystems, freshwater, and waterbodies;
- adverse effects on the water that affect the ability of people to come into contact with the water safely;
- adverse effects on Māori cultural values;
- susceptibility of the land to erosion, and extent to which loss of sediment and other contaminants to water is exacerbated or accelerated; and
- timing and appropriateness of any methods proposed to avoid, remedy, or mitigate the loss of contaminants to water.

99. There is also a temporary standard which will be revoked from the NES-F on 1 January 2025, whereby the use of land for intensive winter grazing is a discretionary activity[41] if the following conditions are not met:

- land was used for intensive winter grazing between 1 July 2014 and 30 June 2019 ('the reference period'); and
- at all times, land on farm used for intensive winter grazing is no greater than the maximum area of the farm used for intensive winter grazing during the reference period.

100. The NES-F enables regional councils to set rules regarding intensive winter grazing in their regional plans based on their local circumstances and level of risk, provided they are more stringent than the NES-F.[42]

101. Some regional councils already regulate winter grazing activities through regional policy statements and plans. For example:

- the Proposed Southland Land and Water Plan (partially operative) provides a policy and rule framework for winter grazing activities. Intensive winter grazing

[40] Note that this pathway is not currently available for most farms as the freshwater farm plan system has currently only been introduced in some areas of Southland and Waikato (from 1 August 2023) and Otago, and the West Coast (from 1 February 2024).

[41] Discretion is limited to the consent authority being satisfied that granting the consent would not result in an increase, compared to 2 September 2020, in a) contaminant loads in the catchment; or b) concentrations of contaminants in freshwater or other receiving environments

[42] Refer Regulation 6 NES-F

is permitted activity if certain conditions are met, including setback requirements which are dependent on slope.[43]

- the Canterbury Land and Water Regional Plan sets permitted activity conditions relating to the area of a farming property used for intensive winter grazing and development of farm management plans. The plan provides consenting pathways where permitted activity conditions are not met.[44]

102. Intensive winter grazing regulations were originally intended to commence on 1 May 2021, however this date was deferred twice by the Government. During the deferral period, extra monitoring and a range of practical support was deployed to assist the primary sector in achieving improvements in winter grazing practices. MPI, MfE, regional councils and primary sector representatives developed an online tool called the 2021/22 Intensive Winter Grazing Module to help improve practices to benefit freshwater quality and animal welfare. The Module was publicly launched in April 2021 and an updated version released in November 2022.[45]

103. The intensive winter grazing regulations commenced on 1 November 2022 for the following winter grazing season (i.e., May 2023 to September 2023). If permitted activity conditions could not be met (e.g., the slope condition), a resource consent needed to be obtained prior to the start of the season.[46]

104. Central government monitored implementation and received regular information from a subset of key regions on resource consenting, compliance monitoring and enforcement and activities of primary sector industry bodies to support good practice and compliance among members.

105. 278 resource consents were issued across five key councils as of 12 July 2023.[47] Conditions relating to slope and critical source areas were the main reasons farmers applied for resource consent, according to information officials received from Southland, Otago, and Canterbury regional councils.

106. Information regarding compliance monitoring and enforcement by regional councils, and activities of industry bodies to support this was provided to officials.[48] The key findings of this report were:

- a range of proactive monitoring (e.g., aerial flyovers, advice letters) and reactive monitoring (e.g., responding to complaints) was undertaken, with a general focus on education rather than enforcement.
- 34 complaints from the public were received by councils and enforcement action included issuing 6 abatement notices, 3 formal warnings and two infringement notices (with some farms still under investigation at the time of reporting).

107. The report also summarised information provided by DairyNZ, Beef +Lamb NZ, Deer Industry NZ and Federated Farmers promoting the uptake of good practice winter grazing and compliance with the rules. Their activities included engaging with industry body members, running media campaigns and providing resources. Many industry

[43] If the slope is 10 degrees or more, there must be a 20-metre setback from specified waterbodies. If the slope is 10 degrees or less there must be a 10-metre setback.

[44] These conditions differ slightly depending on which catchment the property is in.

[45] See Ministry for Primary Industries and Ministry for the Environment Intensive Winter Grazing Module (mpi.govt.nz)

[46] Note that a resource consent does not need to be obtained every season, depending on the term given by the resource consent.

47 Waikato, Manawatū/Whanganui, Canterbury, Otago, and Southland regions.

[48] End of Season Report: Intensive Winter Grazing Compliance Monitoring and Enforcement Activities

assurance programmes, which support farmers to adopt good practice, have intensive winter grazing modules or requirements as part of their programme.

