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20 September 2022

P O Box 10420  
**Wellington 6143**

[WetlandsTeam@mfe.govt.nz](mailto:WetlandsTeam@mfe.govt.nz)

Dear Sir/Madam

**Submission on “Managing our wetlands in the coastal marine area”**

Thank you for the opportunity to provide comment on the document *Managing our wetlands in the coastal marine area*.

The West Coast Regional Council’s (WCRC or the Council) submission is attached.

The Councils consulted with their iwi partners, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini, in the development of this submission.

We welcome the opportunity to respond to this consultation.

The Council fully supports Option 2 as outlined in the discussion document, to amend the National Environmental Standards for Freshwater (NES-F) to clarify that they do not apply to the coastal marine area (CMA), including to coastal wetlands in the CMA.

Our contact details for service are:

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Phone: 021 190 6676  
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We would be grateful for acknowledgement of receipt of our submission.

Yours faithfully

A handwritten signature in black ink, appearing to read 'H. Mabin', followed by a long horizontal line extending to the right.

Heather Mabin  
**Chief Executive Officer**

## **West Coast Regional Council Submission on “Managing our wetlands in the coastal marine area”**

### **Introduction**

The West Coast Regional Council (the WCRC or the Council) appreciates the opportunity to submit on the discussion document titled *Managing our wetlands in the coastal marine area*.

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini, were asked if they wanted to have input into this submission.

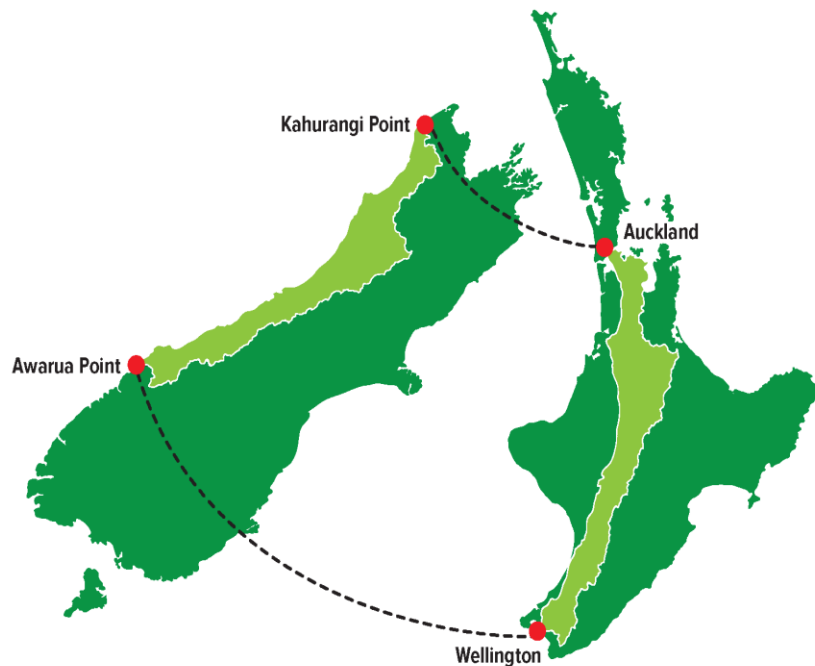
This submission responds to the five questions in the discussion document.

The Council has considered the regional sector draft submission and supports the majority of it. Parts are referred to in this submission where relevant.

### **About the Submitter**

The West Coast Regional Council (WCRC or the Council) is the local authority, and the three District Councils are the territorial authorities for a region covering a vast area with a sparse population. Extending from Kahurangi Point in the north to Awarua Point in the south, this is the approximate distance from Wellington to Auckland.

**Map of New Zealand to highlight 600km length of West Coast Region compared to distance between Auckland and Wellington**



**The West Coast region stretches the equivalent distance of that between Auckland and Wellington**

The West Coast is predominantly rural.

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu – PNT) are mana whenua of Te Tai o Poutini (the West Coast). The WCRC’s Mana Whakahono ā Rohe (Resource Management Act – Iwi Participation Arrangement) captures the intent of the WCRC and Poutini Ngāi Tahu to progress our relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown.

The WCRC and the three territorial authorities (the Buller, Grey and Westland District Councils) work closely together. Outside of the main towns of Westport, Greymouth, Reefton and Hokitika, the region’s relatively small population of approximately 32,600 is spread across smaller settlements and rural communities. It is important that national regulation is relevant to our unique region, and provides for the social, economic, and cultural well-being of all West Coast communities and the natural environment.

The Conservation Estate comprises 84.17% of the West Coast land area, with an additional 1.55% administered by Land Information New Zealand (LINZ). The West Coast Region has the highest proportion of remnant wetlands. This is considered the best representation of the historic extent compared to other regions in New Zealand.

The West Coast coastal marine area (CMA) extends from Kahurangi Point in the north to Awarua Point in the south. It is a predominantly open coastline, approximately 600 kilometres in length. The West Coast CMA is exposed to prevailing south-westerly and north-westerly weather, which often creates a dynamic coastal environment of rough seas and strong currents. Due to the marine, terrestrial and tectonic environments, combined with climate change and low population, there is a relatively low level of development pressure for resource use in the CMA that may affect coastal wetlands. Additionally, approximately 50% of the West Coast coastline has adjoining DOC land, which means that many coastal wetlands are protected under this land tenure. Other coastal natural wetlands will be covered by provisions in the operative and proposed Regional Coastal Plans.

#### **Discussion document questions**

*1. Do you agree that the current application of the NES-F to the CMA requires amendment?*

*Why/why not?*

The Council strongly agrees with the issues outlined in the discussion document for why the current requirement, that the NES-F applies in the CMA, needs changing. When the High Court decision that the NES-F applies in the coastal marine area (CMA) was released, the Council signed the regional sector letter to the Minister for the Environment raising concerns about the Environment Court's determination that the NESF applies to coastal wetlands in the CMA, and the Ministry's apparent agreement with the Court's determination. Delineating or defining the extent of wetlands in the CMA is quite different to delineating natural wetlands on land. In the CMA there is often a gradual transition from wetland to deep water, and there is limited information about the presence of indicative sub-tidal vegetation on the West Coast such as seagrass and kelp.

