



NEW ZEALAND ECOLOGICAL SOCIETY

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Submission on **NPS-IB exposure draft**, 21 July 2022
The New Zealand Ecological Society
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SUBMISSION ON THE EXPOSURE DRAFT OF THE PROPOSED NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

The New Zealand Ecological Society (NZES) was formed in 1951 to promote the study of ecology and the application of ecological knowledge in all its aspects. NZES is the leading professional society for pure and applied ecology and publishes the New Zealand Journal of Ecology, the primary peer-reviewed publication for ecological science and research in the country. We have 400 members, most of whom work with New Zealand's ecosystems and species through scientific research or applied management. Our members serve as conservation managers, research scientists, applied ecologists, and academics who work within the country's universities, Crown Research Institutes, central and local government, private consultancies, and community groups.

NZES made a comprehensive submission on the proposed National Policy Statement for Indigenous Biodiversity (NPS-IB) in March 2021 (**attached**). We welcome the opportunity to comment on this exposure draft. This submission is focused on implementation challenges¹ and our key points are:

- We congratulate the Ministry for the Environment on continuing their work to produce this policy statement. We support adoption of an NPS-IB to provide urgently needed national direction and consistency in the management of indigenous biodiversity. Land use change is the major cause of loss in the context of the RMA, and appropriately the focus of this statement. Regulation is an essential component of the wider package of methods needed to protect remaining indigenous biodiversity and reverse trends of decline (it is not one or the other). There are implementation challenges to be resolved, but we submit that these are not reason to further delay gazetting of the NPS-IB .
- It is critical that the NPS-IB does not weaken the good work of progressive regions and districts that have been national leaders in the conservation of indigenous biodiversity. It is also essential to bring others to the same minimum standard and promote equality. **Unfortunately, this exposure draft does not do that.** Instead
 - A. **removal of interim protection for areas identified as SNAs but not listed in plans** creates a major gap in protection, particularly in those regions and districts where indigenous biodiversity protection is currently weakest. In the strongest terms, NZES warns that this change will enable and incentivise considerable, deliberate, irreversible loss of indigenous biodiversity.
 - B. **lack of explicit direction on transitional protection** for SNAs (or their equivalent) and other indigenous biodiversity until such time as the NPS-IB

¹ We prefer this term to 'workability'.

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requirements are actually implemented could also open major gaps in protection. All existing provisions in regional and district plans are essential in the interim

- C. continuing **lack of clarity that wetlands may be SNAs** wherever they occur will create a critical gap in protection for some of NZ's most vulnerable and irreplaceable ecosystems.
- We have a number of other serious concerns (D to L). Resolving these will make the NPS-IB more effective and resolve implementation challenges.

Primary concerns

A. Removal of interim protection for areas identified as SNAs but not yet listed in plans

The exposure draft has **deleted** critical direction that local authorities must manage land meeting the criteria in Appendix 1 as SNAs. This change profoundly weakens direction on interim protection for SNAs. We raised interim protection as a principal concern in our submission (attached), and we submit now that the deletion is a **backward step** that is **unfair**, and **unlawful**.

Backward step from current practice: SNA mapping is by nature never complete. Many councils therefore couple schedules with significance criteria that serve as backstops to protect SNAs. For example, the recent Plan Change 18 for the Mackenzie District² defines SNAs as all areas meeting the Canterbury RPS criteria, in recognition that their schedule of significant sites – as in most eastern South Island districts – is woefully incomplete. Significance criteria have been thoroughly tested through practice, case law, peer-reviewed published literature, and debate across New Zealand over the last three decades³. They provide an appropriate framework to identify areas that meet s6c, and clear indication of resource users' obligations when combined with policy provisions.

² https://www.mackenzie.govt.nz/__data/assets/pdf_file/0006/540906/MDC-PC18-Decision-Report-12-April.pdf

³ **References include:**

Walker S, Brower AL, Clarkson BD, Lee WG, Myers SC, Shaw WB, Stephens RTT 2008. Halting indigenous biodiversity decline: ambiguity, equity, and outcomes in RMA assessment of significance. *New Zealand Journal of Ecology* 32(2):225–237.

Maseyk FJF, Gerbeaux P 2015. Advances in the identification and assessment of ecologically significant habitats in two areas of contrasting biodiversity loss in New Zealand. *New Zealand Journal of Ecology* 39(1):116–127.

Case law examples:

Royal Forest and Bird Protection Society of New Zealand Incorporated v New Plymouth District Council [2015] NZEnvC 219.