108. Information from regional councils suggests that non-compliance with intensive winter grazing rules identified was minor, the number of farms requiring resource consent was much lower than earlier estimates[49] and any breaches of the requirements were generally easily addressed through minor on-farm practice change.

109. There is some evidence available which estimates changes in winter grazing extent and slopes cropped, using remote sensing. For example:

- winter grazing undertaken on slopes above 10 degrees decreased from 20,783ha to 12,313 ha between 2018 and 2021[50]
- winter grazing land area decreased in Southland from 59,549 ha in 2017 to 55,116 ha in 2021.[51]

110. Intensive winter grazing rules continue to apply for the 2024 grazing season. On-farm decisions for winter grazing are generally made in the summer months, due to the need to plant crops for the future grazing season. Officials are working with industry and regional councils to achieve continued high compliance and improved practices.

Context

111. Ministers sought advice indicating a desire to remove the 'slope rule', which is a condition of undertaking intensive winter grazing as a permitted activity under the NES-F. Officials' understanding of their concerns with the slope rule can be summarised as the following:

- The slope condition is a one-size-fits-all national rule that does not account for catchment or farm-level differences or enable local decision-making
- There are significant costs and efforts for farmers who need to obtain a resource consent due to grazing any land over 10 degrees, but who are generally undertaking good practice.

112. Previous Ministerial and Cabinet decisions have influenced this proposal, including:

a. reform the resource management system, including making targeted legislative changes to the RMA by the end of 2024 [CAB-23-MIN-0463]

b. to consider papers from the Minister of Agriculture on 'quick win' amendments to the resource management system on sloped land [ECO-24-MIN-0022]

Scope of analysis

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[49] For example, the Intensive Winter Grazing Regulatory Impact Statement 2022 estimated there were 10,000 farms undertaking intensive winter grazing, many of which would require a resource consent.

[50] These figures are taken from two studies of winter forage cropping extent in 2018 and 2021, that were summarised in a *Manaaki Whenua* note:

• North H, Amies A, Dymond J, Belliss S, Pairman D, Drewry J, Schindler J, Shepherd J 2022. Mapping bare ground in New Zealand hill-country agriculture and forestry for soil erosion risk assessment: an automated satellite remote sensing method. Journal of Environmental Management 301. https://doi.org/10.1016/j.jenvman.2021.113812

• North H, Belliss S, Amies A, Pairman D 2022. National winter forage – intensive winter grazing map for winter 2021. Landcare Research Contract Report LC4149 for Regional Software Holdings Ltd.

We note there was limited availability of field data in 2018 for Northland, Auckland and Bay of Plenty regions, so these regions have been removed for this comparison. Including these regions, the extent of IWG on slopes above 10 degrees is 22,281 ha (2018) and 12,360 ha (2021).

[51] North H, Belliss S, Amies A, Pairman D 2022. National winter forage – intensive winter grazing map for winter 2021

113. The regulations in scope of this analysis are in Subpart 3 of the NES-F. Of particular relevance is Regulation 26(4)(b) which specifies the maximum 10-degree slope as a condition of undertaking intensive winter grazing as a permitted activity. The broader provisions in Subpart 3 (including the other conditions in Regulation 26, the consenting pathway for when these conditions are not met in Regulation 27, and temporary intensification provisions in Regulations 28-31) are also in scope.

114. The broader NES-F, other national direction (e.g., the National Policy Statement for Freshwater Management), legislation or regulations (e.g., Animal Welfare Act, Freshwater Farm Plan Regulations) are out of scope of this analysis.

115. This RIS assesses the impacts of progressing changes to amend the intensive winter grazing regulations within the context of the above decisions and the broader context outlined in Section 1.

What is the policy problem or opportunity?

116. Currently, Pathway 2 is not available in practice for most farmers because certified freshwater farm plans have not yet been rolled out. This means individuals wanting to undertake intensive winter grazing, and who cannot comply with the permitted activity conditions (e.g., because it is inefficient, or not practical to do so), must obtain a resource consent.

117. Consenting is sometimes viewed as an inefficient outcome in itself (i.e., as an unnecessary cost to confirm that other on-farm mitigations, such as wider setbacks or grazing practices, will adequately manage the effects of winter grazing). Officials understand this perception is central to the proposal to remove the slope rule, noting that resource consenting is a feature of the RMA and examining its merits is outside the scope of this analysis.

118. Available evidence, which is limited, suggests most farmers were able to adjust their practices to comply with the default conditions (including slope) in the 2023 season. Relatively few consents were needed, and rates of non-compliance appear to be very low.

119. Available data suggests consenting costs for the largest winter grazing regions are $1845-$3500.[52] However, this does not include the cost of preparing consent applications and any consulting costs or other professional services. Previous advice has estimated these to be approximately $5000, however this figure is highly uncertain.

