



Freshwater farm plan regulations

Discussion document



Ministry for the
Environment
Manatū Mō Te Taiao

Ministry for Primary Industries
Manatū Ahu Matua



New Zealand Government

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Message from the Ministers

New Zealanders value our freshwater. Our rivers and lakes, and how we care for and use them, are a fundamental part of who we are. We respect the mana of our freshwater – Te Mana o te Wai.

The Government's Essential Freshwater package aims to improve freshwater quality and ecosystems in both urban and rural areas across Aotearoa New Zealand. Working together we can achieve a big improvement in freshwater quality.

Freshwater farm plans are a further stage of the Essential Freshwater package. But we also want to improve some existing parts of the package. We are consulting now on changes to the low slope map used for stock exclusion regulations, and we will soon ask for your feedback on changes to the intensive winter grazing rules.

Your feedback across these three important areas will help us to design freshwater regulations that are practical and enduring.

The Government is strongly supporting the integration of freshwater regulations into broader farm planning. We have allocated \$37 million to roll out integrated farm planning and help farmers and growers access this effective 'whole of farm' planning to meet new regulatory and other requirements. Integrated farm plans will go beyond freshwater and include areas such as animal welfare, biosecurity and greenhouse gas reduction.

We know many farmers and growers are already committed to practices to improve water quality and it's vital they have their say and contribute to this consultation.

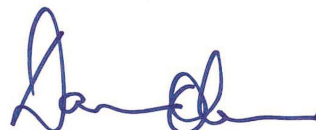
The experience of farmers, advisors and regulators who have already developed farm plans will provide useful support for all farmers to develop their own plans.

It is a busy time for the primary production sector, particularly for those recovering from the impacts of drought and flooding. Thank you for your contribution to this freshwater consultation.

Freshwater farm plans will be developed and owned by farmers. We look forward to hearing your thoughts and those of all interested in freshwater and ecosystem health. We expect to share the consultation findings with you by the end of the year.



Hon David Parker
Minister for the Environment



Hon Damien O'Connor
Minister of Agriculture

Executive summary

This is a consultation on the regulations for freshwater farm plans. It sets out the options that Government has considered and invites your feedback.

Under the Resource Management Act 1991 (RMA), freshwater quality is managed by regional councils in accordance with the National Policy Statement on Freshwater Management (Freshwater NPS).

Regional councils do this via their regional plans, which set out objectives and standards for rivers and other waterbodies using the hierarchy of Te Mana o te Wai. That hierarchy, broadly, prioritises first sustaining ecosystems, then human needs, followed by commercial uses.

Achieving good water quality requires regional councils to manage the effects of land use on freshwater. This has typically been done either through requiring resource consents or by setting out rules and policies in regional plans.

Farmers have told us that often these approaches are not well suited to the complexity and variability of New Zealand's landscapes, climate and farming systems. Farmers have been asking for an approach that allows each farm's unique circumstances to be taken into account when looking at how freshwater can be protected and enhanced.

The freshwater farm plan system proposed in this document responds to these requests. Over time, we expect that freshwater farm plans will be increasingly relied on, reducing the need for consents and hard-and-fast rules (though there will be situations where these existing regulatory tools will be appropriate, particularly where catchments are heavily overallocated).

As the freshwater farm plan system is put in place, we will align it to the fullest extent possible with the requirements for on-farm greenhouse gas reporting. For example, we will work toward a system where a farmer could enter information once and that information could be used for multiple requirements such as for freshwater management and He Waka Eke Noa.

The opportunity to use freshwater farm plans as an alternative to consents was introduced through the 2020 amendments to the RMA.

The legislation sets out that all farmers and growers (above a set threshold) will be required to have a freshwater farm plan in place. Regulations are required to give effect to the system. These regulations need to cover the content of freshwater farm plans, how they will be certified and audited, and the approach for implementation.

The context of the proposed regulations

Progress is being made in improving waterway health. Part of this has been the efforts made by many farmers and growers to reduce the impacts of their activities on freshwater, including through the use of farm environment plans.

There is much more to be done, however, particularly to reduce the contaminants that reach freshwater from 'diffuse discharges', such as nitrogen leaching, sedimentation, and bacterial contamination from land uses.

Freshwater farm plans are intended to work with existing farm planning initiatives, and to allow farmers and growers (and their advisors or catchment peers) to develop solutions that are tailored to each farm and its surrounding area. They will also tie into regional council plans and community aspirations for freshwater health.

Over time, freshwater farm plans will provide an alternative pathway to some national or regional regulations such as National Environment Standards or consents. For example, once the system is in place, farmers will have the option of using the freshwater farm plan as an alternative to the rules for intensive winter grazing in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (Freshwater NES).

The new freshwater farm plan system has the potential to make a major difference in improving our freshwater health and restoring Te Mana o te Wai. For it to work well, we need your input to the regulatory framework that will establish and support these plans.

Proposed timing for introduction of regulations

Freshwater farm plans will not be required across the country all at once. Rollout will need to be phased and this will take time.

The first step is to establish regulations to give effect to the requirements set out in Part 9A of the RMA. Once the regulatory framework is in place, implementation can begin. These steps are summarised below.

Establishing the regulations

This consultation tests options for the regulations that would give effect to the legislated requirements for freshwater farm plans. Feedback on these proposals is due by 12 September 2021. We expect the new regulations to be published in the New Zealand Gazette in the first half of 2022.

Introduction of freshwater farm plans

We propose a phased introduction of freshwater farm plans starting in the first half of 2022. The first tranche of freshwater farm plans certified would use the best local information and catchment context available at the time, recognising plans will need to be updated as catchment vision, values, limits and rules are set.

It will take time to build capability and capacity across the country, including the certification, auditing, and quality assurance systems, as well as enforcement and review.

The phased timeframe supports the adaption of existing farm environmental plans and industry programmes to the new system.

Linking into regional plans

While farmers and growers are developing freshwater farm plans, regional councils will be developing regional freshwater plans that implement the Freshwater NPS. These need to be notified by December 2024 and will be based on close engagement with communities.

Councils' freshwater regional plans will need to give effect to Te Mana o te Wai – the central concept for freshwater management.