Day v Manawatu-Wanganui Regional Council Decision No [2012] NZEnvC 182. [3-34]–[3-45]
 Friends of Shearer Swamp Inc. v West Coast Regional Council First Interim Decision [2010] NZEnvC 345; Second Interim Decision [2012] NZEnvC 006; Third Interim Decision [2012] NZEnvC 53; Final Decision [2012] NZEnvC 162; West Coast Council v Friends of Shearer Swamp Incorporated High Court Decision [2011] CIV-2010-409-002466.

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The roll-back of interim provisions for unlisted SNAs signals licence to destroy them. Perversely, it provides clear incentive and opportunity to undertake activities with adverse effects on indigenous biodiversity prior to anticipated future identification, listing and regulation. Unfortunately, this is not a theoretical risk. For example, the Court gave rules immediate effect to prevent a 'gold rush' of clearance in Mackenzie District⁴, significant indigenous vegetation has been cleared in Queenstown Lakes District⁵ and recently in Wellington⁶ in response to pending SNA protection, and spikes in land clearance have occurred in Australian jurisdictions associated with legislation introduced to halt broad-scale land clearing⁷.

Absence of interim provisions will have particularly severe impacts on indigenous biodiversity in those districts where

- existing vegetation clearance rules are weakest
- areas meeting SNA criteria but not recognised in plans as SNAs cover land with commercial development potential,
- few SNAs have yet been identified and listed, and
- existing provisions for the protection of SNAs sat in regional plans.

There will likely be widespread, irreversible loss of indigenous biodiversity through pre-emptive land development in these districts. Legal challenge is likely, but may happen district-by-district and meanwhile loss will go unchecked. The result will be financially costly and protracted, divert resources and energy from identification and protection of SNAs, and often be carried by less well-resourced representatives of common interests (e.g. environmental NGOs).

Unfair: rather than creating a level playing field, the roll-back will selectively reward land development interests in districts that have lagged behind and retained weak existing rules at the expense of indigenous biodiversity.

Unequal treatment of resource-users will also be substantial and obvious. One landowner wishing to develop or impact on an SNA will be subject to resource consenting processes at cost, while a neighbour with an unlisted SNA will be able to develop as a Permitted activity. This is particularly unjust if the SNA was omitted because the landowner refused permission for survey, a council imposed an arbitrary cut-off (e.g. as in New Plymouth District), or identification processes or plan changes are incomplete. These inequities will be socially divisive, incentivise appeals to delay regulation, and undermine the credibility of the instrument with the community.

⁴ https://www.mackenzie.govt.nz/__data/assets/pdf_file/0004/516631/NZEnvcC202-Decision.pdf

⁵ <https://www.stuff.co.nz/business/farming/116558825/dairy-farm-converts-indigenous-vegetation-to-pasture>

⁶ <https://www.stuff.co.nz/environment/128442829/frustrated-landowners-cutting-down-trees-to-avoid-environmental-protection-status>

⁷ There were spikes in land clearance rates in Queensland preceding and immediately following gazettal of vegetation management legislation in 2000, as documented by Reside et al. 2017 and McGrath 2007. Reside AE, Beher J, Cosgrove AJ, Evans MC, Seabrook L, Silcock JL, Wenger AS, Maron M 2017. Ecological consequences of land clearing and policy reform in Queensland. *Pacific Conservation Biology* 23:219–230.

McGrath C 2007. End of broadscale clearing in Queensland. *Environment and Planning Law Journal* 24:5-13.

It is also essential, and fair, that the playing field is levelled to recognise widespread existing support from both landowners and administrators in local government bodies. We remind MfE that

- The great majority of landowners **support** SNA identification. For example, one of our members has undertaken survey work for SNA survey projects in Nelson, Tasman, Kaikoura, Ashburton, Timaru, Mackenzie and Waitaki districts over more than 20 years. That work included direct contact with landowners of 344 properties, and the survey and assessment of 1347 SNAs. Between 75% (parts of Tasman District) to 95% (Timaru District) consented to access.
- A major shift in social norms has taken place throughout our communities and within councils over the last decade. There is increasing recognition of the value of indigenous biodiversity to cultural, environmental, social, and economic wellbeing and the urgent need for meaningful policy response to the intertwined biodiversity and climate crises. We note that regional councils (many regional council biodiversity staff are members of NZES) are supportive and impatient for the commencement of national direction, as reflected in submissions.