120. To the extent that any consenting is perceived as an inefficient outcome to manage winter grazing activities, the current scale of the problem could be in the order of $1.9-2.4m[53] noting there may be new consent applications in future. This figure is highly uncertain and does not include additional costs we are not aware of at this time.

What objectives are sought?

121. The policy objectives sought are to:

    a. Deliver ‘quick win’ amendments relating to sloped land

    b. Improve regulatory quality by removing one-size fits all rules with local decision-making

[52] This estimate is based on the latest known deposit costs for consent applicants for Southland ($1845), Otago ($1900) and Canterbury ($3500). Councils may charge additional costs above the deposit depending on processing time and resources, which will vary according to each individual application.

[53] This range is calculated using the 278 resource consents issued for the 2023 season, multiplied by $6845 ($1845 Southland consent fee + $5000 consulting costs) and $8500 ($3500 Canterbury consent fee + $5000 consulting costs).

c. Reduce regulatory burden in terms of cost, time and resources needed for regulated parties

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

122. The criteria below were used to assess whether the option will achieve the policy objectives.

Table 1: Evaluation criteria

Criteria	Explanation
Efficient	Does the option reduce regulatory burden in terms of cost, time and resources needed for regulated parties?
Effective	Will the option improve regulatory quality by removing one-size fits all rules and enabling local decision making?
Practical	Does the option provide farmers with flexibility to implement solutions that are appropriate to the specific characteristics of their farm?
Safeguards environmental and human health	Does the proposal allow for environmental and human health to be protected?

Feedback received during previous engagement

123. No recent engagement has occurred on these proposals (refer to Section 1). However, previous consultations on the *Essential Freshwater Package* and subsequent amendments to the NES-F related to the intensive winter grazing regulations. Below is a summary of stakeholder and iwi/Māori views.

Primary sector, local government and ENGOs

124. In 2019, public consultation on the *Essential Freshwater Package* included policies around winter grazing. Primary sector views on the proposed regulations were mixed. For some the proposals were too strict (mainly beef and sheep farmers). They suggested minimum regulation for setback from waterways and guiding other conditions through advice on good management practice.

125. Others (mainly the dairy sector) supported some level of national regulations alongside good management practice. Councils tended to support regulation as a permitted activity to reduce consenting burden and some councils believed some of the permitted activity conditions should be managed through freshwater farm plans. Others believed the regulations are not strict enough and will not control this practice. They suggested the need to be stricter, reduce this practice and some ENGOs wanted it prohibited.

126. In September 2020, the Minister for the Environment and the Minister of Agriculture established the Southland Intensive Winter Grazing NES Advisory Group (the advisory group) to review the recently gazetted intensive winter grazing regulations in the NES-F and provide practical recommendations for improving implementation and winter grazing practice. Advisory group representatives included Beef + Lamb, DairyNZ, Federated Farmers, along with Fish & Game. In these discussions, Ngāi Tahu was represented by Te Ao Marama Incorporated for the Southland region.

127. The advisory group released its report and recommendations in December 2020.[54] Its primary recommendation was for an alternative permitted activity pathway to be included in the regulations in the form of an intensive winter grazing module. They recommended that if this alternative pathway was not created, that application of the regulations be deferred until a freshwater farm plan pathway became available to manage winter grazing.

128. Regarding the slope condition, the SAG noted measuring the slope as a 'mean across a paddock' (as required by the regulations) is difficult to calculate (for both farming and consenting purposes). It would result in areas at a slope greater than the 10 degrees threshold being cultivated and grazed where it was a small area of the paddock. The SAG recommended:

    a. measuring slope as a maximum slope (noting that maximum slope can be easily measured e.g., using an app), instead of 'mean slope across a paddock'
    b. amending the slope threshold to 15 degrees
    c. managing critical source areas to strengthen the requirement to mitigate risks of intensive winter grazing on slopes.

129. Following a public consultation process, changes were made to make the slope condition a maximum slope, as measured over any 20-metre distance of land used for grazing. Changes were not made to increase the slope threshold to 15 degrees.

130. We are not aware of any recent views expressed by the primary sector, local government or ENGOs specific to this proposal. However, some primary sector stakeholders have expressed concerns regarding the current regulatory requirements imposed on farmers, and a desire to review and replace aspects of the *Essential Freshwater Package*, including intensive winter grazing requirements.[55] Conversely, ENGOs and practitioners have expressed concerns about reviewing and replacing freshwater management policy.