When complete, the plans will provide valuable catchment context; representing the values and priorities the community and tangata whenua have for waterways. The initial cycle of freshwater farm plans will, however, need to be set up before these plans are complete. We have outlined how farmers could, in the interim, get access to the best available information about their catchment. We want to build on the momentum of current farm environment plans to continue to improve freshwater health.

Linking with other changes in freshwater management

Freshwater farm plans are one of several changes the Government is making to the way we manage our freshwater. Amendments to the intensive winter grazing provisions of the Freshwater NES, and to the map of low-slope land in the Resource Management (Stock Exclusion) Regulations 2020 are also under consideration.¹ The Government is also soon releasing the Overseer Peer Review Report and the Government's Response.

To make it easier for you to tell us what you think – we have tried to talk to you about these changes as much as possible at the same time.

Freshwater farm plans also link into the Integrated Farm Planning framework – which adopts a 'whole of farm' perspective, integrating all aspects of farm management practice, including environmental rules and improvements, and minimising duplication for farmers.

Tangata whenua involvement

The role of tangata whenua is significant across the wider freshwater management system. This reflects the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and also the principles of Te Mana o te Wai, the overarching concept for freshwater management. Under the Freshwater NPS councils will involve tangata whenua, as well as others, in the regional freshwater planning process. The content of regional plans, such as limits or rules, needs to be reflected in freshwater farm plans.

We do not propose a system where individual farmers and growers would be required to identify and engage relevant tangata whenua about their freshwater farm plan.

That would risk placing an unreasonable burden on both tangata whenua and farmers.

Proposed outcomes

The regulated outcomes are the statements in the regulations that describe what each freshwater farm plan must demonstrate it will achieve.

We propose regulated outcomes covering:

- a. catchment values and context
- b. ecosystem health
- c. farm practice.

The combination of these three regulated outcomes, combined with the requirement for freshwater farm plans to reflect the content of regional plans, means that the Freshwater Farm Plan system can play a key role in giving effect to Te Mana o te Wai.

¹ Insert hyperlinks to consultation material when published

The discussion document presents two options for how the regulated outcomes might be set in the regulations. These can be stated at a reasonably general level in regulations, with separate guidance (the preferred option), or the regulations can specify in detail how the outcomes need to be achieved.

Proposed system settings

This consultation seeks feedback on a range of detailed design and technical issues for freshwater farm plans, and how these will be certified and audited.

Content of freshwater farm plans

The regulations will specify what each freshwater farm plan must contain, showing how the plan will:

- achieve the 'regulated outcomes'
- provide an assessment of the impacts and risks of farming activities for waterways
- identify specific and measurable actions the farm operator will take to avoid, remedy and mitigate those impacts and risks
- comply with any consent requirements or regional or national rules
- provide the 'base information', such as maps, and details of landowner, farm operator, etc.

We are seeking your feedback on the proposed options for these points, and also on how appropriate actions are identified and prioritised or scheduled for implementation by farmers and growers.

Certification and audit

Each freshwater farm plan will need to be assessed by a certifier who will sign-off that it meets the legal requirements. These certifiers would need to meet nationally set standards for competency and experience (to be set in these regulations), and would be appointed by regional councils to operate in their region.

We are consulting on options for certifiers and how they are engaged.

Certified freshwater farm plans will need to be audited at regular intervals. We are consulting on the frequency of audits, how auditors would be engaged and paid, and how auditors would be approved by councils to operate in their regions.

Quality assurance, enforcement, and reporting and review

We have also outlined options for quality assurance and enforcement of the system. There is an early view of how information from the system can be used to inform and improve freshwater management overall.

Section 1: What we are consulting about – freshwater farm plans

We want to know your thoughts on proposals for developing freshwater farm plan regulations under Part 9A of the Resource Management Act 1991 (RMA).

We are not seeking feedback on any of the matters already set out in the RMA.

This consultation will close on 12 September 2021. Once we have considered submissions, we will put final proposals to Ministers for approval.

We also intend to field test elements of a freshwater farm plan system before final regulations are made. Any new regulations should be published in the New Zealand Gazette in the first half of 2022.

Submitting your views

For details on sending feedback to us, see the section on [How to have your say](#).

Section 2: Overview

2.1 Freshwater farm plans – key component of the *Essential Freshwater* reforms

In 2019, the Government announced its objectives for freshwater which included:

- halting further degradation of waterways
- making material improvement in the health of waterways within five years
- restoring degraded waterways within a generation

The package designed to achieve these outcomes is called *Essential Freshwater*, which has six key elements:

1. A new **plan-making process** under the RMA to make regional plans more consistent and speed up the planning process.
2. A **National Policy Statement for Freshwater Management (Freshwater NPS)** that requires councils to give effect to Te Mana o te Wai as the overarching framework for freshwater management (see [section 2.5](#)) and sets national bottom lines for a range of measures of freshwater health. The timeframes to achieve the bottom lines are not fixed and need to be set by councils in consultation with tangata whenua and communities.
3. **Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (Freshwater NES)** that controls some high-risk land-use practices (e.g., intensive winter grazing), provides protection for wetlands, caps synthetic nitrogen fertiliser use, and establishes interim controls on conversions to intensive land uses.
4. **Resource Management (Stock Exclusion) Regulations 2020** that require all dairy cattle and farmed pigs to be kept out of waterways, and for beef cattle and deer to be excluded from waterways on flatter or more intensively grazed land.
5. **Freshwater farm plans (FW-FPs)** under Part 9A of the RMA – the subject of this consultation document.
6. **Jobs for Nature funding support** which provides around \$700 million in funding to assist with recovery from COVID-19, through investment targeted at improving the health of waterways.

2.2 Freshwater farm plans and the protection and restoration of waterways

Farm environment plans are an established tool to help farmers and growers plan their systems and practices to reduce their impact on the environment. We estimate around 75 percent, or up to 30,000 farmers and growers already have some kind of environment plan in place. However, existing plans sometimes deal with only a few issues, such as nutrient management or water-use efficiency. Further, existing farm plans tend to focus on management practices at an individual farm level. The new system will link an individual farm plan to what is important in the catchment where the farm sits.

A robust and trusted freshwater farm plan system should allow regulators (government and regional councils) to increasingly rely on freshwater farm planning as a feasible and risk-based approach to managing impacts on freshwater.

The objective is for freshwater farm plans to identify solutions to improve waterways that are tailored to a particular farm’s circumstances, physical environment and what is important in the catchment that farm sits in.