Unlawful: Many districts throughout the country have taken a sporadic and subjective approach to the identification of SNAs, applying arbitrary caps on the number of SNAs to include in plans. Completely identification and assessment processes and listing SNAs in plans will take some considerable time. The NPS-IB provides no protection for these sites in the interim. This change is contrary to the RMA s6c which states that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance. Protection of areas meeting agreed criteria cannot be deferred until areas are identified as SNAs in plans.

Relief sought

NZES submits that an SNA is any area meeting the criteria in Appendix 1, and this must be abundantly clear in the NPS-IB. Four amendments are needed.

- 1) The definition of an SNA (in **1.6 Interpretation**) must include 'any area that is identified as an SNA following an assessment of the criteria in accordance with Appendix 1'.
- 2) **Provision 3.8 (5)(b)** should be modified to '*if an SNA is identified as a result, manage the area in accordance with **Provision 3.10** of this Policy Statement and... , include it in the next plan or plan change notified by the territorial authority*'.
- 3) The following clause must be reinstated in **Provision 3.16**: '*If an area outside an SNA is assessed as significant indigenous vegetation or significant habitat of indigenous fauna following an assessment in accordance with Appendix 1, a local authority must manage the adverse effects on indigenous biodiversity in the area as if the area were an SNA*'. This requirement needs to apply from the commencement of the NPS-IB, and no later.
- 4) Clarification is needed that existing Objectives, Policies, and/or Rules in Regional policy statements and plans hold until listing is complete, and that local authorities that are Regional Councils may assume primary responsibility for SNAs where appropriate and until territorial authority processes are in place and adequate.

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B. Lack of transitional provisions

Absence of explicit provisions for transitioning from one policy framework to another (transitional provisions) in the NPS-IB could have similar ramifications as the lack of interim protection for unlisted SNAs. It may

- be read as a direction to remove existing regional plan provisions and protections⁸ and thereby enable perverse outcomes such as deliberate clearance
- lower the bar for meeting s6c in the period between gazettal of the NPS-IB and its requirements actually being complied with
- combine with the lack of interim provisions (point A above) to entrench this failing.

Relief sought

We submit that transitional provisions must also be included in the NPS-IB. There must be an explicit statement that all local authorities must retain existing provisions, methods and instruments to protect indigenous biodiversity and SNAs (e.g. Regional or District plans) until the NPS-IB requirements are given full effect.

C. Lack of clarity that wetlands may be SNAs

The exposure draft has **not provided the critical direction** sought in our submission that **wetlands may be SNAs wherever they occur**. We appreciate that MfE seeks to reduce overlap between policy statements. However, neither the NZCPS nor the NPS-FM give comprehensive and coherent effect to s6c. A major gap has been created that is illogical from an ecological perspective and risks further degradation and loss of indigenous biodiversity. In addition, splitting provisions for wetlands across three policy documents creates implementation challenges (that can manifest as gaps in protection), and is confusing for landowners and local authorities alike.

Wetlands are not aquatic ecosystems. Wetland plants in terrestrial wetlands are rooted in soil and form those soils. Wetlands processes and functions are fundamentally terrestrial and wetlands are integral to functioning of other terrestrial ecosystems. Wetlands support important terrestrial indigenous biodiversity and a significant proportion of New Zealand's terrestrial species (whether or not those species are threatened and at risk).

Many if not most remaining wetlands are squarely areas of significant indigenous vegetation and/or significant habitats of indigenous fauna meeting numerous criteria in Appendix 1⁹ wherever they may occur. Many wetlands across NZ are already recognised and listed SNAs, including in the coastal zone. RMA s6c requires them to be protected.

⁸ Examples include Horizon's One Plan, Environment Canterbury's protection for braided rivers, Auckland Council provisions for indigenous biodiversity and urban SNAs.

⁹ For example, they often provide 'habitat for an indigenous species that is listed as Threatened or At-risk in the New Zealand Threat Classification System lists' Appendix 1C(6)(a); support indigenous vegetation types or indigenous species 'that are uncommon within the region or ecological district' (Appendix 1C(6)(b)); and are 'indigenous vegetation or habitat of indigenous fauna occurring on naturally uncommon ecosystems' Appendix 1C(6)(e)(c), and many more.

Damage to indigenous biodiversity: Lack of clarity that wetlands (including coastal wetlands) can be recognised as SNAs under the NPS-IB will open a major gap in fulfilling s6c of the RMA. The NPS-FM provides protection of inland wetlands (not coastal) but does not recognise them as matters of national importance under s6c.