Wetlands in the CMA are already protected by mechanisms that give effect to the NZCPS and do not require the additional protection of the NES-F. For example, staff understand that reclamations have historically been one of the greatest threats to CMA wetlands in other regions. This is not believed to be the case on the West Coast, as the Council has received only a very small number of consent applications for reclamations over the last 22 years.

The activity status hierarchy in the NES-F is inconsistent with the policy framework for CMA wetlands. In the CMA, the policy framework is provided by the New Zealand Coastal Policy Statement 2010 (NZCPS) and regional coastal plans. For inland wetlands, the policy framework is the NPS-FM and regional plans. The NZCPS has policies that relate to coastal wetlands, but these correspond to matters (such as natural character and defences against natural hazards) that are not addressed in the NES-F. The NZCPS 'avoid' policies require regional coastal plans to have restrictive provisions that will prevail over the NES-F consenting pathways.

Minor activities that are provided for in the West Coast currently operative (since 2000) Regional Coastal Plan, and the proposed Regional Coastal Plan, become non-complying under the NES-F. This could have adverse economic, social and cultural impacts on West Coast communities in the future. For the reasons outlined above, the Council **opposes retaining the status quo, that is, that Council opposes the NES-F applying in the CMA.**

*2. Do you agree with the proposal to amend the NES-F wetland provisions to no longer apply to the CMA? Why/why not?*

The Council strongly **supports** Option 2 in the discussion document, to make amendments so that **the NES-F does not apply in the CMA.** The NZCPS Policy 11 has a strong directive to 'avoid adverse effects' and 'avoid significant adverse effects' on coastal indigenous biological diversity, which is further supported by the King Salmon caselaw, where the Court determined that 'avoid means avoid'. The Department of Conservation NZ Threat Classification System, which ranks indigenous species in terms of their rarity and/or threatened status (rankings 1-3 out of 8 being the most endangered), includes coastal species, habitats and ecosystems such as wetlands.

On the West Coast, the main potential impact on coastal wetlands is climate change. Rainfall is predicted to increase in winter and spring and decrease in summer and autumn. Continuity, or lack of, will be important for wetlands. With predicted climate extremes, there is the potential for wind and wave surges which can damage wetland habitat of native coastal species. This is potentially more of a risk than human activity, so applying the NES-F in the CMA to regulate the effects of human activity may not be helpful for protecting coastal wetlands, as weather events are obviously out of the Council's control.

In fact, if earthworks or land disturbance are needed to restore or maintain a coastal wetland damaged by a storm event, and these activities do not meet the proposed amendments to make

restoration a permitted activity<sup>1</sup>, for example, the area limit and using only hand-held tools requirement in section 38(4)(b)(iii), the NES-F may have the perverse outcome of adding extra costs with obtaining a resource consent for the restoration work. It is likely that either DOC or community volunteer groups will be doing restoration work, and the latter will have limited funds to put towards obtaining resource consent.

If the current situation of the NES-F applying in the CMA is retained, this will make implementation of the NZCPS and the NES-F very confusing for Council staff and Plan users. There will continue to be overlaps of restrictions between the NZCPS, Coastal Plan rules and the NES-F wetland provisions. This should be avoided as it is not practical, efficient, or effective.

The Council considers that the proposed Option 2 meets the criteria on Page 10 of the discussion document for assessing options regarding the NES-F applying in the CMA. Implementation of the directives in the NPSFM and the NZCPS are sufficient to provide effective and integrated protection to coastal wetlands through the Council's Land and Water, and Coastal, Plans. Changes to both these regional plans will be made in the next few years, to fully implement these NPS's as part of the National Planning Framework, in tandem with the NBA. Our Treaty partners, Poutini Ngāi Tahu, will be involved in these plan processes.

Retaining the status quo of the NES-F applying in the CMA adds a further layer of complexity to implementation of the Marine and Coastal Areas (Takutai Moana) Act. CMA wetlands are generally within the common marine and coastal area under this legislation. Three applications for customary marine title in the whole, or parts, of the West Coast CMA were lodged with the Crown in 2017.

These applications did not contemplate the NES-F applying in the CMA. If the status quo is retained, when decisions are eventually made about customary marine title applications, the NES-F could potentially unnecessarily restrict mana whenua from being able to carry out their cultural activities in the CMA according to tikanga.

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<sup>1</sup> This refers to MFE's proposed amendments to the NESF Exposure Draft which include making restoration activities permitted subject to conditions. Exposure Draft of the proposed changes to the National Environmental Standards for Freshwater 2020 (including wetland regulations).

3. *Do you think the wording changes proposed in the preferred option make it clear that the NES-F would no longer apply in the CMA? Why/why not?*

Council **supports** the following proposed wording changes:

*“Replace all references to natural wetland in the NES-F with natural inland wetland and define ‘natural inland wetland’ by reference to the existing definition in the NPS-FM. This would clarify that the NES-F wetland provisions no longer apply to natural wetlands in the CMA.”*

The direction and wording is straightforward and clear.

4. *Are there any reasons to prefer other options? If so, what are they?*

Recommendation 8 in Council’s submission on NES-F Exposure Draft

In the Council’s submission on the proposed changes to the NES-F Exposure Draft (attached as Appendix 1 of this submission), the Council made the following Recommendation 8 in response to the lack of direction in the Exposure Draft NES-F, on the issue of the NES-F applying to coastal wetlands:

**“Recommendation 8**

1. *Exclude the CMA from the NES-F natural wetland regulations. Wetlands in the CMA are adequately protected through regional coastal plans under the New Zealand Coastal Policy Statement (our preferred option).*

2. *Amend the NES-F to clarify that the natural wetland regulations apply to any area:*

*(a) with mangrove, estuary, sandflat and mudflat, but not beaches with seagrass or deeper water with kelp beds, or*

*(b) with vegetation noted in the wetlands delineation protocol (including seagrass), or*

*(c) that meets the Ramsar Convention on wetlands definition, including marine water up to 6m water depth, or*

*(d) where councils determine that local wetland types apply.*

3. *Amend the wetlands delineation protocol to clarify how it applies in the CMA.”*

This submission reiterates the Council’s view that was expressed in Recommendation 8 clause 1 of our submission on the NES-F Exposure Draft, that the NES-F should not apply in the coastal marine area (CMA).