Iwi/Māori

131. The majority of iwi/Māori and Treaty partner submissions on the *Essential Freshwater Package* supported the package as a whole and regulations on farming practices, including winter grazing, to halt freshwater degradation. For example, Waikato-Tainui said *"The introduction of standards for intensive winter grazing, feedlots and stockholding areas is supported because they ensure the welfare of the animal, while maintaining the environmental standards"*

132. Following the SAG Report, three submissions were received from Treaty partners during the 2021 consultation, which supported some level of change and can be summarised as:

    - Te Tumu Paeroa – The Office of the Māori Trustee had concerns relating to the application of the intensive winter grazing regulations to leasehold land and the potential for driving unintentional consequences regarding the use of leased Māori land and freehold land (in particular, regarding the limitations on area and slope).
    - Ngāi Tahu's submission can be summarised as that, while agreeing that some of the proposed amendments to the intensive winter grazing regulations are

[54] https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/environment/water/Essential%20Freshwater%20documents/Southland%20NES%20Advisory%20Group%2015-12-2020%20%28Final%29.pdf

[55] https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/National/2023/2023-Election-Platform-Restoring-Farmer-Confidence.aspx

appropriate in some areas, they were not appropriate in other areas (e.g., conditions managing area, slope). Ngāi Tahu's view was that this reinforces why a localised approach to environmental management, recognising mātauranga and local knowledge is important not only for recognising rangatiratanga and kaitiakitanga, but for ensuring good environmental outcomes. Ngāi Tahu also commented that there was no proposal for mana whenua input into guidelines relating to pugging, and the identification of critical source areas. Ngāi Tahu also noted enforcement concerns, especially regarding the conditions managing pugging and resow.

- Te Ao Marama were largely supportive of the proposed amendments. Their concerns related to the implementation and enforcement of the "practicable" standard in pugging and resow.

133. We are not aware of any recent views expressed by iwi/Māori or Treaty partners regarding intensive winter grazing regulations.

How has feedback influenced the policy proposal?

134. As mentioned, there has been no scope for feedback to influence the policy proposal at this time due to timing constraints. There will be opportunities at the Select Committee stage of the Bill process for interested stakeholders, iwi/Māori, ENGOs, and others to submit on these proposals.

135. However, previous feedback, particularly during the 2019 *Essential Freshwater* consultations has shaped the current proposal. Further, feedback on other regulatory proposals outside of the NES-F (e.g., the Southland Land and Water Plan) has also influenced this proposal.

What options are being considered?

136. Three options were considered alongside the status quo. There may be other plausible options (for example, amending the NPS-FM or Freshwater Farm Plan Regulations) but these were not considered further due to the limitations and constraints as outlined in section 1. The options assessed are focused on the Cabinet direction relating to sloped land and making amendments in the time available.

Option One: No changes to the slope condition (status quo)

137. Under this option, no changes are made to the slope condition or broader intensive winter grazing regulations. This would mean farmers undertaking intensive winter grazing would continue to need to meet permitted activity conditions or obtain a resource consent, noting that:

- Intensive winter grazing regulations have already commenced. They were in force for the 2023 intensive winter grazing season, with 278 consents issued.
- On-farm decisions to meet permitted activity conditions or obtain a resource consent have already been made for the 2023 (past) and 2024 (current) seasons.

138. Intensive winter grazing would continue to be regulated nationally with permitted activity conditions (including slope) that manage the effects of winter grazing activities on freshwater, and requirements to obtain resource consent where these conditions are not met. This would ensure that risks of grazing on steep slopes (i.e., sediment and nutrient loss) are managed appropriately through the existing permitted activity standards or through consent conditions. This would occur alongside other mechanisms which could manage winter grazing, including farm plans, regional plans and voluntary actions.

139. This option would retain a regulatory framework, including the ability to take enforcement action against poor practices. There is also an associated incentive to improve practices to meet permitted activity conditions.

140. There would be ongoing costs for regulated parties to obtain or renew resource consents where the slope condition, or other conditions, are not met.

Option Two: Remove the slope condition in Regulation 26(4) from the NES-F

141. Under this option, the condition that requires intensive winter grazing to be undertaken on a maximum slope of 10 degrees would be removed from the NES-F. This would mean:

- The condition specifying a maximum slope of 10 degrees or less is removed.
- Other conditions and rule framework remain in place (e.g., restrictions on farm area and setbacks from waterbodies).
- Intensive winter grazing is permitted where farmers can comply with remaining conditions, or otherwise need a freshwater farm plan or consent. Subject to local decision-making and planning, freshwater farm plans can manage intensive winter grazing activities.

142. The key benefits of this option are:

- It meets the efficient, effective and practical criterion. The option removes a one-size-fits-all rule and enables regional councils, communities and farmers to manage the risks associated with intensive winter grazing on slopes above 10 degrees through farm plans, regional plans and voluntary actions.
- The option will reduce future costs, time and resources for farmers, where intensive winter grazing is undertaken on slopes above 10 degrees and resource consent has not yet been obtained. We estimate costs of obtaining a resource consent to be approximately $1845-$3500 per farm,[56] but do not have estimates of how many farms may require resource consent in the future.

