



**TO:** Ministry for the Environment

**DATE:** 8 July 2022

**SUBMISSION ON:** Exposure Drafts of Proposed Changes to the NPS-FM and NES-F (including wetland regulations)

**FROM:** New Zealand Kiwifruit Growers Incorporated (NZKGI)  
Kathy Mason  
Senior Policy Advisor  
[kathy.mason@nzkgi.org.nz](mailto:kathy.mason@nzkgi.org.nz)  
Phone: 021 056 4778

## 1 Introduction

- 1.1 New Zealand Kiwifruit Growers Inc (NZKGI) is a grower advocacy body for New Zealand Kiwifruit Growers. The kiwifruit industry is New Zealand's largest horticultural earner. Kiwifruit exports were worth \$3.6 billion in the financial year 2020/2021 and sales are expected to grow to \$4.5 billion by 2025. By 2030 Māori grower revenue is estimated to grow from \$271m to \$638m per year.
- 1.2 Kiwifruit provides the highest per-hectare return in New Zealand's primary sector – \$76,722 per hectare for Green and \$177,846 per hectare for SunGold in 2020/21. Just 5% of all producing orchards are greater than 10 ha, with the median orchard being approximately 3 ha in size.
- 1.3 The kiwifruit industry is a major contributor to regional New Zealand returning \$2.25 billion directly to rural communities in 2020/21. There are approximately 2800 growers, 14,000 ha of orchards, 9,250 permanent employees and up to 24,000 jobs during the peak season.
- 1.4 Kiwifruit is grown in eight regions however much of New Zealand's kiwifruit (80%) is grown in the Bay of Plenty region where the soils are generally deep and free draining. The regional contribution and producing areas for New Zealand kiwifruit are summarised in Figure 1.



Figure 1: Regional Contribution and Producing Area<sup>1</sup>

- 1.6 NZKGI is generally supportive of the proposed amendments to the NPS-FM and NES-F, including the wetland regulations. In terms of the matters of detail, NZKGI generally supports the submission of HortNZ.
- 1.7 This submission from NZKGI has been prepared to:
- highlight a practical issue for kiwifruit growers that results from the current wording of regulation 54,
  - provide general support for the amendments to regulation 54 and seek that the existing amendments be retained, and,
  - seek further wording regarding the activity status that applies in the event that the discharge of water occurs within, or within a 100m setback from, a natural wetland, where there is (or isn't) a hydrological connection between the discharge and the natural wetland, and it is unlikely that there will be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.

## 2 Practical Issue Relating to the Current Wording of Regulation 54(d)

- 2.1 Confirmed and/or potential natural wetlands<sup>2</sup> can and do exist within 100m of some kiwifruit orchards where the discharge of water for the purposes of irrigation and frost control is undertaken.
- 2.2 In NZKGI's experience, there are recent examples where resource consent applications for groundwater and surface water takes for the purposes of irrigation and frost control on kiwifruit orchards that would otherwise be discretionary activities have been processed as non-complying activities because the discharge of the water for the purposes of irrigation

<sup>1</sup> NZKGI (2021) The Voice of New Zealand's Kiwifruit Growers. New Zealand Kiwifruit Growers Incorporated.

<sup>2</sup> In some cases, councils have identified and mapped potential wetlands through aerial imagery and these require ground truthing to confirm.

and frost protection is proposed within 100m of a natural wetland and is therefore captured by Regulation 54(d)<sup>3</sup>.

2.3 The non-complying activity status due to the discharge of water for the purposes of irrigation and frost protection within 100m of a natural wetland is difficult to justify given that consent conditions increasingly require that:

- irrigation is to cease when the soil is at field capacity, and
- consent holders are required to demonstrate water use efficiency.

2.4 In addition to the requirement to comply with the consent conditions, growers are unlikely to over-irrigate their kiwifruit orchards for the following reasons:

- the costs to pump water, and
- the risk of disease that could arise from excess water being applied.