Regarding Recommendation 8, clause 2, after further consideration, the WCRC position has changed and Council no longer supports brackish wetlands being included in the NPS-FM. WCRC prefer that an amendment is made to exclude the CMA from the NES-F natural wetland regulations.

Council notes that Fisheries New Zealand has released a discussion document about a proposal to establish “habitats of particular significance for fisheries management”. The document was published on 21 June 2022, after the Council’s submission (with the Recommendation 8) on the NES-F Exposure Draft. As a consequence, the Council now no longer supports coastal wetlands in the CMA coming under the NES-F. The Fisheries New Zealand proposal may be another tool for implementing the NZCPS Policy 11 to protect coastal wetlands in the CMA.

Recommendation 8 clause 3 is no longer relevant if the NES-F is amended to not apply in the CMA.

#### Option 3 in the discussion document

Additionally, the Council does not support Option 3 in the discussion document, to amend the NES-F to clarify where and how it applies to the CMA. Option 3 does not alter the current, underlying position that the NES-F wetland provisions apply to the CMA. WCRC agrees with the regional sector submission on the “Managing Our Wetlands” Discussion Document, which gives a number of examples of where applying the NES-F is impractical, and unreasonably makes small-scale, low impact activities in the CMA non-complying or prohibited. This shows how complex it would be to try and identify where, and in what situations, the NES-F would apply in the CMA.

#### *5. Is there any additional relevant information that you think the Ministry should consider?*

How the Coastal Marine Area Boundary is defined for wetlands and in estuaries.

The effect of sea level rise on coastal wetlands.

This ends our feedback.

**Appendix 1: West Coast Regional Council submission on proposed changes to the NPS-FM and NES-F  
Exposure Drafts**



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8 July 2022

Ministry for the Environment  
PO Box  
**Wellington 6140**

Dear Sir/Madam

**Submission on NPSFM and NESF Exposure Draft changes**

Thank you for the opportunity to provide comment on the proposed changes to wetland provisions in the National Policy Statement for Freshwater Management (NPSFM), and the National Environmental Standard for Freshwater (NESF).

The West Coast Regional Council's (WCRC or the Council) submission is attached. Council consulted with its iwi partners, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini, in the development of this submission.

We welcome the opportunity to respond to this consultation.

The Council has prepared this submission in consultation with our Poutini Ngāi Tahu partners – Te Rūnanga o Makaawhio and Te Rūnanga o Ngāti Waewae.

Council has previously consulted with West Coast farmers, miners and District Councils who will be affected by the proposed changes to the wetlands provisions.

Council supports a number of the proposed changes to wetlands provisions, including some we sought in our submission on the draft changes in October 2021, and acknowledges the Ministry for taking these on board.

Other changes sought by the Council in our previous submission have not been accepted, and this submission raises further concerns about some of these matters.

Due to our high workload, we have not had time to fully consider all of the proposed wetland changes; Council has therefore focussed on those that will incur costs to the Council and ratepayers, or where there are issues with applying the changes. Council has also not had time to consider the technical and other changes to the NPSFM and NESF.

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We would be grateful for acknowledgement of receipt of our submission.

Yours faithfully

Heather Mabin  
**Chief Executive Officer**

**List of Feedback and Recommendations**

**Feedback**

Council supports the proposed changes listed in the section of this submission titled “Proposed changes supported by the West Coast Regional Council”.

**Recommendation 1**

- a) To avoid being contested in the Environment Court, the reference to the *National List of Exotic Pasture Species* should be removed from the natural wetland definition, and instead add a dictionary definition of “pasture”.
- b) If the *National List of Exotic Pasture Species* is retained in the natural wetland definition, obligate (OBL) and facultative wet (FACW) pasture species, and pasture companion plants or associates, for example, creeping buttercup and *Juncus effusus*, should be included in the list, to ensure that the definition does not capture wet pasture as natural wetland.

**Recommendation 2**

- a) The methodology for identification needs to focus on the goals of the NPS-FM, which is to identify natural wetlands with biodiversity values, not areas of wet hydrology;
- b) When making wetland assessments, the methodology needs to be clear about the minimum size of a wetland that meets the natural wetland definition.

**Recommendation 3**

The NPSFM, and/or the wetland assessment methodology, need to be amended to make it clear that a minimum wetland size needs to be a viable, functioning habitat, which is self-sustaining and valuable to species in the wider landscape. This minimum size should be much greater than 2m<sup>2</sup>.

**Recommendation 4**

Remove the provision in NESF Regulation 48(1)(a) that makes new Sphagnum moss harvesting in a wetland not previously harvested prior to 1 January 2010 a consent activity.

**Recommendation 5**

That the Ministry for the Environment links wetland protection under the Freshwater regulations in its Implementation Programme with the fair transition climate change mitigation and adaptation directives,

to prioritise providing economic incentives for West Coast private landowners to maintain current natural and induced wetlands as carbon sinks.

**Recommendation 6**

At the start of clause (d), remove “a wetland that:”. This wording is repeated at the start of the definition, and is unnecessary in clause (d).

**Recommendation 7**

That clauses (c)(ii) and (iii) are reviewed to ensure consistency with the Government’s managed retreat policy direction.

**Recommendation 8**

1. Exclude the CMA from the NES-F natural wetland regulations. Wetlands in the CMA are adequately protected through regional coastal plans under the New Zealand Coastal Policy Statement (our preferred option).
2. Amend the NES-F to clarify that the natural wetland regulations apply to any area:
  - (a) with mangrove, estuary, sandflat and mudflat, but not beaches with seagrass or deeper water with kelp beds, or
  - (b) with vegetation noted in the wetlands delineation protocol (including seagrass), or
  - (c) that meets the Ramsar Convention on wetlands definition, including marine water up to 6m water depth, or
  - (d) where councils determine that local wetland types apply.
3. Amend the wetlands delineation protocol to clarify how it applies in the CMA.