143. The key costs of this option are:

- It is at risk of being much worse than the status quo for the safeguarding natural resources criterion. Removing the slope condition will create a regulatory gap insofar as the slope of intensive winter grazing is not being managed at a national level, and management instead will rely on relevant regional plans, farm plans or voluntary actions (e.g., catchment groups working together to develop management plans). This increases the risk of sediment and nutrient loss impacting freshwater quality, as this may be inconsistent across regions.

Option Three: Remove Regulation 26(4)(b) and amend Regulation 26(4) to include additional conditions in the NES-F

144. Under this option, the condition that requires intensive winter grazing to be undertaken on a maximum slope of 10 degrees would be removed from NES-F and amendments made to other conditions according to slope. This would mean:

- The condition specifying maximum slope of 10 degrees or less, with no other qualifying factors, is removed.
- New conditions are set that would allow, as a permitted activity, intensive winter grazing on slopes above 10 degrees if there is a 20-metre setback from waterbodies and critical source areas (or otherwise a 10-metre setback), if

[56] This estimate is based on the latest known deposit costs for consent applicants for Southland ($1845), Otago ($1900) and Canterbury ($3500). Councils may charge additional costs above the deposit depending on processing time and resources, which will vary according to each individual application. These estimates do not include the costs for a consultant to prepare an Assessment of Environmental Effects, if required, or other time and resources that may be required.

intensive winter grazing is not undertaken more than 800m above sea level, and if specific grazing practices (e.g., downslope grazing) are undertaken.[57]

- Other conditions and rules framework remain in place.
- Intensive winter grazing is permitted where farmers can comply with remaining and new conditions, or otherwise need a freshwater farm plan or consent. Additional actions are voluntary or driven by non-regulatory efforts.

145. The key benefits of this option include:

- It meets the practical criterion because it provides more flexibility for farmers to make grazing decisions suited to the characteristics of their farm, including doing winter grazing on slope above 10 degrees, without a resource consent (provided the new conditions are met).
- It is not considered different to the status quo for the safeguarding natural resources criterion. Removing the slope condition and replacing it with other conditions to manage setbacks and other issues is likely to protect environmental health in a similar way to the existing regulations.
- It retains a regulatory framework to manage intensive winter grazing, including the ability to take enforcement action against poor practices. There is also an associated incentive to improve practices to meet permitted activity conditions (similar to the status quo).
- It mitigates the risk of allowing an activity with significant adverse effects to be permitted, as the effects of grazing on steep slopes are managed through new conditions (e.g., larger setbacks are required when grazing on steeper slopes).

146. The key costs of this option include:

- The option is no different from the status quo for the effectiveness criterion. This means that intensive winter grazing activities would be regulated nationally on the basis of slope, which does not enable local decision-making. Where permitted activity conditions cannot be met, resource consent is required, which we estimate to be $1845-$3500 per farm.

Option Four: Repeal Regulations 26-31 from the NES-F

147. Under this option, all conditions and activity statuses for intensive winter grazing would be removed from the NES-F. This would mean:

- All conditions and activity statuses are removed. Resource consents would not be required for intensive winter grazing activities.
- The general pugging and ground cover standards are removed.
- The temporary intensification provisions in Regulations 28-31 are removed, if the regulations have not already revoked on 1 January 2025.[58]
- intensive winter grazing activities would be managed through farm plans, regional plans or voluntary actions.

148. The key benefits of this option include:

- It is much better than the status quo for efficiency, effectiveness and practicality. The option best enables regional councils, communities and

[57] The intent would be to mirror the proposed Southland Land and Water Plan rule 20A

[58] See Regulation 31 NES-F

farmers to manage the risks associated with winter grazing through farm plans, regional plans and voluntary actions.

- It will reduce costs, time and resources for farmers the most, as they will not need to assess their activities against the conditions and apply for resource consent where these conditions are not met.
- In comparison to option two, avoids regulations that would risk permitting adverse effects on the environment.