This does not mean that freshwater farm plans will replace the need for resource consents or rules. These other regulatory tools are still important, and we expect councils will continue to use them where necessary.

2.3 What is a freshwater farm plan?

A freshwater farm plan is a new legal instrument established under the RMA; they are different to all farm environment plans currently being used. The main elements of freshwater farm plans are laid out in Part 9A of the RMA (sections 217A to 217M).

What the RMA requires

If you have the opportunity, we recommend you read the [relevant sections of the RMA](#). The key requirements of the legislation are summarised here.

Purpose of freshwater farm plans: to better control the adverse effects of farming on freshwater and freshwater ecosystems using certified freshwater farm plans.

The content of a freshwater farm plan must:

1. identify any adverse effects of activities on the farm on freshwater and freshwater ecosystems; and
2. specify requirements (ie, actions the farmer or grower will undertake) that—
 - a) are appropriate to avoid, remedy, or mitigate the adverse effects of those activities; and
 - b) are clear and measurable; and
3. demonstrate how any outcomes prescribed in regulations are to be achieved; and
4. meet any other requirements in regulations, such as the inclusion of maps, farm location, farm operator details; and
5. comply with a rule that, in effect, means if something in a council plan or rule, a resource consent or in national regulation is more stringent than what would otherwise be in a freshwater farm plan, then the more stringent provision applies. The same is true in reverse – if an action in a freshwater farm plan is more stringent than would otherwise apply in a consent, rule or regulation, it is the farm plan action that applies.

Role of certifiers: to determine whether they are satisfied that a freshwater farm plan complies with the requirements 1–5 above.

Role of auditors: to audit then report on whether the farm achieves compliance with the certified freshwater farm plan. The auditor needs to report findings to councils.

RMA reform

RMA reform is being considered by the government and will be publicly consulted on this year. This will impact the freshwater regulatory context. It is intended the freshwater farm plan process will be incorporated into the Natural and Built Environments Act, with any existing freshwater farm plans addressed through transitional provisions.

2.4 How the freshwater farm plan system fits with regional council planning processes

By December 2024, regional councils are required to notify regional freshwater plans that implement the Freshwater NPS. Councils will choose their own processes for making new plans. In broad terms we expect these will include:

- working with tangata whenua and communities to establish a long-term vision for their waterways
- establishing what freshwater values need to be protected/achieved (e.g., ecosystem health, mahinga kai, recreation) and what state the environment needs to be in to achieve that
- determining what the current environmental state is and how much change is needed, in what areas, to reach the target environmental state
- assessing what options are available to deliver the amount of change needed – including assessing how much improvement can be expected from the freshwater farm plan system
- determining what mix of measures are needed (in addition to the freshwater farm plan system) – this may include regional rules and specific limits on use of resources that go beyond what would otherwise be in a freshwater farm plan
- monitoring the effectiveness of the overall regional freshwater plan and adjust as necessary over time.

Question – regional council planning processes

1. What other information should we consider about how the freshwater farm plan system fits with regional council planning processes, and why?

2.5 Role of tangata whenua in the freshwater farm plan system

The specific obligations in the Freshwater NPS require councils to involve tangata whenua in all stages of the regional freshwater planning process. In this context, the term tangata whenua means:

Iwi/hapū/ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource.

Giving effect to Te Mana o te Wai

The Freshwater NPS also requires councils to give effect to [Te Mana o te Wai – the central concept for freshwater management](#). Te Mana o te Wai includes six principles² relating to the roles of tangata whenua and other New Zealanders that inform how freshwater is managed.

As well as the principles, Te Mana o te Wai sets out a hierarchy of obligations to ensure that natural and physical resources are managed in a way that prioritises:

- first, the health and wellbeing of water bodies and freshwater ecosystems
- second, the health needs of people (such as drinking water)
- third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

How the freshwater farm plan system is developed, implemented and overseen should reflect the principles and obligations outlined above. It is important we engage tangata whenua on how this might best be achieved at a system level.

Influencing what risks and actions are reflected in freshwater farm plans

Responsibility for engaging with tangata whenua on freshwater planning sits with regional councils. The views of tangata whenua will be incorporated into the vision, values, environmental targets, limits and rules set in regional plans. Freshwater farm plans would then be developed to reflect these settings.

There may also be scope for councils and tangata whenua to develop guidance and/or strategy material at a more local level, that could then be reflected in freshwater farm plans. Such material might, for example, include finer grained identification of significant sites to tangata whenua, local values or priorities, and local action plans to restore waterways.

We do not propose a system where individual farmers and growers would be required to identify and engage relevant tangata whenua about their freshwater farm plan. That would risk placing an unreasonable burden on both tangata whenua and farmers.

Involvement across the FW-FP system

Tangata whenua might be involved in a number of aspects of the FW-FP system, including, for example:

- oversight of the performance of the system and the outcomes it is generating (locally, regionally and/or nationally)
- establishing the competencies and experience that must be held by actors in the system (especially freshwater farm plan certifiers)
- contributing to the assessment of any industry assurance programmes that may seek to be recognised under the system
- developing practice standards or other guidance that will be applied when undertaking risk/impact assessments and identifying actions farmers and growers must undertake in response

² The principles are mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship, care and respect.

- undertaking quality assurance work (eg, to ensure on the overall quality of freshwater farm plans being produced)
- developing and delivering training courses.

Service providers across the system

Tangata whenua can also be service suppliers in the system, for example in roles such as advisors to farmers and growers, freshwater farm plan certifiers and auditors. We want to know whether tangata whenua would be interested in such roles and what support might be needed to help tangata whenua into these roles.

Implications for Māori-owned farming operations and underdeveloped land

It is important to consider the implications of the freshwater farm plan system for tangata whenua as landowners and farm operators.

We want to better understand whether the proposed freshwater farm plan system might create particular issues for farms owned by multiple Māori landowners. For example, we note the freshwater farm plan system is likely to generate a schedule of required actions, some of which will require investment. We understand that accessing finance can be difficult for land held under Te Ture Whenua Maori Act 1993.

Questions

2. What information should we consider regarding the role of tangata whenua in the freshwater farm plan system?

2.6 A role for industry assurance programmes and other farm plan initiatives in delivering freshwater farm plans

Freshwater farm plans will build on the work many farmers and growers are already doing to manage the risks and impacts of farming activities on freshwater quality and ecosystems.