2.5 In summary for practical as well as compliance reasons, growers are unlikely to over-apply water to the extent that the discharge of the water could adversely affect the hydrological regime or biodiversity values of a natural wetland. Non-complying activity status for the discharge of water for irrigation and frost control on kiwifruit orchards therefore appears to be overly stringent considering the potential effects of these activities.

### **3 NZKGI's Support for the Proposed Amendments to Regulation 54**

3.1 The proposed amendments to regulation 54 are as follows:

***“Non-complying activities***

*The following activities are non-complying activities if they do not have another status under this subpart:*

- (a) *vegetation clearance within, or within a 10m setback from, a natural wetland:*
- (b) *earthworks within, or within a 10m setback from, a natural wetland:*
- (c) *the taking, use, damming, ~~diversion, or discharge~~ or diversion of water within, or within a 100m setback from, a natural wetland,*
- (d) *the discharge of water within, or within a 100m setback from, a natural wetland if –*
  - (i) *there is a hydrological connection between the discharge and the natural wetland, and*
  - (ii) *there are likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland.*

3.2 The recommendation report<sup>4</sup> states the following regarding Regulation 54:

*“Many submitters provided examples where this regulation was being applied to the discharge of contaminants. This included stormwater discharges, septic tank overflows for rural-residential dwelling developments with tertiary treated wastewater systems, or overflows from drinking water tanks. In another case a non-complying activity consent is now required for the creation of any impervious surface on a residentially zoned site located within 100m of a natural wetland.”*

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<sup>3</sup> When an activity falls under more than one rule or regulation the most restrictive activity status applies, therefore overall the irrigation is considered to be a non-complying activity.

<sup>4</sup> MfE (2022) Managing our wetlands: Report, recommendations and summary of submissions, ISB: ISBN 978-1-99-102545-6 (online), Publication number: ME 1656, page 78.

- 3.3 As described in this submission, in NZKGI's experience regulation 54 is also being applied to the discharge of water (as opposed to contaminants) to kiwifruit for the purposes of irrigation and frost control.
- 3.6 "Recommendation 64<sup>5</sup> is to amend every reference to 'discharges of water' in Part 3 – Subpart 1 of the BES-F to specify that they are only regulated if the activity has, or is likely to have, adverse effects on the hydrological regime or biodiversity values of a natural wetland.
- 3.7 NZKGI's interpretation of the proposed changes to Regulation 54(d) is that the discharge of water within, or within a 100m setback from, a natural wetland where: –
- (i) there is (or isn't) a hydrological connection between the discharge and the natural wetland, and,
  - (ii) there is **not** likely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland,
- is not regulated by the NES-F and that planning provisions in regional plans apply.
- 3.4 This view is based on Recommendation 64 of the recommendation report. NZKGI's view is that to avoid confusion for future users a new regulation could be drafted to provide clarification, as follows.

## **4 Relief sought**

- 4.1 Section 43A RMA (1991) **Contents of national environmental standards** states the following:

- "(4) A national environmental standard that allows an activity –
- (a) may state that a resource consent is not required for the activity; or
  - (b) may do one or both of the following:
    - (i) state that the activity is a permitted activity, but only on the terms or conditions specified in the standard; and
    - (ii) require compliance with the rules in a plan or proposed plan as a term of condition.

- 4.2 NZKGI seeks that a new regulation is added as follows:

### ***"Compliance with the Rules in a Plan or Proposed Plan***

*The following activities require compliance with the rules in a plan or proposed plan (but are not managed under Part 3 of these regulations):*

- (a) *the discharge of water within, or within 100m setback from, a natural wetland if –*
- (i) *there is a hydrological connection between the discharge and the natural wetland, and*
  - (ii) *there is unlikely to be adverse effects from the discharge on the hydrological functioning or the habitat or the biodiversity values of a natural wetland*

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<sup>5</sup> Page 78

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*(b) the discharge of water within, or within 100m setback from, a natural wetland if there is no hydrological connection between the discharge and the natural wetland.*

4.3 NZKGI also seeks that the existing proposed amendments to Regulation 54 be retained.

Thank you for considering this submission.