

SUBMISSION ON

Resource Management (Freshwater and Other Matters) Amendment Bill

27 June 2024

To: Primary Production Committee

Name of Submitter: Horticulture New Zealand

Supported by: New Zealand Apples & Pears, Persimmon
Industry Council, Summerfruit NZ, Vegetables New Zealand Inc.

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OVERVIEW

Submission structure

- 1 Part 1: HortNZ's Role
- 2 Part 2: Executive Summary
- 3 Part 3: Submission
Expediting changes to national direction, freshwater changes
- 4 Part 4: Amendment Table
Specific amendments sought and justification

Our submission

Horticulture New Zealand (HortNZ) thanks the Primary Production Committee for the opportunity to submit on the Resource Management (Freshwater and Other Matters) Amendment Bill and welcomes any opportunity to continue to work with the Primary Production Committee and to discuss our submission.

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ wishes to be heard in support of our submission and would be prepared to consider presenting our submission in a joint case with others making a similar submission at any hearing.

The details of HortNZ's submission and decisions we are seeking are set out in our submission below.

HortNZ's Role

Background to HortNZ

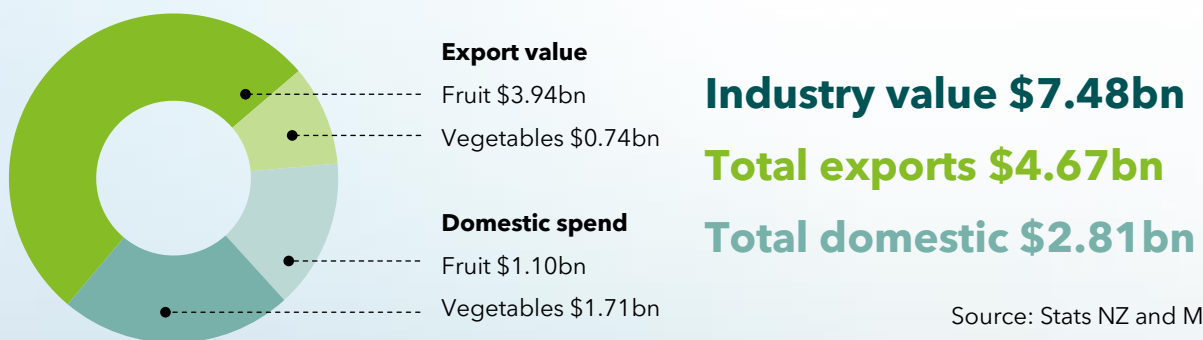
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

Executive Summary

Resource Management Reform

This submission only seeks changes in scope of the Resource Management (Freshwater and Other Matters) Bill (referred to as “the Bill”). Some of the amendments we recommend related to freshwater and discharges are not currently covered in the Bill but urgently needed due to a pressing risk to the horticulture industry.

HortNZ will seek other changes to the Resource Management Act in the next round of amendments. These amendments were signalled in our recent submission: [Targeted Changes to the RMA in April 2024](#).

Horticulture Interest in National Direction under RMA

HortNZ is generally supportive of the proposed amendments to speed up the process for creating or amending national direction.

Outside of this submission, HortNZ is seeking greater changes related to national direction for commercial vegetable production through letters to Ministers and further submissions to Government.

Freshwater Changes

In this submission, we discuss changes to the Freshwater Farm Plan Regulations and Part 9A of the RMA to align with international standards. Aligning national environmental standards (NES) with international standards is now supported by amendments proposed in this Bill to S44 of the RMA. This amendment allows an exemption to the typical consultation process to align an NES with a New Zealand Standard within the meaning of section 4 of the Standards and Accreditation Act 2015.

HortNZ seeks that this alignment with the Standards and Accreditation Act extended to the assurance process for Freshwater Farm Plan Regulations and Part 9A.

This submission supports excluding the hierarchy of obligations within the National Policy Statement for Freshwater Management 2020 from resource consent applications and resource consent decision-making processes.

HortNZ seeks further changes to Te Mana o te Wai to ensure an overall judgement approach for a balance between the obligations, taking into account the associated principles of Te Mana o te Wai. We seek a holistic definition of “health needs of people” to support implementation of the National Policy Statement for Freshwater Management.

HortNZ also seeks changes to S70 and S107 of the RMA related to discharges in light of recent court decisions which pose an urgent risk to horticulture.

Submission

1. Horticulture Interest in National Direction under RMA

National direction has significant impacts on horticulture, including the National Policy Statement for Freshwater Management (NPSFM), the National Policy Statement for Highly Productive Land (NPSHPL) and the National Planning Standards. National direction has the potential to drive regional consistency, giving regulatory certainty to growers. It also manages the protection of precious resources essential to growing fruits and vegetables, like quality soils and clean water. HortNZ was closely involved in the development of these national policy statements and recent resource management reforms, and we appreciate the opportunity to contribute further.

This submission only seeks changes in scope of the Resource Management (Freshwater and Other Matters) Bill (referred to as “the Bill”). Some of the amendments we recommend related to freshwater and discharges are not currently covered in the Bill but urgently needed due to a pressing risk to the horticulture industry.