Regional and unitary councils have also been working to address water quality concerns through the regional planning framework, with several councils implementing a farm environment plan (FEP) system in some form either through rules or voluntarily.

The primary sector has played a leadership role in the development of industry assurance programmes (IAPs) such as Synlait's *Lead With Pride*, NZGAP, or the red meat sector's *New Zealand Farm Assurance Programme (NZFAP)*. Many of these have an environmental component.

These programmes would need to be updated or adapted if they are to deliver a freshwater farm plan that meets the requirements of Part 9A of the RMA.

We propose a system where industry programmes and possibly council programmes can be assessed and recognised as being appropriate to deliver a freshwater farm plan that meets the requirements of the RMA. That assessment would require the programme to have:

- robust processes that meet regulatory requirements

- practice standards at least equivalent to any required standards that are set in regulation or accompanying guidance
- appropriate incorporation of regional rules and any catchment-level priorities and values
- independent quality assurance and checks and balances
- dispute resolution processes
- processes to review and update the programme, as necessary.

We see the advantages of building off existing industry-led programmes as including:

- a smoother transition to the freshwater farm plan system that adapts what farmers and growers already have in place rather than starting from scratch
- the ability for industry to add market/consumer assurance requirements to the freshwater farm plan requirements, creating a single system that meets multiple needs
- industry bodies providing additional support to farmers and growers to develop and implement plans
- the opportunity for strategic partnerships between industry groups, tangata whenua and councils.

Once the regulations are developed, more work will be required to determine the details of the programme integration.

Questions – industry assurance programmes and other farm plan initiatives

3. What other information should we consider regarding the proposed role for industry assurance programmes and other farm plan initiatives in the freshwater farm plan system?
4. What are the likely impacts and cost implications of the proposed approach?

2.7 How freshwater farm plans fit with Integrated Farm Planning

Integrated farm planning adopts a ‘whole of farm’ perspective, integrating all aspects of farm management practice and minimising duplication for farmers. It is not a regulatory tool; rather it builds on existing farm planning efforts by providing a single framework to incorporate regulated requirements (eg, mitigation of greenhouse gas emissions and freshwater farm plans) into farm planning processes.

Taking an integrated approach to farm planning is intended to streamline compliance, reduce duplication, and provide a structured approach for farmers and growers to lift compliance.

Once certified freshwater farm plan regulations have been developed, they will be included in the integrated farm planning framework. Bringing certified freshwater farm plans under integrated farm planning framework is intended to avoid duplication for farmers and growers.

As the freshwater farm plan system is put in place, we will align it to the fullest extent possible with the requirements for on-farm greenhouse gas reporting. This could include aligning planning and audit processes and data, information and reporting systems.

2.8 Transition to a fully implemented freshwater farm plan system

The proposed system will require a transition from the current state, where there is a range of farm plans with different status and requirements, to a situation where all farmers and growers have a freshwater farm plan that is compliant with Part 9A of the RMA.

Timing challenge: gathering community input to freshwater farm plans

A fully implemented freshwater farm plan system can only be established once councils have developed new regional plans that implement the Freshwater NPS as this will provide the context and any specific rules for inclusion in freshwater farm plans in a particular area.

We expect this to take at least until late 2025 to achieve, with likely ongoing development and refinements.

Our proposal is a phased introduction of freshwater farm plans, starting in the first half of 2022. The first tranche of freshwater farm plans certified would use the best local information and catchment context available at the time, recognising plans will need to be updated as catchment vision, values, limits and rules are set.

See [Figure 1](#) below for how the transition would occur over time.

We have considered the advantages and disadvantages of this timing.

- delaying phasing in the freshwater farm plan system risks creating uncertainty about what farm plan system farmers and growers should be using, and risks stalling the good progress already being made by councils, farmers, growers and sector groups.
- starting now means tangata whenua and communities will not have had a chance to fully engage for the first generation of freshwater farm plans.
- starting now may also result in farmers or growers thinking the initial cycle of freshwater farm plans contain all that is required.

We think that these last two issues can be managed by:

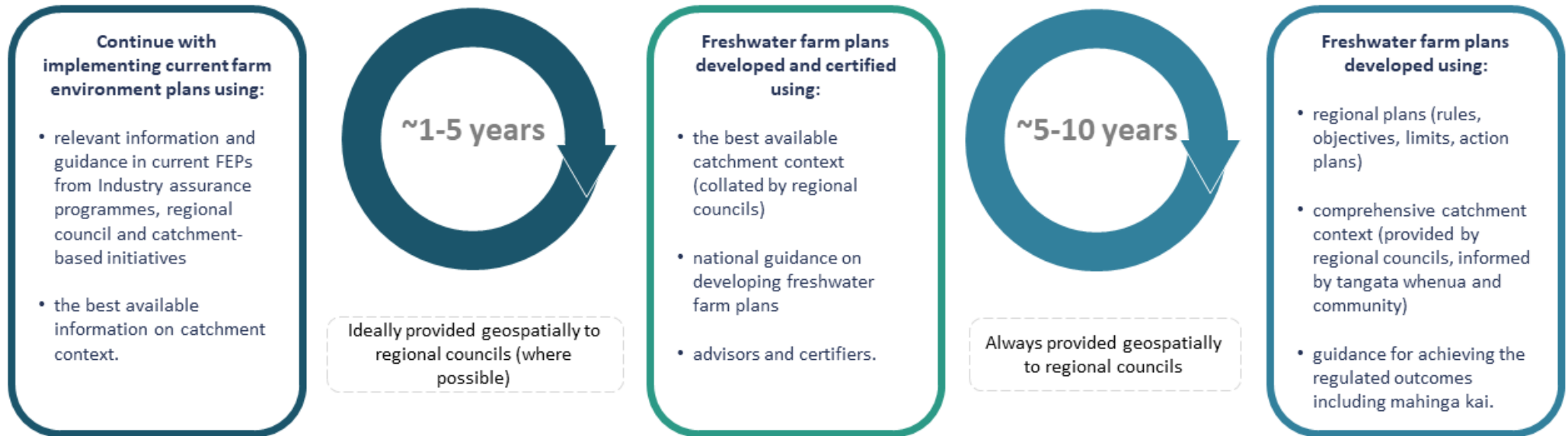
- councils making and distributing an initial assessment of the state of catchments in their region, noting significant issues that need to be addressed – any available information from tangata whenua, such as iwi resource management plans, would be incorporated in this assessment
- managing expectations through clear communications with farmers, growers, tangata whenua and communities.