## **Introduction**

The West Coast Regional Council (the WCRC or Council) appreciates the opportunity to submit on the proposed changes to the wetlands provisions in the National Policy Statement for Freshwater Management (NPSFM), and the National Environmental Standard for Freshwater (NESF).

Given the importance of wetlands to our Treaty partners, we have worked with Poutini Ngāi Tahu when preparing our response. We wish to acknowledge that wetlands are regarded as taonga to Poutini Ngāi Tahu. We acknowledge that wetlands have historical, cultural, economic, and spiritual significance. Wetlands can be reservoirs for knowledge, wellbeing, and utilisation. They are mahinga kai (food gathering) sites and provide significant habitats for a range of culturally important plants and animals. They are breeding grounds for native fish and tuna and a large range of culturally significant plants for weaving e.g. harakeke, raupō, toetoe and kuta, and carving e.g. tōtara, kahikatea. Many wetlands also comprise a variety of culturally important medicinal plants for rongoā (Māori medicinal use).

The focus of this submission is on the proposed changes to the wetlands provisions in the NPSFM and NESF which may affect Council and West Coast ratepayers, or there are issues with implementing them on the West Coast.

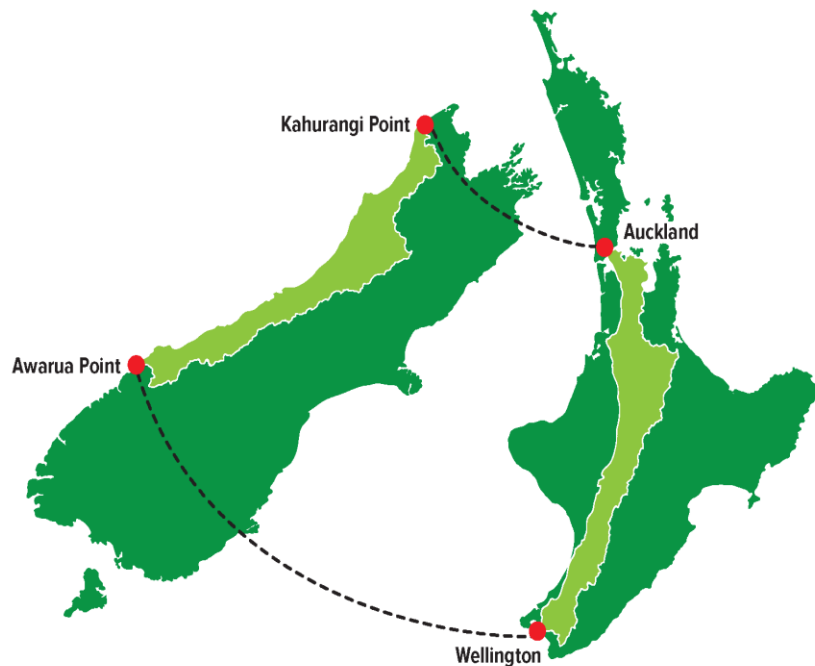
Due to time constraints, the WCRC is not submitting on the proposed other technical changes.

Due to the technical nature of some of the proposed changes, Council obtained advice from consultant Ecologist Dr Vaughan Keesing. We agree with Dr Keesing's advice, and this forms the basis of most of our responses.

## **About the Submitter**

The West Coast Regional Council (WCRC) is the local authority for a region covering a vast area with a sparse population. Extending from Kahurangi Point in the north to Awarua Point in the south, this is the approximate distance from Wellington to Auckland.

**Map of New Zealand to highlight 600km length of West Coast Region compared to distance between Auckland and Wellington**



**The West Coast region stretches the equivalent distance of that between Auckland and Wellington**

The West Coast is predominantly rural.

WCRC works closely with the regions' three territorial authorities (the Buller, Grey and Westland District Councils). Outside of the main towns of Westport, Greymouth, Reefton and Hokitika, the region's relatively small population of approximately 32,600 is spread across smaller settlements and rural communities. It is important that central government priorities for monitoring and reporting are relevant to our unique region, and beneficial to the social, economic, and cultural well-being of all West Coast communities and the natural environment.

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu – PNT) are mana whenua of Te Tai o Poutini (the West Coast). Our Mana Whakahono ā Rohe (Resource Management Act - Iwi Participation Arrangement) captures the intent of the Council and Poutini Ngāi Tahu to progress our relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown.

The Conservation Estate comprises 84.17% of the West Coast land area, with an additional 1.55% administered by Land Information New Zealand (LINZ). Due to the WCRC's low rating base, the Council has limited resources to undertake many basic inventory duties in detail (for example, Significant Natural Areas (SNAs)), including detailed small scale (0.05 ha) wetland survey mapping and monitoring (section 3.23 of the amended NPS FM 2022), where the region remains relatively rich in large wetlands.

The West Coast Region has the highest proportion of wetlands remaining (the best representation of the historic extent) compared to other regions in New Zealand. The proposed changes to the definition of a wetland will incorporate a lot of "natural" wetlands and induced wetlands in the West Coast Region, in addition to those larger indigenous ones already recognised.

The higher proportion of wetlands in the West Coast Region compared to the rest of New Zealand reflects both the large amount of rainfall we receive, past land use patterns, low population, and significantly large areas of undeveloped land under the administration of the Department of Conservation. The West Coast is the wettest region in New Zealand with average yearly rainfall totals of between 1,746mm to 11,228mm<sup>2</sup>. Rainfall is predicted to increase as a result of climate change. This has the potential for more wetlands to form in the Region in the future, and most of them will be induced.