Outside of this submission, HortNZ is seeking greater changes related to national direction for commercial vegetable production through letters to Ministers and further submissions to Government.

2. Expediting the Creation or Amendment of National Direction under the RMA

HortNZ is generally supportive of the proposed amendments to speed up the process for creating or amending national direction.

2.1. S32 Evaluation Report Requirements

HortNZ supports the new requirements for evaluation of national direction under S32AB, in place of S32, which will no longer apply to national direction.

The Bill removes national direction (national environmental standards, the National Planning Standards, national policy statements, and New Zealand coastal policy statements) from S32 requirements, replaced with a S32AB Evaluation of national direction. The S32AB requirements are clearer and more succinct. We support that the evaluation report analysis must begin early in policy development, which will ensure that the effectiveness of a policy proposal is kept in mind as the policy is constructed.

2.2. Exemptions from S46a Process

HortNZ supports the expansion of exemptions from the S46a process. S46a prescribes the process for preparing national environmental standards and national policy statements, including public and iwi consultation and a report to the Minister with a summary of submissions. S10 of the Bill amends S44 of the RMA to streamline the process of updating

national environmental standards when the proposed changes meet various criteria. HortNZ's reasons for supporting each criterion are laid out in the table at the end of this submission.

HortNZ strongly supports the change for a streamlined process to align national environmental standards with the Standards and Accreditation Act 2015 because it will allow Government to remedy inconsistencies between international best practice and current regulations. This also points to the regulatory changes needed to recognise industry assurance programmes, such as GAP, that apply assurance principles including certification and audit in a manner consistent with international practice and aligned to the purpose of the Standards and Accreditation Act.

We seek that this alignment with the Standards and Accreditation Act is extended to the assurance process within Freshwater Farm Plan Regulations and Part 9A of the RMA, which we discuss further under the Freshwater Farm Plan section of this submission.

2.3. Board of Inquiry Process Repeal

The new Bill repeals S47-51 of the RMA, effectively disestablishing the board of inquiry process for proposed national direction. The new Bill also now just requires official's advice, not a board of inquiry report, before approving national direction under S52 of the RMA. The board of inquiry process is not used frequently. Specific projects that used the process include the Watercare Services Limited application to take water from the Waikato River¹ and Waka Kotahi's application for the East West Link² (a four-lane arterial road to connect State Highways 1 and 20 in Auckland). The S46a process has been more frequently used for national direction, and we consider the S46a process is appropriate for setting national environmental standards and national policy statements.

3. Freshwater Farm Plan Changes

Freshwater farms plans (FWFP) are an important regulatory tool. The ability to undertake freshwater farm planning in an integrated manner allows industry to efficiently achieve regulatory and market requirements and drive sustainable outcomes. Changes are needed, however, to better incorporate industry assurance programmes.

- The horticulture industry relies on industry assurance programmes, primarily New Zealand Good Agricultural Practice (NZGAP) and GLOBALG.A.P. to meet domestic and international market and regulatory requirements.
- These programmes were established over 25 years ago by growers and industry groups who were committed to enhancing food safety, worker welfare and sustainability practices in the horticulture industry.
- GAP programmes are independently audited, self-management assurance schemes. Growers who are GAP certified must meet relevant standards, and in

¹ <https://www.epa.govt.nz/public-consultations/decided/watercare-application/>

² <https://www.epa.govt.nz/public-consultations/decided/east-west-link/>

doing so can demonstrate that the necessary practices are in place to meet regulatory and market requirements.

- Industry assurance programmes operate alongside regulators, performing separate but complementary functions with the FWFP system to achieve the desired outcomes. Industry assurance programmes would audit and certify FWFPs and report key information, like audit and certification outcomes, while regulators would perform oversight and compliance functions.
- Recognition of these programmes would reduce duplication and compliance costs for growers, while supporting the horticulture industry to drive environmental improvements through a trusted assurance process. Recognition of GAP will provide certainty to growers that their farm plans are assessed against a clear standard, so they know exactly what they need to include. It will also give domestic and export customers confidence that their fruit and vegetables are grown sustainably.

HortNZ support amendments to national environmental standards to align to the Standards and Accreditation Act. This process is made simpler by the amendments to S44 proposed in S10 of this Bill. We would like to see this approach extended to Part 9A of the RMA and the FWFP Regulations, so that the assurance process for FWFP can be aligned with international assurance frameworks to reduce complexity and improve credibility.

The proposed amendments we seek to the FWFP Regulations are to provide an alternative pathway for IAP programmes that apply assurance principles including certification and audit in a manner consistent with international practice and aligned to the purpose of the Standards and Accreditation Act.