Further, many wetland areas that will be excluded from protection under the NPS-FM because they would have >50% exotic pasture species across part or all of their area will still meet criteria for identifying significant natural areas (Appendix 1 NPS-IB). These wetland areas, along with coastal wetlands, will be excluded from the provisions of both the NPS-IB and the NPS-FM. This gap will have the greatest detrimental impact in areas where the extent of wetlands and critical ecosystem services from them are extremely reduced (e.g., eastern South Island districts, Manawatū). In these areas most of what remains will be ecologically significant regardless of condition, and for many of these districts, identification of both SNAs and wetlands lags behind most of the rest of the country and existing clearance rules are weak.

Absence of NPS-FM provisions for unrecognised wetland parts of contiguous SNAs will enable the character, intensity and scale of activities to change. Damage will have adverse effects on non-wetland parts of contiguous SNAs (e.g. through compromised function and severed ecological connectivity). This is not the protection that s6c requires.

Challenging and confusing: Different provisions from different local authorities applying to different parts of SNAs is inconsistent with an integrated approach (Policy 5) and unworkable.

It is ecologically illogical because SNAs are not vegetation types but areas (as required by s6c) that are often large and contain many functionally connected and interdependent sequences or mosaics of wetland and non-wetland components. Our members emphasise that requiring assessing ecologists to 'carve out' every wetland will impose extremely onerous boundary identification requirements and creates serious and unnecessary fragmentation and disconnection edges directly contrary to Appendix 1 D Ecological Context criteria

The split is also practically challenging:

- unnecessary costs of separating out wetlands in SNA assessment will be passed on to ratepayers
- it is more resource-efficient and ecological sensible to identify, assess, and where necessary undertake field-surveys in a holistic manner at the same time
- the task of explaining an ecologically completely illogical process to landowners will fall to assessors and ultimately on councils.

Relief sought

- Amend 1.3 Application to include "*For the avoidance of doubt SNAs may include wetland and aquatic environments*".
- In Section 3.8 add a requirement that the relevant regional council and territorial authority must collaborate in identifying wetland SNAs.

Other serious concerns

D. At Risk species

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It is essential that the habitats of Relict, Recovering and Naturally Uncommon¹⁰ At Risk species are also significant under criterion C(6)(a) (Appendix 1). Those species occur in only a few, usually small, areas nationally. Even a single clearance event could have very severe consequences for the species by removing a high proportion of remaining numbers or suitable habitat¹¹. Protection of these areas would impose only a slight additional burden on landowners and developers, while adverse effects would have disproportionate consequences for indigenous biodiversity and add to numbers of Threatened species.

Relief sought

We submit that the parenthesised word “(Declining)” should be removed from Appendix 1 C(6)(a).

E. Bringing others to the same minimum standards

The exposure draft is missing a clear and explicit statement that the policy sets a minimum standard and councils can do more, but not less.

F. Effects management hierarchy

We strongly support the elevation of the effects management hierarchy to a fundamental concept, and the addition of clause (f). However, clause f should be clarified to say that ‘*if biodiversity compensation is not appropriate (as defined in Appendix 4), the activity itself is avoided*’.

We do not support watering down the effects management hierarchy from ‘not possible’ to ‘not practicable’ which now requires that financial considerations are weighed. This lowers the bar, and invites more litigation and will be more work for local authorities well beyond their core expertise (which is resource management, **not** the financial models and business cases of developers). We submit that ‘not possible’ is more appropriate.

G. Ecological integrity

This term is applied at the site level and limited to that scale (other, broader definitions of ecological integrity appropriately apply across scales and incorporate the full range and diversity of ecosystems). Therefore we submit that either:

- the term ‘site-level ecological integrity’ is used or
- the definition clarifies that in this policy statement the term applies only the site level.

¹⁰ An imminent change to the NZTCS is expected to merge these three categories into a single ‘Uncommon’ category.

¹¹ For example, At Risk (Relict) species include the shrub *Carmichaelia williamsii* (now known from only two small remnant populations near East Cape), and moko skink (*Oligosoma moco*) which now inhabits only a few mainland sites of open forest, scrub and grassland in the northeastern North Island. Clearance of those habitats could lead to situations similar to the loss of 30% of the wild population of *Muehlenbeckia astonii* (Nationally Endangered) on Kaitorete Spit recently: <https://www.newsroom.co.nz/councils-surprise-snub-of-rare-shrub>.

H. Exceptions to protection of SNAs

Exclusions and carve-outs (in **Provision 3.11**) have increased substantially. They are now:

- much more extensive than in the draft NPS-IB
- not explicit
- very vulnerable to manipulation through political pressure from developers
- at odds with the NPS-FW 'specified infrastructure'.