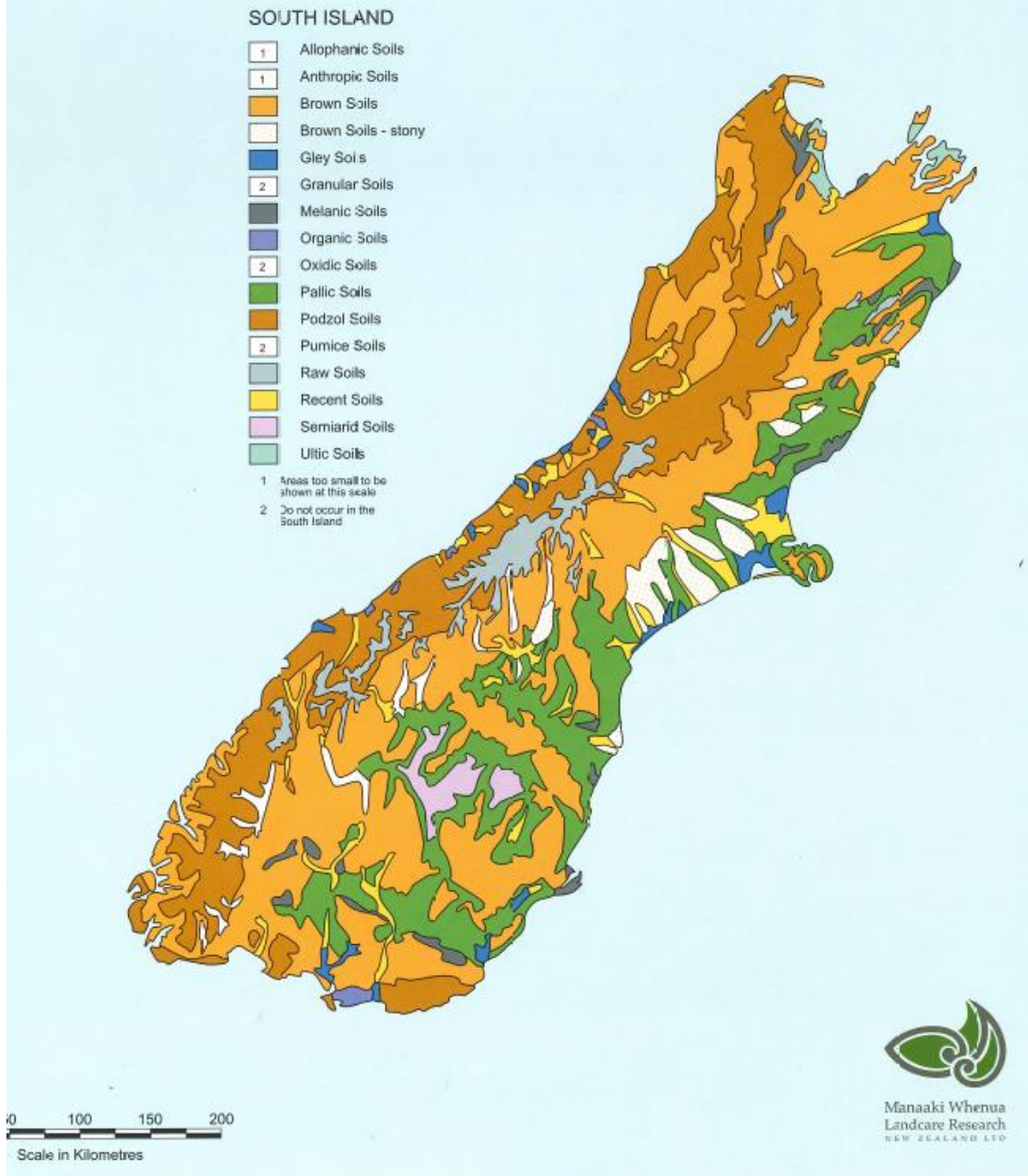
The abundant rainfall (orographic) and extensive low-lying coastal plains leads to a predominance of podsolised and gleyed soils. These typically water-logged soils, often somewhat acidic, are whites and ginger soils with extensive moulting with iron, aluminium and other metals and minerals, and will classify nearly always as hydric under the MfE hydric soil tool (Fraser et al 2018).

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<sup>2</sup> West Coast State of Environment Report 2018 - <https://www.wcrc.govt.nz/environment/state-of-environment>



## Map of New Zealand



The topography and rainfall will mean that any lowland area, which is most of the land not in DoC lands, will also nearly always be classified as wetland hydrology (MfE 2021).

Historically on the West Coast, lowland areas had abundant kahikatea-pukatea forest, and there would not have been many inland rush and sedge natural wetlands present. Induced wetlands have occurred because of the removal of kahikatea and rimu forests which had been maintaining (through transpiration) a lower ground water level. Forest cover typically dried out the first 20-30 cm of soil and when the forest

and tree roots were removed, the groundwater level rose and the groundwater came closer to the surface where there were dips and depressions. These dips in the ground started to accrue wetland plants rather than pasture. The assemblages that accrued look relatively representative but they are induced, and there was no wetland before the clearance.<sup>3</sup> While the proposed amendments now exclude induced wetlands caused by deliberately constructed water bodies, it does not identify a wetland caused by unnatural processes through human modifications.

In its current planning framework, the West Coast has:

<b>23</b> <b>Schedule 1 wetlands</b>	<b>206</b> <b>Schedule 2 wetlands</b>	<b>229</b> <b>Total Scheduled wetlands</b>
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In regards to land area, this comprises:

	<b>Land area</b>	<b>Schedule 1 &amp; 2 wetland area</b>	<b>Privately owned land area</b>	<b>No. of private landowners</b>
<b>Buller</b>	794,794 ha	4,542 ha	1,027 ha	161
<b>Grey</b>	351,530 ha	2,886 ha	1,618 ha	34
<b>Westland</b>	1,189,489 ha	50,404 ha	1,042 ha	97
<b>West Coast</b>	<b>2,335,993 ha</b>	<b>57,832 ha</b>	<b>3,687 ha</b>	<b>229</b>

The Council has been through a publicly notified process for identifying and mapping significant wetlands, and wetlands likely to be significant, and protecting them through objectives, policies and restrictive rules in our Regional Land and Water Plan. A substantial number of these are on public conservation land and already have a level of protection under this land tenure. Additional protection is given by the Regional Plan. Some of the proposed changes outlined in the discussion document will reduce the percentage of available land even further.

We understand why 'natural' and 'induced' wetlands need to be recognised and protected nationally, and the current wetlands definition is likely to be appropriate and necessary for other regions that have very few natural wetlands left. We stress that there are significant differences between other regions and the West Coast.