The purpose of the Standards and Accreditation Act 2015 is to:

- (a) make provision for standards and conformity assessment systems in New Zealand that:
 - i. are consistent with international practice; and
 - ii. facilitate trade; and
 - iii. protect the health, safety, and well-being of individuals;

Our proposed amendments align with the government’s priorities to “support Freshwater Farm Plans with clear standards to improve the consistency of Freshwater Farm Plans across the country and potential integration with other farm management systems to avoid duplication”,³ “support Farm Environment Plans administered by regional councils and

³ [“Blueprint for a Better Environment” policy](#)

targeted at a catchment level⁴ and “improve Farm Environment Plans so they are more cost-effective and pragmatic for farmers”⁵.

3.1. Resource Management (Freshwater Farm Plans) Regulations

3.1.1. IMPROVE DEFINITION OF CRITICAL SOURCE AREA

HortNZ proposes a change to the content of the definition of “critical source area” with regard to FWFP. The definition of the critical source area within the FWFP Regulations currently cross references the critical source areas definition in the NES Freshwater. A proposed amendment in Schedule 2 of the Bill revokes the definition in the NES Freshwater while amending the FWFP Regulations to express the definition directly.

While the proposal is simply to copy the existing definition, there is an opportunity to improve the definition. Currently, the definition is interpreted broadly in implementation. For example, Waikato Regional Council defines all cultivation as a critical source area⁶, which is not sensible. There may be critical source areas concentrating flow at the downstream end of cultivated fields, but to define all cultivation as a critical source area undermines the purpose of the definition. As such, HortNZ seeks the following amendment to the definition.

It’s also important that discharges from erosion and sediment control and other treatment devices are treated as diffuse discharges from critical source areas, rather than point source discharges. To classify discharges from devices that treat diffuse discharges as point source discharges, could disincentivise treatment of diffuse discharges.

Proposed amendment to the Resource Management (Freshwater Farm Plans) Regulations 2023, 3 Interpretation

3 Interpretation

critical source area means a landscape feature such as a gully, swale, or depression that–

(a) accumulates runoff from adjacent land **such that runoff is concentrated in a single flow path**; and

(b) delivers, or has the potential to deliver, 1 or more contaminants to 1 or more rivers, lakes, wetlands, or drains, or their beds (regardless of whether there is any water in them at the time

3.1.2. CLARIFY SECTION 8

HortNZ believes that Section 8 of the FWFP Regulations should be clear that only significant risks must be identified and managed in FWFPs, to focus growers’ actions on the highest risk elements of their activity and not require all possible risks. Otherwise, the list of possible risks

⁴ [coalition agreement between National and NZ First](#)

⁵ [coalition agreement between National and ACT](#)

⁶ [6374-HRWO-critical-source-areas.pdf \(waikatoregion.govt.nz\)](#)

would be of indeterminate length and could include anything from a handful to a hundred, at the discretion of users of the regulations.

Proposed amendment to the Resource Management (Freshwater Farm Plans) Regulations 2023, 8 Freshwater farm plan must identify risks and actions

8 Freshwater farm plan must identify risks and actions

(1) In order to identify the **significant** risks of adverse effects of farming activities on freshwater or freshwater ecosystems, a farm operator must—

(a) identify, map, and describe each land unit of the farm; and

(b) identify and assess for each land unit—

(i) its inherent vulnerabilities; and

(ii) the **significant** risks from farming activities being carried out.

(2) The operator must—

(a) identify existing and new actions to avoid, remedy, or mitigate the **significant** risks identified under subclause (1) of adverse effects of farming activities on freshwater or freshwater ecosystems; and...

3.2. Resource Management Act Part 9A

3.2.1. IMPROVE DEFINITIONS OF AUDITOR AND CERTIFIER

One of HortNZ's concerns is the concept of certification in the default pathway is inconsistent with the international recognised definition of this concept. We would like to see recognition of the need for consistency with international standards extend to the FWFP Regulations and Part 9A of the RMA. The current definitions of "auditor" and "certifier" under Part 9A of the RMA are not aligned with international standards and create an inconsistent approach to assurance for freshwater farm plans.

We further consider that such an approach is required by statutory interpretation principles and with New Zealand accepted practice. It is our opinion that the reasonable expectation of Parliament in passing Part 9A of the RMA was that the definition of the terms "audit" and "certification", which are not defined in the legislation, would have meanings in regulation consistent with the meanings of these terms in international practice. Accordingly, the definitions of, and criteria for, 'auditor' and 'certifier' in any regulations made must be in line with the approach taken under the ISO framework and fulfil New Zealand's obligation for consistency with international practice.

We seek a process for the approval of auditors that are employees of or contracted by approved organisations. This would mean that auditors (who meet relevant competency requirements), employed by a conformity assessment body which is contracted by the approved industry assurance programme, would be approved as auditors for FWFPs. The current 'certifier' role in Part 9A is inconsistent with the ISO framework. Instead, an industry

assurance programme should be approved as a certification body to issue certification based on the outcome of the FWFP audit. This approach is consistent with the ISO framework and would be more efficient for industry assurance programmes, such as GAP, which operate in a manner consistent with the ISO framework.

This amendment will support the intent of Section 217KA and the Ministerial Standard being developed to approve industry organisations to audit and certify freshwater farm plans.