In the meantime, farmers and growers should continue to use any existing farm environment plans to manage environmental risks until the freshwater farm plan system applies to their farm, as in [Figure 1](#).

Questions – transition to the new system

5. Do you agree with our proposed approach for transitioning to a fully implemented system? If not, why not?

Figure 1: Transition – moving from where we are now to a fully implemented system in the future



Section 3: Key elements of freshwater farm plans

This section focuses on the key elements of the plans themselves. This diagram shows how a farmer or grower would move through the freshwater farm plan development, certification and audit process.

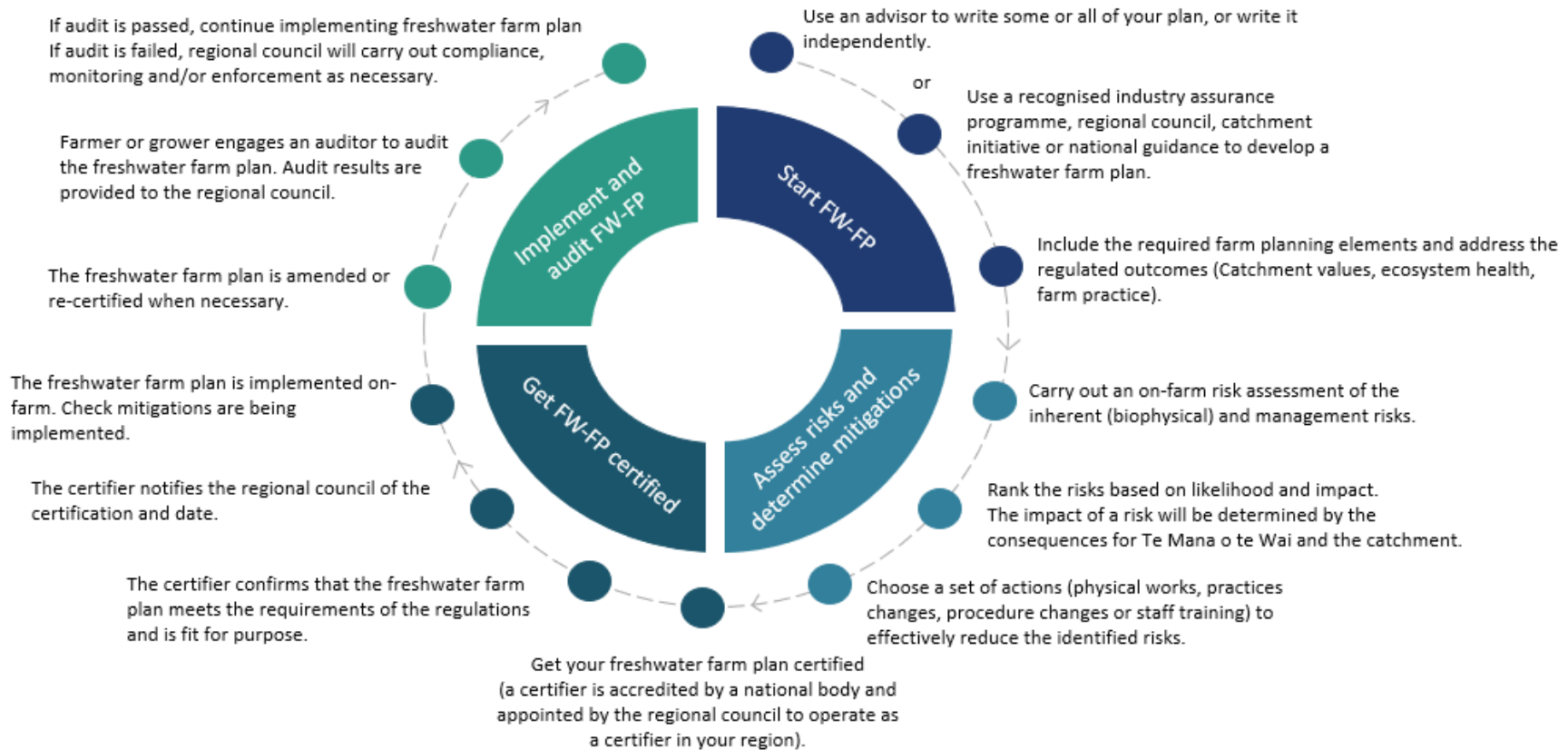
The options presented in this document have been analysed against four criteria: Effective, practical, gives effect to Te Mana o te Wai, takes into account the Treaty of Waitangi.

Please refer to the accompanying *Freshwater Farm Plans initial regulatory impact analysis of the proposed options* for further detail on this analysis.

Figure 2: Farmer and grower journey through the freshwater farm plan system

Farmer and grower journey through the freshwater farm plan system

Based on preferred options



Role of central government

- Design freshwater farm plan regulations
- Review and evaluate freshwater farm plan system

Role of regional councils

- Collate catchment context (initially the best available information)
- Work with tangata whenua to express catchment values and reflect Te Mana o te Wai
- Appoint auditors and certifiers
- Carry out compliance, monitoring and enforcement

Role of national accreditation body

- Ensure certifiers have adequate knowledge and competencies
- Train certifiers in relevant areas
- Define the scope of the roles
- Ensure a high standard of ethics in certifiers

3.1 Regulated outcomes

Freshwater farm plans should be outcome driven, risk based and farm specific. To achieve this, we propose an approach where regulated outcomes need to be achieved, but the precise detail of how they are achieved is largely left to the professional judgement of a certifier (with guidelines and practice standards to support decision-making). This gives farm operators and certifiers more flexibility to determine appropriate on-farm actions. It is important to note that one action can achieve multiple regulated outcomes.

To be effective, the regulations need to contain specific, clearly articulated outcomes. All regulated outcomes must be considered in every freshwater farm plan.³

The challenge is striking a balance between making freshwater farm plan outcomes general enough to be flexibly adapted for each freshwater farm plan and farm system, but specific enough to be measurable and enforceable.