NZES strongly opposes these changes, and notes that they are in conflict with s6c.

Relief sought

Revert to the nationally significant projects, with the narrow exception of interim regional works required to enable managed retreat from climate change.

I. Existing use

Provision 3.15 is unspecific as to the type, or extent of existing activities that this clause applies to. This provides the potential to allow a wide range of activities that have adverse effects on indigenous biodiversity (including permanent loss) to continue as unmonitored Permitted activities, even though their continuation risks undermining the objective of the NPS-IB. Furthermore, the provision must raise lagging councils to a minimum standard on existing activities, not result in the perverse outcome of lowering the bar in districts and regions where the standard is already higher.

Relief sought

We submit that **provision 3.15**:

- must restrict the scope of existing activities that are allowed to continue (i.e. with specific types and quantities). This clarity must be provided within the NPS-IB provision itself, not via non-statutory guidance.
- clarify that existing use provisions in current plans cannot be undermined to more permissive regulation than currently in place (e.g. the Auckland Unitary Plan already provides clear definition of existing uses).
- must include maintenance of pasture (see below).

J. Maintenance of improved pasture

'Although an improvement on the last version, provision **3.17 Maintenance of improved pasture** remains as a 'hangover' from special interest lobbying in the BCG. It is **unnecessary** for two reasons

- **provision 3.15** already covers this entirely; repetition is not needed
- 'improved pasture' has been removed from the NPS-FM

NZES acknowledges that MfE amended this NPS-IB provision in line with their previous submission on depositional landforms and threatened and at risk species. However, major harm could still occur outside those exclusions. Clauses (2)(a) and (2)(b) would usually be impossible for a local authority to enforce; and the definition of 'maintenance of improved

pasture' allows a very wide range of activities that would completely destroy or cause major harm to indigenous biodiversity; these are clearly not 'maintenance' at all. This is inappropriate in a policy statement that seeks to protect SNAs under s6c.

Relief sought

We submit **that Provision 3.17** and the terms 'improved pasture' and 'maintenance of improved pasture' are removed entirely from the NPS-IB.

K. Monitoring

Lack of consistent and targeted monitoring of indigenous biodiversity (including compliance, policy effectiveness, and comprehensive state and trend monitoring) has hindered understanding of indigenous biodiversity and its response to drivers of change. Consequently decisions must now be made and policy developed without knowledge and understanding of ecological connections at site and landscape-scales.

We strongly support the requirement for regional councils to undertake monitoring. However, we submit that monitoring national frameworks and nationally consistent methods are needed to ensure complementarity across agencies and enable national reporting.

Monitoring in relation to **3.15** and **3.25** is a key implementation challenge. Methods and tools don't yet exist, and must be robust to survive potential legal challenge *and* logistically feasible for small to medium sized SNAs. Baseline measures of condition will be required when SNAs are identified in order to measure degradation (or not)

We submit that a priority for central government resourcing is to develop nationally agreed methods for monitoring the maintenance of indigenous biodiversity and ecological integrity in SNAs.

L. Prioritising resourcing

We acknowledge that the Policies now give better effect to our submission that the priority is to maintain what is left, and to restore secondarily. However, a number of territorial authorities have avoided conflict for decades by including only (or mainly) DOC land or their own reserves in SNA schedules. There is a real risk that they will focus SNA survey resources on those areas that minimise potential conflict.

We appreciate that land under any tenure should be able to be an SNA but also submit that there should be a clear message that the priority for council resources is SNA survey **of areas vulnerable to development**. It is neither necessary nor palatable to spend rates on public conservation land, but development applications with adverse effects should trigger those surveys (whether or not affected areas are under some form of protection).

Relief sought

We recommend that a new clause (2) is added to Provision 3.8 stating '*the district-wide survey must prioritise areas that are most under threat of current and future development*'.

Finally, we are aware that there has been advocacy for a primary focus on animal and plant pests. We submit that

- Regulatory and non-regulatory methods are both essential and work together to provide necessary protection for SNAs and other indigenous biodiversity. It is not one or the other. Critically, areas need to be protected from clearance and loss **first** if the benefits of ratepayer investments in animal and plant pest control are to be realised,
- Regional Biodiversity Strategies and Te Mana o Te Taiao are the proper documents to coordinate and manage non-regulatory activities. We support the recognition of biodiversity strategies in the NPS-IB but suggest the direction for these should closely align with Te Mana o Te Taiao.

Attachment: NZES submission on the proposed NPS-IB, March 2020

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