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<sup>3</sup> Statistics New Zealand website

## Proposed changes supported by the West Coast Regional Council

Council supports the following proposed changes to the wetland provisions in the NPSFM and the NESF:

- Removing the definition of “improved pasture” from section 3.21 of the NPSFM – definition of natural wetland. Council agrees with the Government’s *“Managing our wetlands: policy rationale for exposure draft amendments 2022”* (policy rationale or rationale) on this change, that it removes the ambiguity around interpreting what is “improved” pasture.
- Adding new clause (b) to the natural wetland definition, which excludes from the definition a wetland *“that has developed in or around a deliberately constructed water body, since the construction of the water body;”*
- Adding new clauses that provide a discretionary consent pathway for urban development, aggregate quarrying, mineral extraction, landfills and cleanfills. These are subject to various proposed gateway tests:
  - national or regional benefit (for quarries, fills (cleanfill, landfill) and mining);
  - no practicable, alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland for urban development, landfills and cleanfills; and
  - functional need for aggregate quarrying and mineral extraction.

This includes consequential amendments to definitions and other provisions for the above-mentioned activities. Discretionary status is an improvement on the current non-complying and prohibited statuses for these activities in the NESF. There is an exception, for NPSFM 3.22(1), new clauses (c)(ii) and (c)(iii), which is discussed in the section of this submission titled “Issues with proposed changes”.

- Adding “the construction and maintenance of water storage infrastructure” to the definition of “specified infrastructure”, and adding provisions in the NESF. It is currently not provided for in the NESF, making it a prohibited activity. Making it a discretionary activity is therefore an improvement.
- Adding new clauses and Appendices 6 and 7 to the NPSFM with principals for aquatic offsetting and compensation where adverse effects of an activity on a natural wetland cannot be avoided, minimised or mitigated. Where aquatic offsetting or compensation is sought by a consent

applicant, the Council must be satisfied that the proposal has given regard to the principals in Appendix 6 or 7. The principals are fairly common and typical, and provide sufficient flexibility. Item 5 is new and reflects care about wider biodiversity. Council considers the principals will give greater clarity and consistency with assessing proposed offsets and compensation.

- Including “wetland maintenance” and “biosecurity” in the NESF permitted and restricted discretionary wetland restoration rules and NPSFM definitions. These activities are currently not provided for in the NESF, preventing them from being carried out, however they are important activities undertaken for biosecurity work. Council agrees with the reasons for the changes explained on Pages 26-33 of the policy rationale. The changes will allow our Biosecurity staff to continue with biosecurity work where it needs to occur within or near wetlands.
- Deleting “discharge” from NESF Regulations 52 and 53, as discharges of water into wetlands will not drain a wetland.
- Allowing an increase in the size of infrastructure for fish passage. The proposed amendment provides an exception to regulation 46(4)(b,) to allow activities to increase the size of infrastructure if it:
  - is for the purpose of providing for fish passage, and
  - complies with the fish passage provisions in Part 3, Subpart 3
- Amending NESF Regulation 46(4)(a) to exempt flood control and drainage works from general conditions in Regulation 55(2), (3)(b) to (d) and (5).
- Amending Schedule 4, Condition (7) to allow the use of containers of 20 litres or less to refuel machinery, vehicles or equipment within a natural wetland as part of Sphagnum moss harvesting. The amendment removes the requirement to refuel within a 10-metre setback outside the wetland.

### **Feedback**

Council supports the proposed changes listed in the section of this submission titled “Proposed changes supported by the West Coast Regional Council”.

## Issues with proposed wetland changes

### *NPSFM 3.21 Definition of natural wetland clause (d)*

In the NPSFM definition of a natural wetland, the principal exclusion for farms, covering much of the West Coast non-conservation land, is:

*“(d) a wetland (is not a natural wetland) that:*

*(i) is within an area of pasture; and*

*(ii) has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species (see Clause 1.8)); and*

*(iii) is not known to contain a threatened species.”*

### Pasture species list

The pasture species list referred to in subclause (ii) is problematic. The list of species has no obligate (OBL) or facultative wet (FACW) pasture species, and Council considers it is a limited list of species relative to the definition of “pasture”. Wet pasture species - typically Yorkshire fog, mercer grass, creeping bent, and Glyceria species - were introduced into New Zealand as wet pasture species, for the purposes of grazing stock. While they are rarely sown today, (aside from Yorkshire fog) there are farms in which all are present and they are still a substantive component of some wet pasture areas on which the stock graze, meeting the definition of pasture.

The dictionary meaning of pasture is “*plants (such as grass) grown for the feeding especially of grazing animals*”.<sup>4</sup> The word “pasture” is used in the NPSFM exclusion definition of natural wetland, it therefore has weight.

Because “pasture” has a definition, there is no need to list what are considered pasture plants because any such list is unlikely to be complete relative to the definition. It will always therefore be contested. Any ‘pasture’ species list will be out of date as farming practices and species use change.

The absence of any FACW or OBL wet pasture species will automatically result in any wet pasture area being identified as a “natural wetland”, through the assessment method required to be undertaken. It is not possible by the assessment method to exclude wet pasture as being pasture, with a weighted plant list.

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<sup>4</sup> <https://www.merriam-webster.com/dictionary/pasture>

Furthermore, the *National List of Exotic Pasture Species* also excludes pasture companion plants or associates, for example, creeping buttercup and, *Juncus effusus*. In doing so, the definition will have the outcome of capturing wet pasture as a natural wetland, and removing a land use activity rather than identifying natural wetlands. We note that these pasture wetlands do not, as a rule, have indigenous biological diversity value, they are largely simple, low diversity exotic species dominated. This is contrary to the intended outcome stated in the policy rationale document (Pg 11): “*The purpose of the national list is to capture (and exclude) species that contribute to productive pasture for livestock grazing.*”

### **Recommendation 1**

- c) To avoid being contested in the Environment Court, the reference to the *National List of Exotic Pasture Species* should be removed from the natural wetland definition, and instead add a dictionary definition of “pasture”.
- d) If the *National List of Exotic Pasture Species* is retained in the natural wetland definition, obligate (OBL) and facultative wet (FACW) pasture species, and pasture companion plants or associates, for example, creeping buttercup and *Juncus effusus*, should be included in the list, to ensure that the definition does not capture wet pasture as natural wetland.