We propose regulated outcomes covering:

- A. catchment values and context
- B. ecosystem health
- C. farm practice.

Outcome A: Reflecting catchment values and context

The health of a waterway is significantly determined by the cumulative effects of all land uses within a catchment. To achieve the *Essential Freshwater* goals, freshwater farm plans need to consider the local objectives and problems within their catchment and sub-catchment, and consider how on-farm activities impact these – rather than just focusing on the individual farm.

Including catchment context as a regulated outcome also allows a finer grain of detail about values and challenges to be reflected in freshwater farm plans. For example, this could include identification of significant sites to tangata whenua, local values or priorities, and local action plans to restore waterways or protect and enhance mahinga kai.

In this document the term ‘catchment values and context’ relates to the local area that the farm operates in, and the downstream impacts activities have on the receiving environment.

Outcome B: Ecosystem health

Freshwater farm plans are being introduced to improve protection for freshwater and freshwater ecosystems from possible adverse impacts of farming. If the freshwater farm plan includes an outcome related to ecosystem health, then freshwater farm plans can explicitly prioritise actions that benefit and potentially proactively restore freshwater ecosystem health. We intend to develop guidance to outline how a farm operator and certifier can define ecosystem health.

³ Section 217F (c) of the RMA requires the contents of a freshwater farm plan to “demonstrate how any outcomes prescribed in regulations are to be achieved”.

Outcome C: Farm practices that respond to environmental needs

Freshwater farm plans need to enable farmers to better manage and control the adverse effects of farming and growing activities on freshwater. They will require farmers and growers to adopt practices that avoid, remedy or mitigate the risks their activities pose to their waterways. Guidance is intended to be developed to support farm operators and certifiers on what practices are appropriate.

The combination of these three regulated outcomes, combined with the requirement for freshwater farm plans to reflect the content of regional plans, means that the Freshwater Farm Plan system can play a key role in giving effect to Te Mana o te Wai.

Options

Table 1 below presents two options for how the proposed regulated outcomes might be set in the regulations. Under Option 1, outcomes would be stated at a reasonably general level in regulations, and separate guidance on achieving these outcomes would be developed. Under Option 2, more detail on how to achieve the outcomes would be included in regulations.

Option 1 is our preferred approach because the increased detail provided by Option 2 appears to reduce its practicality and make it harder for freshwater farm plans to mesh with other regional council freshwater policies and objectives. We propose the detailed explanations in Option 2 be included in guidance to provide further clarity for implementation of the regulated outcomes without conflicting with other regulatory tools.

Table 1: Proposed options for regulated outcomes within freshwater farm plan regulations

	Option 1: Outcomes in regulations with additional guidance [preferred option]	Option 2: Outcomes in regulations with the below details specified in regulations
A: Reflecting catchment values and context	The freshwater farm plan is developed and implemented in a way that reflects catchment values and priorities.	The freshwater farm plan describes the catchment context and priorities. Risks and actions at farm scale are prioritised based on catchment priorities. If the regional council has identified any specific outcomes in national policy statements, regional plans or action plans this must be reflected in the freshwater farm plan.
B: Ecosystem health	The freshwater farm plan is developed and implemented in a way that reflects any relevant objectives for improving the health of the freshwater ecosystem identified by regional councils.	The freshwater farm plan identifies and addresses barriers to fish passage where necessary. The freshwater farm plan identifies practices which maintain a healthy habitat for species living in waterways. The freshwater farm plan identifies and enhances shading of streams where necessary. The freshwater farm plan proactively protects and improves wetlands where necessary.
C: Farm practices that respond to	Freshwater farm plans avoid, remedy or mitigate the adverse impacts of high-risk	<i>Nutrient management:</i> Nutrients are managed efficiently to minimise losses to water. Where applicable, nutrient losses do

	Option 1: Outcomes in regulations with additional guidance [preferred option]	Option 2: Outcomes in regulations with the below details specified in regulations
environment need	<p>farming activities (which must be identified and prioritised during the risk assessment).</p> <p>Consideration must be given to these areas:</p> <ul style="list-style-type: none"> • nutrient management • soil and erosion management • waterbodies including wetlands – beds, margins and inputs and their riparian protection • animal effluent • point source discharges • indigenous fish passage and spawning or fauna breeding sites • riparian management (including vegetation and shading of streams) • water use – domestic, shed, stock, and irrigation 	<p>not exceed maximum application limits and farm discharge limits.</p> <p><i>Soil management:</i> The condition and structure of soils are maintained or improved to minimise the movement of sediment, phosphorus, and other contaminants to water, including for critical source areas, and winter cropping.</p> <p><i>Waterbodies:</i> Waterbodies are managed to avoid damage to the bed and to appropriately protect their riparian margins, and to avoid the direct input of nutrients, sediment, and microbial pathogens.</p> <p><i>Animal effluent:</i> Animal effluent and manure is managed to minimise the risk of leaching and run-off.</p> <p><i>Point sources discharges:</i> Point source discharges are managed to minimise risk of losses to waterbodies including aquifers.</p> <p><i>Water use – domestic, shed and stock:</i> Farm water use is efficient and minimises risk to human health.</p> <p><i>Water use – irrigation:</i> The amount and timing of irrigation is managed to meet plant demand, minimise the risk of leaching and run-off and to ensure water use is efficient.</p>

Questions-regulated outcomes

6. Do you agree with the preferred option for how regulated outcomes could be described in regulations? If not, what is your preference?
7. What are the likely impacts and cost implications of the preferred approach?

3.2 Farm planning

Regulated ‘base information’

Much of the content of freshwater farm plans will be driven by the requirement to assess freshwater risks/impacts and identify actions to avoid, remedy and mitigate those risks/impacts.

However, the regulations can also prescribe other minimum content (‘base information’) that must be included, such as mapping information, farm ownership, farm system. More technical matters like data standards could also be prescribed (to ensure consistency in the way data is used and collected). We understand there are privacy concerns associated with farm data, this is discussed more in [section 7.2](#).

[Appendix 1](#) outlines proposals for this regulated base information.

Questions – regulated ‘base information’

8. Does the material in Appendix 1 cover all the base information that should be mandatory for inclusion in freshwater farm plans? If not, what else should be considered and why?
9. What are likely impacts and cost implications of the proposed requirements in Appendix 1?