149. The key costs/risks of this option include:

- It is at risk of being much worse than the status quo for the safeguarding natural resources criterion. Removing the national level regulations will create a regulatory gap insofar as the activities are not being managed at a national level, and management instead will rely on relevant regional plans, farm plans or voluntary actions (e.g., catchment groups working together to develop management plans). This increases the risk of sediment and nutrient loss impacting freshwater quality, as this may be inconsistent across regions.
- This option does not retain a national regulatory framework. This means there would be no ability to take enforcement action against poor intensive winter grazing practices unless the activities are regulated by regional councils.
- There is a risk that discharges associated with intensive winter grazing mean section 15 of the RMA applies (Discharge of contaminants into environment), and in the absence of regulations or plan rule permitting it, necessitates a resource consent. Ultimately, it would be a matter for regional councils to determine how they manage winter grazing (i.e., whether that is through regional plan rules, consenting or otherwise). Officials note that key regions where intensive winter grazing is most prevalent (e.g., Southland, Canterbury and Otago) have provisions for intensive winter grazing within their operative or partially operative regional plans. Ongoing litigation relating to the Proposed Southland Water and Land Plan may have a bearing on this risk.

How do the options compare to the status quo?

Criteria	Option One Status quo	Option Two Remove slope condition only	Option Three Remove and replace slope condition	Option Four Remove all intensive winter grazing regulations
Efficient	0 Exceeding the slope condition will continue to trigger a resource consent, meaning intensive winter grazing activities which are undertaken on higher slope land (and therefore have higher environmental risks) will continue to be managed nationally. Farmers will still be required to comply with additional rules in their regional plan, or actions within a farm plan, and may still do voluntary actions to manage the impacts of intensive winter grazing on freshwater.	+ Removing the slope condition will likely reduce the number of future consents required for farmers to undertake intensive winter grazing activities, reducing the cost, time and resources needed to comply with the intensive winter grazing Regulations. Farmers will still be required to comply with other permitted activity conditions (or obtain resource consent), rules in their regional plan, or actions within a farm plan.	0 The slope condition will be replaced by different conditions that changes the requirements for a consent (providing options regarding setback requirements, depending on the slope grazed). This may reduce the cost of consents for regulated parties, however this is only if the new conditions can be met for farmers who currently do intensive winter grazing on slopes over 10 degrees. The rule could result in an opportunity cost due to the higher setbacks required (i.e., loss of productive land during intensive winter grazing season). Farmers will still be required to comply with rules in their regional plan, or actions within a farm plan, and may still do voluntary actions to manage the impacts of intensive winter grazing on freshwater.	++ Removing all of the intensive winter grazing regulations will remove the rules for intensive winter grazing activities and the requirement for consents for winter grazing activities if these rules are not met, reducing the cost, time and resources needed to comply with them. Farmers will still be required to comply with regional plan rules, or actions within a farm plan, and may still do voluntary actions to manage the impacts of intensive winter grazing on freshwater.

Effective	0 The Regulations will remain the same and maintain one-size fits all, nationally applicable conditions regarding intensive winter grazing activities, meaning a resource consent will be required if these permitted activity conditions are not met. Regional councils will maintain the ability to set their own rules regarding intensive winter grazing in their regional plans based on their local circumstances and level of risk.	+ Removing the slope rule will improve regulatory quality by removing the one-size fits all slope condition and enabling regional councils and communities to manage intensive winter grazing activities on land slopped higher than 10 degrees in a way that suits their local context. The other intensive winter grazing conditions and framework will still remain. Regional councils will maintain the ability to set their own rules regarding intensive winter grazing in their regional plans based on their local circumstances and level of risk.	0 Removing the existing slope condition and replacing it with other conditions will be the same as the status quo. Changing the conditions to manage slope will not remove the number of one-size fits all rules or enable local decision-making any more than what the status quo enables. Regional councils will maintain the ability to set their own rules regarding intensive winter grazing in their regional plans based on their local circumstances and level of risk.	++ This option will remove all conditions and activity statuses for intensive winter grazing in the NES-F, removing a larger set of nationally applicable, one-size fits all rules. Regional councils will maintain the ability to set their own rules regarding intensive winter grazing in their regional plans based on their local circumstances and level of risk. This option will provide maximum scope for localised approaches (e.g., regional plans or farm plans) to manages the impacts of OWG activities on freshwater.
Practical	0 Farmers will be required to comply with the permitted activity conditions or apply for a resource consent. Regional plans may have or implement specific conditions that need to be met. Farm plans may outline actions which are specific to the risks and characteristics of the farm.	+ Removing the slope condition will allow farmers more flexibility to manage the impacts of doing intensive winter grazing activities on slope above 10 degrees, in a way that accounts for the specific characteristics of their farm and without requiring a consent. intensive winter grazing activities will still require a consent if other conditions are not met.	+ This option provides more flexibility for farmers to make grazing decisions suited to the characteristics of their farm while still meeting permitted activity conditions, insofar as these farmers can meet new conditions set. If farms are unable to comply with the setback conditions (or other conditions included in the intensive winter grazing	++ Removing the intensive winter grazing regulations provides farmers with much greater flexibility on how they manage the effects of intensive winter grazing activities on freshwater, subject to other requirements. Farm plans may outline actions for managing intensive winter grazing activities which are specific to the