Proposed amendment to the RMA Part 9A Freshwater Farm Plans 217B

217B Interpretation

auditor means a person who—

- a. is appointed under section 217K; ~~and or~~
- b. **is employed/contracted by an approved industry organisation under Section 217KA; and**
- c. meets the criteria prescribed in regulations made under section 217M(1)(h)

certifier means ~~a person who—~~

- a. **a person who** is appointed under section 217K; ~~and or~~
- b. **an approved industry organisation under Section 217KA; and**
- c. meets the criteria prescribed in regulations made under section 217M(1)(h)

3.2.2. INTRODUCE DEFINITION OF FRESHWATER FARM PLAN STANDARD

We seek that the content of a freshwater farm plan can also be provided for through an approved “freshwater farm plan standard”. The standard will be approved to demonstrate that it meets the purpose and content requirements of Part 9A of the RMA and approved against criteria in the Ministerial Standard under Section 217KA of the RMA. This method recognises that there are multiple ways to achieve the aims of freshwater farm plans, such as a benchmarked standard developed by industry that is tailored to horticulture.

Proposed amendment to the RMA Part 9A Freshwater Farm Plans 217B

217B Interpretation

freshwater farm plan standard means a set of publicly available specified requirements approved by a national body as equivalent to 217F (1) (a)-(e).

3.2.3. PROVIDE FLEXIBILITY FOR APPROVAL OF INDUSTRY ASSURANCE SCHEMES

Greater flexibility is needed in the way that industry organisations can be approved, such that organisations that operate nationally can apply for national recognition against Ministerial Standards, and regional councils must accept programmes that have been nationally approved.

Proposed amendment to the RMA Part 9A Freshwater Farm Plans 217KA

217KA Regional council may approve industry organisation to provide certification **and/or** audit services

Approval of ~~Regional council may approve~~ industry organisation to provide certification **and/or** audit services.

(1) A **national body under the Ministry for the Environment, or a** regional council may give approval to an industry organisation ~~that applies to the council~~ to provide certification **and/or** audit services under this Part if ~~the council~~ is satisfied that the organisation meets the standards issued under subsection (2).

(1a) **An industry organisation, if operating nationally on behalf of its members, may apply for national recognition under the national body. A Regional Council must accept the national body approval of that industry organisation as meeting the requirements to operate in their region.**

(2) The Minister may, by notice in the Gazette, issue standards by which industry organisations must be assessed for the purpose of determining their suitability to be an approved industry organisation...

(3) Standards may also—

(a) set out the kind of organisation eligible to be approved for the purposes of this Part; and

(b) include content and processes to provide for compliance with the standards, for example, by requiring the industry to run training programmes and ensuring that conflicts are appropriately managed

(c) set nationally consistent reporting requirements stipulating reporting required to reasonably carry out regional council functions under 217I

(4) A regional council may **only** request information from an approved industry organisation **that is outlined in the standard as** ~~the council considers~~ reasonably necessary for carrying out their functions under section 217I

4. Te Mana o te Wai

4.1. Excluding Te Mana o te Wai from Resource Consents

The amendment bill allows repeal of provisions to exclude consideration of Te Mana o te Wai, also known as the hierarchy of obligations, in resource consent applications and decisions. This change is implemented through the introduction of Part 7 inserted into Schedule 12 and amendments to Sections 2, 92, 104 and Schedule 4 of the RMA.

HortNZ believes that Te Mana o te Wai is important for protecting the health of waterways. We consider that Te Mana o te Wai is achieved when all three elements of the hierarchy – the health of waterways, human health needs and societal, cultural and economic needs – are in balance. Achieving that balance is guided by the principles in the National Policy Statement for Freshwater Management (NPSFM) 2020.

HortNZ considers that Te Mana o te Wai is best managed during plan-making. Objectives, policies and rules of plans should be drafted to give effect to Te Mana o te Wai, so resource consents that are compliant with plans already fit into a framework designed to meet the hierarchy of obligations.

HortNZ supports removing the consideration of the hierarchy of obligations in consent decisions and supports this method of achieving that policy goal. We do seek a balanced, integrated approach to implementing Te Mana o te Wai in plan-making, discussed in the following section.

4.2. Overall Judgement Approach to Te Mana o te Wai

The definition of Te Mana o te Wai (TMOTW) provided in section 1.3 of the NPSFM causes some confusion, with councils placing too much weight on protecting health of freshwater for the well-being of the wider environment without due consideration to the second sentence about restoring the balance between water, the wider environment and community, which fundamentally requires trade-offs.^{7,8}

Activities that support human health, including domestic food supply, should be prioritised within environmental limits. A holistic definition of “human health needs” will better encompass the wider factors that encompass the physical well-being of New Zealanders. The proposed definition below is based on the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the World Health Organisation (WHO) discussion on the right to health.⁹

Many activities that are important for human health, such as vegetable production, are not without environmental effects, but a balanced approach should recognise the importance of food to human health needs for the nutrition and well-being of New Zealanders.