Risk/impact assessment

RMA Part 9A section 217F requires the freshwater farm plan to “identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems”. We propose this is achieved via a risk/impact assessment of a farm.

A risk/impact assessment will consider all land that makes up the farm, the biophysical characteristics of the land (inherent risk), the management practices on the farm (management risk), and how these interact to impact on freshwater and freshwater ecosystems.

A risk/impact assessment process identifies, assesses, and prioritises the actual or potential adverse effects of activities carried out on-farm on freshwater outcomes, which will then guide the choice of actions to avoid, remedy or mitigate the identified risks/impacts. The risk/impact assessment needs to be transparent, generally produce similar results when applied across farms in similar circumstances, and provide an assessment of the relative severity of risk or impact.

We also propose the risk/impact assessment must consider the catchment values and context, to understand how the farm is likely to be contributing to downstream effects and how actions on farm can be prioritised to meet the catchment objectives.

We have developed two options. Option 1 is that the regulations state the minimum general requirements for a risk/impact assessment. Under Option 2 the regulations would prescribe a specific methodology to undertake a risk/impact assessment.

Option 1: Specify the minimum general requirements for a risk/impact assessment

One way to create a tailored system is to regulate the minimum requirements or ‘must haves’ of the risk/impact assessment methodology and provide guidance to support the interpretation of the regulations.

In this form, the regulations would set out minimum requirements for the risk/impact assessment such as:

- a process for identifying inherent (biophysical) and management risks to freshwater and freshwater ecosystems, recognising it is the interplay between these two risk types that characterise the overall risk to water quality and freshwater ecosystems – in most instances, this process is best started with the characterisation of the different land units on the property
- the relationship to the identified catchment values, context and outcomes
- a means of prioritising risks/impacts (eg, low, medium, high)

- a way to prioritise actions to address the highest risks/impacts first
- it addresses both mātauranga Māori and European values science when considering the risks

This allows for the use of a methodology appropriate to assessing risk/impact to freshwater, while providing flexibility to tailor the approach to what is most relevant on-farm. It would enable industry assurance programmes to adapt their existing approaches (that are targeted to their stakeholders) to incorporate the risk/impact assessment requirements.

This option could also lead to a wide variety in the approach taken to risk/impact assessment across the freshwater farm plan system. To help promote consistency in approach we would provide detailed guidance on what a 'good' risk/impact assessment looks like.

Option 2: Prescribe the methodology for risk/impact assessment

Another approach would be to prescribe in more detail a required methodology for risk/impact assessments for a freshwater farm plan, through the provision of a template.

This would create more consistency among freshwater farm plans but would limit the ability to tailor the risk assessment, and would require significant change by existing farm environment planning services to meet the new requirement which could slow down implementation.

In this approach a National Freshwater Farm Risk Assessment would need to be developed and incorporated by reference into the regulations. This would create a template for completing a risk assessment, setting factors of the farm system to be assessed, minimum data sets to be collected and prescribing a matrix for assessing the likelihood and impact of a risk.

If Option 2 is not progressed, some of this information could be included in guidance proposed under Option 1.

Preferred option

Option 1 is preferred because it allows for flexibility to adopt the most effective methodology for a farm risk/impact assessment. This flexibility also allows for adapting risk assessment approaches as and when new technologies and research become available. Option 1 would require both the inherent (biophysical risks) and management risks to be considered. Comprehensive guidance would accompany the regulations to demonstrate what should be considered when carrying out a risk/impact assessment. This option is more suitable for incorporation into existing industry assurance programmes, which would leverage the good work already occurring in farm environment planning and create a smoother transition.

Questions – risk/impact assessment

10. Do you agree with our preferred option? If not, what is your preference?
11. What information should be included in guidance to inform the risk/impact assessment, and why?
12. What are the likely cost implications of a risk/impact assessment? Is a flexible approach more cost effective?

Identifying actions to avoid, remedy or mitigate risks/impacts

Once risks/impacts have been identified and prioritised, appropriate actions need to be identified and prioritised to address those risks/impacts.

There are many ways to do this, and the chosen actions would be tailored to the farm system accounting for co-benefits and costs. Actions should be prioritised to reduce the greatest risks/impacts first. As noted above, catchment context and values help inform what the high priority risks/impacts are.

The actions need to be clear, measurable and time-bound.

Appropriate actions can encompass a wide range of investments or procedures relating to the farming system, from stock management or nutrient management through to engineered solutions such as sediment traps or dairy effluent management systems. In some high-risk situations, effective solutions may require a range of actions.

Actions should be considered in the context of the individual farm, the farm objectives and the freshwater farm plan.

For a freshwater farm plan to meet the statutory requirements for certification, the certifier must be satisfied:

- the identified actions appropriately address the identified risks/impacts, and
- the actions proposed are not less stringent than anything set in national or regional regulations, resource consent conditions or rules.

We have identified three options, of which option 3 is preferred.

Option 1: Certifier's discretion and professional judgement

Under this option, regulations would include high-level factors to consider when determining whether appropriate actions had been identified, but would otherwise rely on the certifier's professional judgement to determine the appropriateness of the specific actions.

When determining if an action is appropriate there are several things that should be considered, including whether the action is:

- suitable (to the enterprise and/or receiving environment)
- effective (reduces contaminant load)
- cost effective (cost to benefit ratio and whether there are any co-benefits)
- long lasting (the effectiveness of some mitigations reduces with time).

It is also important for the certifier to consider all the actions proposed and confirm they would effectively avoid, remedy or mitigate the most significant risks/impacts identified in the risk/impact assessment. The priority these actions are given and the timeframes for them to be carried out will be determined by the prioritisation of risk/impact (as above). The next section provides further discussion on timeframes to implement actions.

There would need to be evidence the proposed actions work to reduce environmental risk. This could be science-based evidence, local practical experience of what has worked in the past or information about mātauranga Māori relating to the land.

The actions would need to be clearly defined, and could include a mix of:

- physical works (eg, fencing, tree planting, shifting tracks, reticulate stock water etc)
- practice changes (eg, changing from conventional cultivation to direct drilling or minimum tillage, reducing fertiliser rates)
- procedure changes (eg, developing or updating dairy effluent procedures)
- staff training so all staff are aware of the actions needed on farm.