		Regional plans may have or implement specific conditions regarding slope that need to be met. Farm plans may outline actions which are specific to the risks and characteristics of the farm.	Regulations), then a resource consent will still be required. Regional plans may have or implement specific conditions regarding slope that need to be met. Farm plans may outline actions which are specific to the risks and characteristics of the farm.	risks and characteristics of the farm. Regional plans may have or implement specific conditions regarding intensive winter grazing that need to be met.
Safeguards natural resources	0 Intensive winter grazing will be continued to be regulated nationally with permitted activity conditions (including slope) that manage the effects of winter grazing activities on freshwater, and requirements to obtain resource consent where these conditions. This would ensure that risks of grazing on steep slopes (i.e., sediment and nutrient loss) are managed appropriately through consent conditions. Regional plan rules and farm plans may also support managing the impacts of intensive winter grazing on freshwater.	- - Intensive winter grazing activities on land sloped higher than 10 degrees will not require a resource consent unless triggered by one of the remaining conditions or plan rule. This will actively permit an activity with adverse effects. This could reduce environmental protections and increases the risk of sediment and nutrient loss impacting freshwater quality. There has been practice change for intensive winter grazing, which may reduce this impact, and maintaining the remaining conditions (i.e., critical source areas) may also help manage the effects of doing intensive winter grazing on higher sloped land. Regional plan rules and farm plans may also support managing	0 Replacing the existing slope condition with other conditions which to manage setbacks and other requirements is likely to protect environmental health in a similar way to the existing regulations. The effects of doing intensive winter grazing on slope above 10 degrees are still managed by requiring greater setbacks than when doing intensive winter grazing on land below 10 degrees. Regional plan rules and farm plans may also support managing the impacts of intensive winter grazing on freshwater.	- - All intensive winter grazing activities will not require a resource consent unless triggered by plan rule. This does not regulate the activity at a national level. This could reduce environmental protections and increases the risk of sediment and nutrient loss impacting freshwater quality. There has been practice change for intensive winter grazing, which may reduce this impact. This option provides maximum scope for regional plan rules and farm plans to manage the impacts of intensive winter grazing on freshwater.

		the impacts of intensive winter grazing on freshwater.		
Overall assessment	0	+	0	+

Key for Qualitative assessment:

++much better than doing nothing/the status quo/counterfactual

+better than doing nothing/the status quo/counterfactual

0about the same as doing nothing/the status quo/counterfactual

- worse than doing nothing/the status quo/counterfactual

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

Treaty Impact Analysis

Treaty Settlements

150. Some Treaty settlements, and related accords and relationship agreements, contain early engagement obligations on decision-makers when considering changes to national direction or legislation,[59] or policies relating to specific areas, such as freshwater, where an iwi area of interest is impacted.[60] These obligations relate to engagement requirements when developing policy and provides directives about matters that need to be considered when making decisions.

151. Some Treaty settlements also require local authorities to give effect to[61] or recognise and provide[62] for vision, policies or outcomes in particular documents developed under Treaty settlement arrangements. In some cases, this may still lead local authorities to develop or maintain planning requirements of the nature proposed to be changed.

Crown-Māori relationships and Māori rights and interests

152. The proposals in this paper largely affect Māori freshwater rights and interests.[63] For these policy proposals, the likely relevant Treaty principles are partnership and good faith[64] and the Crown's duty of active protection to Māori in respect of freshwater, which is a taonga.[65] The Waitangi Tribunal found that, in respect of freshwater, the principle of partnership may require a collaborative agreement between the Crown and Māori in respect of the making of law and policy.[66]

Engagement

153. Previous engagement on matters related to the proposals in this paper may have raised expectations of engagement on these proposals. Lack of engagement may have relationship implications. While there is not time to engage with iwi/Māori prior to the Bill's introduction, officials have recommended to Ministers that Post-Settlement Governance Entities (PSGEs) and Māori entities are written to and informed of the changes being proposed ahead of introduction.

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[59] For example, the commitments in the Waikato River settlement arrangements; and specific engagement requirements in the Kingitanga Accord in relation to the development of policy and new legislation affecting the Waikato River and its catchment. Ngāti Maru's Relationship Agreement with the Ministry for the Environment also requires the Ministry to consult with Ngāti Maru when proposing to amend legislation administered by the Ministry and provide opportunities for the Trust to have input.

[60] For example, the relationship agreement between the Minister and Secretary for the Environment and Te Nehenehenui.