⁷ [National-Policy-Statement-for-Freshwater-Management-2020.pdf \(environment.govt.nz\)](#)

⁸ This concept is explored in the recent Proposed Otago Regional Policy Statement decision, copied in the appendix of this submission.

⁹ <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

We acknowledge that TMOTW is a concept from Te Ao Māori. Given that TMOTW is a critical concept within the NPSFM, the changes we propose to the definition provide clarity on how this concept should be applied for all New Zealanders.

HortNZ raised these recommendations in our “Submission on Fast Track Consents and Te Mana o Te Wai in Consenting Decisions”.¹⁰ This aligns with government priority to “rebalance Te Mana o te Wai to better reflect the interests of all water users”¹¹ and “Support the efficient allocation of freshwater”¹².

Retain the TMOTW hierarchy of obligations within the NPSFM but refine the concept of TMOTW to ensure better and more consistent interpretation.

Proposed amendment to the RMA Section 2 Interpretation

Introduce definition: Fundamental concept – Te Mana o te Wai Concept means (1) Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community, **having regard to the hierarchy of obligations and using an overall judgment approach.**

Introduce definition: **Health needs of people means underlying determinants of health, including:**

- **Safe drinking water and adequate sanitation**
- **Safe food**
- **Adequate nutrition and housing**
- **Healthy working and environmental conditions**

5. Discharges

Recent court decisions regarding discharges have pressing implications for horticulture in New Zealand. These issues pose threats to future consenting and operation of horticultural activities, which will have negative consequences for national food security, the economy, exports and the environment.

Prior to these Decisions (listed below), and since the advent of the RMA in 1991, S70 and 107 were not considered to apply to diffuse discharges and were therefore not considered relevant regarding horticulture.

¹⁰ [SUBMISSION-ON-FAST-TRACK-CONSENTS-AND-TE-MANA-O-TE-WAI-FINAL.pdf \(hortnz.co.nz\)](#)

¹¹ [coalition agreement between National and ACT](#)

¹² [“Blueprint for a Better Environment” policy](#)

The Southland Decision means that future regional plans may not be able to authorise a discharge as a permitted activity;¹³ therefore, horticultural activities may be required to apply for a discharge consent.

The Canterbury Decision means it will not be possible for horticultural operations to obtain resource consent for their diffuse discharges where one or more attributes of the waterway are below national bottom lines or minimum acceptable states as the assessment required is to recognise the existing cumulative significant adverse effects on aquatic life, including from diffuse discharge of nitrogen.¹⁴

This is the first time since 1991 that such a requirement has been imposed, without warning given of the magnitude of this change, nor opportunity afforded to prepare. Without changes, future (and existing unconsented) horticultural activities in degraded catchments will not be able to gain discharge consent and will not be enabled to operate lawfully. If this outcome were to occur the vegetable supply for New Zealand would be severely reduced.

5.1.1. AMENDMENTS SOUGHT

HortNZ requests immediate changes to the Act:

clarifying the ability for regional councils to set permitted rules for horticultural land uses involving diffuse discharges;

- ensuring horticultural activities have a viable consenting pathway for diffuse discharge consents; and
- amending S70 to enable commercial vegetable production as a permitted activity in future plan changes.¹⁵ This addition is required to specify that discharges from horticulture are included in this exception, which would include discharge arising from the decomposition of horticultural plant residue and cultivation.
- amending S107 to enable grant of discharge permits for horticulture.

Proposed amendment to S70 Rules about discharges

(1) Before a regional council includes in a regional plan a rule that allows as a permitted activity...

(2) Before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option...

(3) This section shall only apply to a point source discharge.

(4) For the purposes of this section, point source discharge means a discharge from an identifiable and confined point but excludes:

(a) any discharge of contaminants intended to be disposed of onto or into land, such as disposal of stormwater to ground, irrigation of effluent or waste water, application of fertiliser, or critical source areas;

(b) the discharge of contaminants from or caused by animals;

¹³ Southland Decision at [90].

¹⁴ Canterbury Decision at [76]-[79].

¹⁵ These changes are informed by a letter from the Farming Interests (DairyNZ, Federated Farmers and Beef + Lamb) to Ministers dated 29 April 2024 regarding the three court decisions described in this submission. HortNZ's specific amendments sought are included.

(c) any discharge of contaminants from or caused by horticulture.

Proposed amendment to S107 Restriction on grant of certain discharge permits

(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—

(a) that exceptional circumstances justify the granting of the permit; or

(b) that the discharge is of a temporary nature; or

(c) that the discharge is associated with necessary maintenance work; **or**

(d) that any of the effects identified in subsection (1) above is only likely to arise because of a cumulative effect of the discharge in combination with other discharges and that the discharge permit includes conditions requiring any contribution of the discharge to that cumulative effect to be managed over time—

and that it is consistent with the purpose of this Act to do so.