### Plot size as indicator of natural wetland

A perverse outcome of the NPSFM wetland definition changes will be that any exotic OBL or FACW species in any local abundance of more than a 3m diameter area in a paddock will qualify as a natural wetland, according to the methodology for measuring and assessing wet areas in pasture against the natural wetland definition<sup>5</sup>. The methodology requires the assessor to use a 2 metre x 2 metre plot to assess if a wet area is a natural wetland. Council understands that the methodology directs that if a 2 metre x 2 metre plot can fit in the wet land area, then that is the minimum size, and it falls within the definition of a natural wetland. This is despite the NPSFM 3.23(1) requirement that wetlands **larger than 0.05ha (500m<sup>2</sup>)**, or less than 0.05ha that are known to contain threatened species need to be identified as natural wetland. If the minimum size for a natural wetland is 2 metre x 2 metre, this will mean that the regulatory requirements for protection will apply, and farmers will have to fence off small areas throughout their paddocks, or entire paddocks. It will not be economically sustainable to implement on farmland in the West Coast. This is also contrary to one of the intended outcomes stated

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<sup>5</sup> To determine whether a wetland meets the “natural wetland” definition, the National Policy Statement for Freshwater Management 2020 clause 1.8 requires regional councils to have regard to, by way of reference to, the Wetland Delineation Protocol in cases of uncertainty or dispute about the existence or extent of a natural wetland. Ministry for the Environment. 2020. Wetland delineation protocols. Wellington: Ministry for the Environment. <https://environment.govt.nz/assets/Publications/Files/wetland-delineation-protocols.pdf>

in the policy rationale document (Pg 10) in relation to assessing possible natural wetlands in pasture areas:  
*“The intent is to exclude wetlands within pasture areas, where the wetland is dominated by exotic pasture species, so those areas can continue to be used for agriculture”.*

In Council’s view, identifying such small ‘wetlands’ does not have any value on the West Coast in protecting or managing the remaining indigenous wetlands. The NPSFM “avoid” Policy 6 direction following identification does not improve those situations. At best, it seems to Council that the intent is to reserve small areas of wet soil and hydrology that might allow future indigenous wetland (or more complex exotic wetlands) to form or be restored. The current wet land features are often simple assemblages of a few wetland species only with little wetland value.

## **Recommendation 2**

- c) The methodology for identification needs to focus on the goals of the NPS-FM, which is to identify natural wetlands with biodiversity values, not areas of wet hydrology;
- d) When making wetland assessments, the methodology needs to be clear about the minimum size of a wetland that meets the natural wetland definition.

### Minimum size of a natural wetland

There is a debatable functional aspect to protecting these small simple features but a size aspect to that functionality is absent and important. Due to wetland systems being very dynamic and highly susceptible to seasonal change, the reference to being just a bit larger than a 2 metre square plot as a minimum size is not one Council considers to be a realistically viable, functional wetland.

The absence of a reasonable and ecologically considered minimum size of a viable, functioning habitat, (which is self-sustaining and valuable to species within the wider landscape) is certainly greater than 3m diameter in a paddock. Arguments in the Environment Court of minimum sizes of ecological features have focused on at least 0.5 ha, and in examples, 2 ha has been considered as a minimum (e.g. NZEnVC 109 (16 May 2013) Madsen Lawrie consultants v Auckland Council 2013).

Council considers that the actual method of assessment via representative plots along transects, to determine the vegetation cover and consider the proportionality of each plot result across the entire community, is useful and works, but is hinged on what is accepted as ‘pasture’ (ignoring the acceptance or not of exotic wetlands), and the need for a functional minimum size.

### **Recommendation 3**

The NPSFM, and/or the wetland assessment methodology, need to be amended to make it clear that a minimum wetland size needs to be a viable, functioning habitat, which is self-sustaining and valuable to species in the wider landscape. This minimum size should be much greater than 2m<sup>2</sup>.

#### *Perverse outcome of restricting new sphagnum moss harvesting in unharvested wetlands*

In May 2021, Council wrote to the Ministers for the Environment and Agriculture seeking, amongst other changes to the Freshwater Package documents, to remove the requirement for consent in Regulation 48(1)(a) for new Sphagnum moss harvesting in wetlands not previously harvested before 2010. This request has not been accepted in the proposed NESF changes. Council's 2021 submission on the draft wetland changes explained that on the West Coast, a wetland with sphagnum moss present which is not harvested can dry out by woody vegetation such as manuka establishing amongst the moss and soaking up the water. This is then followed by other woody terrestrial species establishing and eventually drying out the wetland through (as discussed above) forest transpiration- this process is known ecologically as succession.

Requiring resource consent to harvest Sphagnum moss in a wetland not previously harvested before 1 January 2010 is a cost to prospective harvesters, and a disincentive to set up a new harvesting operation. It could have the perverse outcome of wetlands being lost, which is contrary to the NPSFM Policy 6 of "no further loss of extent" of wetlands. Sphagnum moss harvesting using good practice techniques is beneficial for maintaining wetlands, as it involves removing the woody vegetation prior to harvesting. Harvesting maintains the wetland as the moss roots (acrotelm) are left in the wet soil, and the moss regrows, thereby maintaining the wetland. If there is no incentive for a harvester to harvest the moss and maintain the wetland, there will be no gain in biodiversity values, and the wetland may become degraded by weeds and woody vegetation establishing. Sphagnum moss wetlands also have hydrological advantages for flood retention. Managing wetland for sphagnum moss growth halts ecological succession but retains many advantages of wetlands. It is also preferable to manage a site for sphagnum moss harvest as opposed to pasture land.

The conditions of permitted Sphagnum moss harvesting in the NESF Regulation 48(2), and Schedules 3 and 4, provide a sufficient process to enable harvesting to be undertaken in wetlands with the benefit of maintaining the wetland.



#### **Recommendation 4**

Remove the provision in NESF Regulation 48(1)(a) that makes new Sphagnum moss harvesting in a wetland not previously harvested prior to 1 January 2010 a consent activity.

#### *Economic and social impacts of induced wetlands being natural wetlands*

In our 2021 submission on the draft changes to the wetland provisions, Council sought the inclusion of text that excluded West Coast induced wetlands from the definition of natural inland wetland. As this has not been accepted by the Ministry, the following is further explanation about the adverse economic and social impacts on West Coast landowners of induced wetlands being captured by the wetland definition.