[61] For example, schedule 1 s4 Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

[62] For example, s 137 Ngāti Rangitihi Claims Settlement Act 2022.

[63] Engagement with Māori between 2014-2018 resulted in freshwater rights and interests being grouped under broad categories, including water quality, recognition of relationships with water bodies, governance and decision-making, and access and use for economic development.

[64] These principles were articulated by the Court of Appeal in the Lands case in 1987, New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641.

[65] The Te Tau Ihu Waitangi Tribunal stated that the Crown's duty of active protection is 'not merely passive and extends to active protection of Māori people in their use of their lands and waters to the fullest extent practicable'. It notes that this requires honourable conduct by, and fair processes from, the Crown, and full consultation with those whose interests are to be protected (Waitangi Tribunal, Te Tau Ihu Report, Vol 1, page 4).

[66] Waitangi Tribunal 2019 Stage 2 Report Wai-2358.

What option is likely to best achieve the policy objectives?

154. Both removing the slope condition (Option 2) and removing all intensive winter grazing Regulations (Option 4) are more effective options to achieve the objectives than the status quo. These both fully meet the efficient, effective and practical criteria, with fully removing the regulations scoring higher than only removing the slope condition.

155. Neither of these options meet the safeguarding natural resources criterion. The proposals therefore have the potential to create a trade-off between achieving administrative objectives (e.g., reducing regulatory burden; lowering costs) and environmental objectives (namely maintaining and improving freshwater quality). This trade-off will materialise to the extent that other regulatory tools or voluntary actions do not adequately manage the risks of intensive winter grazing activities in the absence of these regulations.

156. The available evidence suggests there may be potentially high impacts of progressing Options 2 and 4 regarding increased surface erosion and soil damage. Officials have not had adequate time to assess all available evidence and implications of progressing these options.

157. This could have implications for achieving the broader policies of the NPS-FM, for example improving degraded waterbodies and ecosystems and achieving sediment bottom lines.[67] However, the NPS-FM policies and requirements may drive councils to include rules to manage intensive winter grazing within their regional plans, especially for catchments that have sediment issues.

158. There are other mechanisms outside of the intensive winter grazing regulations which could manage the impacts of these activities on freshwater (e.g., regional plans, certified farm plans). We also expect that embedded practice change described above will mitigate freshwater risks substantially if and where regulatory tools are not managing the freshwater risks.

159. Due to the limitations and constraints on this analysis, and the findings of the Treaty impact analysis, officials do not have a preferred option.

[67] See NPS-FM Policy 5

What are the costs and benefits of Options Two and Four?

As there is no preferred option, Options Two and Four are assessed below as they are higher scoring and more likely to achieve the policy objectives than the status quo or option three.

Affected groups	Comment	Impact	Evidence certainty.
Additional costs of the preferred option compared to taking no action			
Regulated groups	There will be no additional costs to farmers.	Low	Medium
Regulators	There may be additional costs to regional councils, if they decide to develop local rules to manage intensive winter grazing in response to removing the slope condition or broader regulations.	Medium	Low
Wider government	N/A	Low	Low
Iwi//Māori	Refer to the Treaty impact analysis.		
Total monetised costs	N/A		
Non-monetised costs (e.g, environmental, social)	There may be increased environmental effects where poor practice intensive winter grazing occurs and is not managed through another mechanism	Medium	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Cost savings to farmers (estimated at $1845-$3500 per farm, not including consulting costs) who have not obtained resource consent and who do not meet permitted activity conditions for future intensive winter grazing seasons.	Medium	Low
Regulators	There may be small benefits to regional councils who would not have to resource compliance monitoring and enforcement for consents (either broadly, or for the slope condition)	Low	Low

Wider government	Lower cost of monitoring and maintaining national regulations.	N/A	N/A
Iwi/Māori	Refer to the Treaty impact analysis.		
Total monetised benefits	Not available	N/A	N/A
Non-monetised benefits (e.g. environmental, social)	Enables viable farming options to continue in these areas, supporting employment and economic returns.	N/A	N/A

Section 3: Delivering an option

How will the new arrangements be implemented?

160. It is anticipated that the amendments to the RMA and national direction instruments will receive Royal Assent in 2024 and come into force shortly afterwards. We expect this will occur prior to requirements for excluding stock on low slope land (1 July 2025) and prior to the next intensive winter grazing season (1 May 2025).

161. The Ministry for the Environment and Ministry for Primary Industries will produce guidance documents, and engage with key stakeholders, to assist with implementation.

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

162. The Ministry for the Environment and Ministry for Primary Industries will monitor the effect of the proposal by liaising with regional councils as part of business-as-usual conduct to determine whether:

- it has been effective in addressing the Governments concerns; and
- any unintended consequences have arisen.