5.1.2. THE DECISIONS

The Decisions:

1. Aratiatia Livestock Limited v Southland Regional Council [2022] NZEnvC 265 (**Aratiatia**) and the High Court appeal decision Federated Farmers Southland Incorporated v Southland Regional Council [2024] NZHC 726 (**Southland Decision**); and
2. Environmental Law Initiative v Canterbury Regional Council [2024] NZHC 612 (**Canterbury Decision**); and
3. Muaupoko Tribal Authority Incorporated v Minister for the Environment [2023] NZCA 641 (**SVGA Decision**).

5.1.3. ARATIATIA

The Environment Court decision in Aratiatia held that:¹⁶

where attributes of water bodies are below a national bottom line or minimum acceptable state in the NPSFM then discharges would be “highly likely” to have significant adverse effects on aquatic life;¹⁷

- s70 applies beyond point source discharges to diffuse discharges;¹⁸ and

¹⁶ [2022] NZEnvC 265.

¹⁷ At [264], [265].

¹⁸ At [259].

- there is not jurisdiction under s70 to approve of a permitted activity rule for point source discharges.¹⁹

On appeal, the High Court in the Southland Decision confirmed the Environment Court's Aratiatia decision that s70 and s107 applies to diffuse discharges and that before a permitted discharge rule can be included in a plan,²⁰ the Council must be satisfied that the effects listed in s70(1)(c)-(g) are not likely to arise.²¹

5.1.4. CANTERBURY DECISION

Ashburton Lyndhurst Irrigation Ltd (**ALI**) applied for, and was granted, consent to discharge nutrients onto or into land for farming activities taking place between the Hakatere/Ashburton and Rakaia Rivers. This decision was judicially reviewed in the Canterbury Decision. The ground for judicial review relevant to this situation was that there was a misapplication of the requirements of s107 which prohibited the granting of consent.²²

The High Court decision found the Commission failed to recognise that the existing cumulative significant adverse effects on aquatic life, including from diffuse discharge of nitrogen, prevented consent from being granted under 107(1)(g).²³ The Court held that in the absence of the consent requiring immediate remediation of the significant adverse effects on aquatic life, consent should not have been granted.²⁴

5.1.5. SVGA DECISION

The Court of Appeal quashed the Specified Vegetable Growing Areas of Pukekohe and Horowhenua (SVGA exceptions) from the NPSFM.²⁵

The outcome of the SVGA Decision is that there are no longer any time exemptions to the requirement to comply with target attribute states set out in the NPSFM in the key and critical vegetable growing areas of Pukekohe and the Horowhenua.

The combination of an inadequate consenting framework for horticulture, and now the removal of the SVGA exceptions from the NPSFM, create an increasingly difficult space for horticulture to operate within.

Furthermore, without the SVGA exceptions in force, the effect of the S70 and 107 Decisions to restrict consent for diffuse discharges where one or more of the waterway attributes are below national bottom lines or minimum acceptable states will be fatal to the production of sufficient quantity of fruit and vegetables in New Zealand as required for domestic consumption and food security.

¹⁹ At [8].

²⁰ *Federated Farmers Southland Incorporated v Southland Regional Council* [2024] NZHC 726 at [90].

²¹ At [84].

²² At [26].

²³ *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 at [41]-[42].

²⁴ At [41], [42].

²⁵ *Muaupoko Tribal Authority Incorporated v Minister for the Environment* [2023] NZCA 641

Submission on Resource Management (Freshwater and Other Matters) Amendment Bill

Without limiting the generality of the above, HortNZ seeks the following decisions on the Resource Management (Freshwater and Other Matters) Amendment Bill, as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address the concerns raised in this submission.

Additions are indicated by bolded underline, and deletions by strikethrough text.

Provision	Support/oppose	Reason	Decision sought
5 Section 32 amended (Requirements for preparing and publishing evaluation reports)	Support	Making the S32 report available at the same time the proposal is notified is supported to assist submitters in making informed submissions with a fuller understanding of what officials have considered in the drafting process.	Retain as proposed: Replace section 32(5) with: (5) The person who must have particular regard to the evaluation report must make the report available for public inspection at the same time as the proposal is notified.
7 New section 32AB inserted (Evaluation of national direction)	Support	S32AB is much clearer and more succinct than S32 and still meets most important requirements for evaluating the effectiveness of national direction.	Retain as proposed.
10 Section 44 amended (Restriction on power to make national environmental standards)	Support	The Bill streamlines the process of amending national environmental standards when the amendment is to align the meaning of the word 'standard' with the meaning in the Standard and Accreditation Act.	(3) The Minister need not follow the process referred to in section 46A if the Minister is recommending the making of an amendment for 1 of the following reasons... (see rows below)