The restrictions on uses of induced wetlands in the NPSFM and NESF, in tandem with the RMA and National Policy Statement for Indigenous Biodiversity (NPSIB) restrictions on the use of land with Significant Natural Areas (SNAs) of terrestrial forest/bush, are having, and will continue to have, a significant adverse economic and social impact on rural property values in the region, and on future generations of current private landowners. Council is aware of a growing number of private landowners with protected SNAs and natural wetlands on their land, who had intended to either sell their land for money as an inheritance for their children and grandchildren, or for their own retirement, but are finding that their land has lost monetary value, and is difficult to sell.

The SNAs and wetlands on the West Coast currently have little or no economic value, but landowners are stuck, being unable to develop these areas for economic return. Nor will those features receive enhancement or management as that too costs money and a loss in productive use. This makes the large land areas unsustainable in terms of economic wellbeing of our Community.

The West Coast has been promoting the tourism potential of the natural environment. Many natural wetlands have the same or similar “representative” ecological values, so there is a limited number of wetlands that can provide income from alternative sources such as eco-tourism. New eco-tourism ventures based on wetlands are likely to be reliant on international tourists, which may become unsustainable in light of another global crisis such as the Covid pandemic, and it may take some time for their numbers to return to pre-Covid levels. Additionally, wetland eco-tourism ventures on private land could be competing with tours in larger and more impressive wetlands on public conservation land.

The West Coast is in a unique situation where large areas are considered ecologically significant. Other regions have a more buoyant local economy and other industry for economic activity. The West Coast is facing impacts to its small local economy with climate adaptation requirements and the agricultural restrictions in the Freshwater Package.

No compensation is available from the Government for the loss of economic value of West Coast wetlands on private land as a result of government regulation. The only other potential economic value that Council is aware of for these areas is to have a system of economic incentives for private landowners to be able to receive some benefit from maintaining their wetlands. It is imperative for the economic and social wellbeing of West Coast people and communities that the Government provides economic incentives for West Coast wetlands. This could be in terms of carbon sinks, as wetlands contribute a significant proportion to absorbing carbon emissions. The Council has submitted on the Government's Draft National Adaptation Plan and Emissions Reduction Plan (ERP) seeking such incentives for West Coast landowners to maintain their natural and induced wetlands. Given that the ERP proposes that the biodiversity and climate crises be addressed together, the most pragmatic way to achieve this will be by the Government providing economic incentives to West Coast landowners for maintaining and improving their wetlands' capacity to remove carbon from the atmosphere. This may include research into the benefits of wetland management for fibre or moss harvest.

#### **Recommendation 5**

That the Ministry for the Environment links wetland protection under the Freshwater regulations in its Implementation Programme with the fair transition climate change mitigation and adaptation directives, to prioritise providing economic incentives for West Coast private landowners to maintain current natural and induced wetlands as carbon sinks.

*NPSFM 3.22(1): Definition of natural wetland clause (d)*

#### **Recommendation 6**

At the start of clause (d), remove "a wetland that:". This wording is repeated at the start of the definition, and is unnecessary in clause (d).

*NPSFM 3.22(1), new gateway clauses (c)(ii) and (c)(iii) for urban development as a discretionary activity*

New gateway test clauses for urban development within or affecting a natural wetland include:

*“(c) the regional council is satisfied that:....*

*(c)(ii) the activity occurs on land identified for urban development in an operative regional or district plan;*

*(iii) the activity does not occur on land that is zoned in a district plan as general rural, rural production, or rural lifestyle;....”*

Clause (c)(ii) could be problematic for land areas that are not identified for urban development in a plan. With the best intentions, regional and district plans do not always identify all land for future urban development at the time of full review. Not all natural hazard events, or the scale of them, can be foreseen, and damage to housing and urban development can consequently require relocation of urban development to less hazard-risk land. On the West Coast, given the high proportion of conservation land, and land away from steep slopes and landslide risk, and waterways, there may be few suitable low-hazard locations to retreat to. Low slope land tends to be where wetlands form, further limiting relocation options. Under clause (c)(ii), increased natural hazard events from climate change could potentially increase the number of plan changes needed to plans, to add new urban development areas to regional or district plans.

Clause (c)(iii) restricting urban development on rural zoned land further exacerbates the managed retreat issue for the West Coast. There is a potential disconnect between clauses (c)(ii) and (iii) and the Government’s managed retreat policy direction which needs to be addressed.

#### **Recommendation 7**

That clauses (c)(ii) and (iii) are reviewed to ensure consistency with the Government’s managed retreat policy direction.

#### *Coastal wetlands*

Council is not aware of any proposed changes to the NPSFM and NESF about the NESF applying to coastal wetlands, as part of the changes recently released for consultation. This is a current contentious issue, and the WCRC, along with other regional councils, have signed a letter to the Minister raising concerns about the Environment Court’s determination that the NESF applies to coastal wetlands, and the Ministry’s apparent agreement with the Court’s determination.

Delineating the extent of wetlands in the CMA is quite different to delineating natural wetlands on land. In the CMA there is a gradual transition from wetland to deep water and there is limited information about the presence of sub-tidal vegetation such as seagrass and kelp.

Wetlands in the CMA are already protected by mechanisms that give effect to the NZCPS and do not require the additional protection of the NES-FWM.

### **Recommendation 8**

1. Exclude the CMA from the NES-F natural wetland regulations. Wetlands in the CMA are adequately protected through regional coastal plans under the New Zealand Coastal Policy Statement (our preferred option).
2. Amend the NES-F to clarify that the natural wetland regulations apply to any area:
  - (a) with mangrove, estuary, sandflat and mudflat, but not beaches with seagrass or deeper water with kelp beds, or
  - (b) with vegetation noted in the wetlands delineation protocol (including seagrass), or
  - (c) that meets the Ramsar Convention on wetlands definition, including marine water up to 6m water depth, or
  - (d) where councils determine that local wetland types apply.
3. Amend the wetlands delineation protocol to clarify how it applies in the CMA.

This ends our feedback.