10 Section 44 amended (Restriction on power to make national environmental standards)	Support	<p>HortNZ support amendments to national direction to align to the Standards and Accreditation Act. This currently only applies to national environmental standards in the Bill.</p> <p>We would like to see this approach extended to the Freshwater Farm Plan regulations to create a pathway for industry assurance programmes such as GAP which are consistent with international practice and aligned to the purpose of the Standards and Accreditation Act.</p>	(a) to align with a New Zealand Standard within the meaning of section 4 of the Standards and Accreditation Act 2015: (retain as notified)
10 Section 44 amended (Restriction on power to make national environmental standards)	Support	HortNZ agrees that national environmental standards should be updated to reflect New Zealand’s international agreements to ensure credibility and fulfil our obligations on the world stage.	(b) to implement New Zealand’s obligations under any international convention, protocol, or agreement to which New Zealand is a party: (retain as notified)
10 Section 44 amended (Restriction on power to make national environmental standards)	Support	HortNZ strongly supports updating national environmental standards to help New Zealand achieve its emissions targets and adaptation plan. Reducing emissions requires wholesale action across branches of government, policy areas and economic sectors. A piecemeal approach is not enough to achieve the sweeping and just transition needed to meet New Zealand’s national targets, so a straightforward approach to policy integration is needed.	(c) to give effect to provisions in an emissions reduction plan or national adaptation plan: (retain as notified)

10 Section 44 amended (Restriction on power to make national environmental standards)	Neutral	No comment	(d) to change the time frame for implementation of any part of a national environmental standard:
10 Section 44 amended (Restriction on power to make national environmental standards)	Support	It is sensible that updating national environmental standards to align with higher legislation should be a streamlined and direct process.	(e) to remove provisions in a national environmental standard that are no longer required as a consequence of changes to legislation: (retain as notified)
10 Section 44 amended (Restriction on power to make national environmental standards)	Support	Making minor corrections is a sensible and precedented reason to truncate the process for making changes to national direction.	(f) to make changes that are no more than minor in effect, to correct errors, or to make similar technical alterations. (retain as notified)
Schedule 2 Amendments to secondary legislation made under Resource Management Act 1991	Support in part	<p>The definition of the critical source area within the FWFP regulations currently cross references the critical source areas definition in the NES Freshwater. With the proposed amendment in NES freshwater removing this definition there is a need for this definition to be expressed in the FWFP regulations.</p> <p>While the proposal is simply to copy the existing definition, there is an opportunity to improve the definition. Currently the definition is being interpreted very broadly. For example, Waikato Regional Council defines all cultivation as a critical</p>	<p>Resource Management (Freshwater Farm Plans) Regulations 2023 (SL 2023/113)</p> <p>In regulation 3, replace the definition of critical source area with:</p> <p>critical source area means a landscape feature such as a gully, swale, or depression that–</p> <p>(a) accumulates runoff from adjacent land such that runoff is concentrated in a single flow path; and</p> <p>(b) delivers, or has the potential to deliver, 1 or more contaminants to 1 or more rivers, lakes, wetlands, or drains,</p>

		source area ²⁶ , which is not sensible. There may be critical source areas concentrating flow at the downstream end of cultivated fields, but to define all cultivation as a critical source area undermines the purpose of the definition.	or their beds (regardless of whether there is any water in them at the time
Schedule 2 Amendments to secondary legislation made under Resource Management Act 1991	Additional amendment	HortNZ seeks another amendment to the Resource Management (Freshwater Farm Plans) Regulations 2023 to S8 Freshwater farm plan must identify risks and actions. We think it should be clear that significant risks must be identified and managed.	<p>Resource Management (Freshwater Farm Plans) Regulations 2023</p> <p>8 Freshwater farm plan must identify risks and actions</p> <p>(1) In order to identify the significant risks of adverse effects of farming activities on freshwater or freshwater ecosystems, a farm operator must—</p> <p>(a) identify, map, and describe each land unit of the farm; and</p> <p>(b) identify and assess for each land unit—</p> <p>(i) its inherent vulnerabilities; and</p> <p>(ii) the significant risks from farming activities being carried out.</p>

²⁶ [6374-HRWO-critical-source-areas.pdf \(waikatoregion.govt.nz\)](https://www.waikatoregion.govt.nz/6374-HRWO-critical-source-areas.pdf)

			(2) The operator must– (a) identify existing and new actions to avoid, remedy, or mitigate the significant risks identified under subclause (1) of adverse effects of farming activities on freshwater or freshwater ecosystems; and...
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Additional RMA Amendments

Provision	Reason	Decision sought
RMA 2 Interpretation	<p>The TMOTW principles and the hierarchy of obligations should be maintained but clarified to take a more holistic approach to balance and human health needs.</p> <p>This aligns with government priority to “rebalance Te Mana o te Wai to better reflect the interests of all water users”²⁷ and “Support the efficient allocation of freshwater”²⁸.</p>	<p>Proposed amendment to the RMA Section 2 Interpretation</p> <p>Fundamental concept – Te Mana o te Wai Concept means (1) Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community, having regard to the</p>

²⁷ [coalition agreement between National and ACT](#)

²⁸ [“Blueprint for a Better Environment” policy](#)

		<p><u>hierarchy of obligations and using an overall judgment approach.</u></p> <p><u>Health needs of people means underlying determinants of health, including:</u></p> <ul style="list-style-type: none"> • <u>Safe drinking water and adequate sanitation</u> • <u>Safe food</u> • <u>Adequate nutrition and housing</u> • <u>Healthy working and environmental conditions</u>
<p>RMA 70 Rules about discharges</p>	<p>Recent court decisions regarding discharges have pressing implications for horticulture in New Zealand. These issues pose threats to future consenting and operation of horticultural activities, which will have negative consequences for national food security, the economy, exports and the environment.</p> <p>This is discussed further under Section 5. Discharges of this submission.</p>	<p>(1) Before a regional council includes in a regional plan a rule that allows as a permitted activity...</p> <p>(2) Before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option...</p> <p><u>(3) This section shall only apply to a point source discharge.</u></p> <p><u>(4) For the purposes of this section, point source discharge means a discharge from an identifiable and confined point but excludes:</u></p> <p><u>(a) any discharge of contaminants intended to be disposed of onto or into land, such as disposal of stormwater to ground, irrigation of effluent or waste water, application of fertiliser, or critical source areas;</u></p>

		<p><u>(b) the discharge of contaminants from or caused by animals;</u></p> <p><u>(c) any discharge of contaminants from or caused by horticulture.</u></p>
<p>RMA</p> <p>107 Restriction on grant of certain discharge permits</p>	<p>Recent court decisions regarding discharges have pressing implications for horticulture in New Zealand. These issues pose threats to future consenting and operation of horticultural activities, which will have negative consequences for national food security, the economy, exports and the environment.</p> <p>This is discussed further under Section 5. Discharges of this submission.</p>	<p>107 Restriction on grant of certain discharge permits</p> <p>(2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied–</p> <p>(a) that exceptional circumstances justify the granting of the permit; or</p> <p>(b) that the discharge is of a temporary nature; or</p> <p>(c) that the discharge is associated with necessary maintenance work; or</p> <p><u>(d) that any of the effects identified in subsection (1) above is only likely to arise because of a cumulative effect of the discharge in combination with other discharges and that the discharge permit includes conditions requiring any contribution of the discharge to that cumulative effect to be managed over time–</u></p> <p>and that it is consistent with the purpose of this Act to do so.</p>

RMA
Part 9A Freshwater farm plans
217B Interpretation

Changes are needed to better incorporate industry assurance schemes into the Freshwater Farm Plan rules. The assurance process for Freshwater Farm Plans should be aligned with international practice, especially the concepts of certification and audit, to reduce complexity and improve credibility.

This method recognises that there are multiple ways to achieve the aims of freshwater farm plans, such as a benchmarked standard developed by industry that is tailored to horticulture.

This aligns with the government's priorities to "support Freshwater Farm Plans with clear standards to improve the consistency of Freshwater Farm Plans across the country and potential integration with other farm management systems to avoid duplication",²⁹ "support Farm Environment Plans administered by regional councils and targeted at a catchment level"³⁰ and "improve Farm Environment Plans so they are more

217B Interpretation

auditor means a person who—

- (a) is appointed under section 217K; ~~and~~ **or**
- (b) is employed/contracted by an approved industry organisation under Section 217KA; and**
- (c) meets the criteria prescribed in regulations made under section 217M(1)(h)

certifier means ~~a person who—~~

- a. **a person who** is appointed under section 217K; ~~and~~ **or**
- b. **an approved industry organisation under Section 217KA; and**
- c. meets the criteria prescribed in regulations made under section 217M(1)(h)

freshwater farm plan standard means a set of publicly available specified requirements approved by a national body as equivalent to 217F (1) (a)-(e).

²⁹ ["Blueprint for a Better Environment" policy](#)

³⁰ [coalition agreement between National and NZ First](#)

	cost-effective and pragmatic for farmers ³¹ .	
RMA Part 9A Freshwater farm plans 217KA Regional council may approve industry organisation to provide certification or audit services	Greater flexibility is needed in the way that industry organisations can be approved, such that organisations that operate nationally can apply for national recognition against Ministerial Standards, and regional councils must accept programmes that have been nationally approved.	217KA Regional council may approve industry organisation to provide certification and/or audit services Approval of Regional council may approve industry organisation to provide certification and/or audit services. (1) A <u>national body under the Ministry for the Environment, or a</u> regional council may give approval to an industry organisation that applies to the council to provide certification and/or audit services under this Part if the council is satisfied that the organisation meets the standards issued under subsection (2). (1a) <u>An industry organisation, if operating nationally on behalf of its members, may apply for national recognition under the national body. A Regional Council must accept the national body approval of that industry organisation as meeting the requirements to operate in their region.</u> (2) The Minister may, by notice in the Gazette, issue standards by which industry organisations must be assessed for the purpose of determining their suitability to be an approved industry organisation...

³¹ [coalition agreement between National and ACT](#)

(3) Standards may also–

(a) set out the kind of organisation eligible to be approved for the purposes of this Part; and

(b) include content and processes to provide for compliance with the standards, for example, by requiring the industry to run training programmes and ensuring that conflicts are appropriately managed

(c) set nationally consistent reporting requirements stipulating reporting required to reasonably carry out regional council functions under 217I

(4) A regional council may **only** request information from an approved industry organisation **that is outlined in the standard as the council considers** reasonably necessary for carrying out their functions under section 217I