Option 1 requires a high degree of competency of certifiers (and any farm advisors supporting farm operators to prepare freshwater farm plans) to assess whether actions chosen are appropriate for addressing the relevant risks/impacts. Testing this competency, and developing training to reach the necessary competency, would need to form part of the process to accredit certifiers.

The advantage of this option is that it will allow for new technologies and farming techniques that reduce impacts on freshwater to be incorporated as they become available and proven.

Considerable guidance would be needed to provide information on options for actions and emerging innovations. This information would be publicly available. It would be essential information for farm operators and their advisers in developing effective freshwater farm plans that meet certifiers' expectations. Decision support tools are currently in use or in development that could support this approach.

Another benefit of this approach is that the process for determining actions is tailored to the farm-specific risk/impact assessment, and the certifier can use their professional discretion and knowledge to assess if the actions in the freshwater farm plan would be effective (and therefore appropriate).

However, this option may result in a variety of approaches and there may be a lack of consistency in terms of the urgency and ambition of the actions included in freshwater farm plans.

Option 2: Detailed approach through prescribed practice standards

To provide more consistency across the farm planning system, a high level of detail could be included in regulations (probably practice standards incorporated by reference) as well as a prescribed list of actions for certain circumstances.

In this option a certifier would have to ensure that high priority risks were addressed by one or more actions from the list in the regulations.

This list would be based on current information of known actions to reduce risks/impacts. Some of the criteria described in Option 1 could be used to determine which action was most suitable.

This option would provide more consistency across the freshwater farm plan system and may provide more certainty that high-risk activities are well controlled. However, it may not allow for a tailored approach based on a farm's unique circumstances that would efficiently target efforts on farm to achieve the best results. It may also stifle innovation by limiting the options available.

A process would need to be put in place to develop, review and make recommendations on standards to be incorporated by reference (e.g., standards for managing intensive winter grazing, standards for erosion control, standards for excluding stock from waterways). Under this option, these standards would need to be updated in regulations as they continued to evolve over time.

Option 3: A hybrid between Option 1 and Option 2

Option 3 is a hybrid of the first two options. Higher-risk activities (such as intensive winter grazing) or potentially other activities where the Government is seeking a more direct level of control (such as stock exclusion outside the low-slope map areas), would need to use a more prescribed methodology to identify actions.

Lower-risk activities or activities that require a great deal of tailoring on-farm (such as sediment reduction generally) would be left to professional judgement as described in Option 1.

Preferred option

Option 3 is the preferred option as it allows for the most flexible approach, tailored to the risks and needs of the farm system. This option also allows for the most innovation.

Option 3 has an advantage over Option 1 in that it allows for targeted application of actions to address the known highest risks.

Questions – identifying actions

13. Do you agree with our preferred option? If not, what is your preference?
14. What are the likely impacts and cost implications of the preferred options?

Determining timeframes to implement the actions identified in the freshwater farm plan

Once mitigations for on-farm risk have been determined, they must be implemented. The timeline (or schedule) for implementing actions is key to achieving the goals of the freshwater farm plan system, and needs to be reasonable and affordable for farmers and growers. Scheduling of actions also recognises that there will be capacity constraints for some key services needed to implement certain actions (eg, fencing contractors, planting contractors, plant supplies).

The certifier will need to be satisfied that any proposed schedule to implement actions is 'appropriate' in the farm's circumstances.

We propose to apply a general test of 'reasonableness', leaving the question of what is reasonable for certifiers to determine (in discussion with the farm operator and recognising catchment values and context). Guidance would need to be provided as to how to apply such a test, and a quality assurance/moderation process would be needed to ensure robust decisions were being made.

Questions – implementation timeframes

15. Do you agree with our preferred approach? If not, what is your preference?

3.3 Certification

Part 9A of the RMA sets out the specific functions of certifiers and auditors and in general what steps they must take when exercising these functions. However, the legislation does not include many matters of detail, such as who can be a certifier or auditor, how they are appointed, who engages and pays them, how disputes are resolved, what the timeframes are for certification and auditing, and how the quality of decision-making across the system will be assured.

Under Part 9A, freshwater farm plans must be certified and audited by people appointed to those roles by regional councils.

Certifiers must be adequately skilled and provide consistent services across New Zealand. They need to be able to identify environmental risks/impacts in a farm system context, and in relation to the catchment the farm sits in. Certifiers need to understand farming systems, the farm operator's aspirations, have a good knowledge of both national and regional requirements, and operate within a professional code of ethics.

Process for accrediting and appointing certifiers in the freshwater farm plan system

We identified two options for how certifiers could be accredited and appointed. Option 1 is national accreditation of certifiers against standards set in regulations, and subsequent appointment by regional councils to operate in a region. Option 2 leaves appointment solely to regional councils and does not implement national standards.

Option 1: National accreditation of certifiers followed by regional council appointment

Under this option, all certifiers would be nationally accredited on a common set of knowledge and skills. National accreditation by a new professional body would provide assurance of certifier professionalism and competence across New Zealand. The national body would be responsible for the complaints process and a review process.

Regional councils would then appoint an accredited certifier to operate in their region, as required under Part 9A of the RMA.

For regional appointment, the certifier would be assessed on their knowledge and understanding of the rules and catchment context settings in the region/s they would operate. Regional councils would develop, or help develop, these regional assessments.

Setting up a national professional body and accreditation scheme will take some time, meaning a transitional pathway, such as interim recognition, may need to be established.

Option 2: Regional accreditation and appointment of certifiers (no nationally set standards)

Under this option each regional council would develop their own regional accreditation and appointment process. This system would ensure that appointed certifiers would have the knowledge and skills to operate within the regional context. This option would likely be more costly to run and does not support a nationally consistent framework.

Preferred option

Option 1 is our preferred option. The proposed two-tiered approach allows for many of the administrative and oversight aspects of the accreditation programme to be conducted at national level while enabling regional control of the appointment process. A national accreditation body could also manage the regional assessment process if regional councils provided the relevant content. A national accreditation system is more likely to ensure consistency in freshwater outcomes across New Zealand and this option is also likely to make it easier for certifiers to be appointed across multiple regions since most of their necessary competencies would have been assessed nationally.

Questions – certifier accreditation and appointment

16. Do you agree with our preferred option? If not, what is your preference?
17. What are the likely impacts and cost implications of the preferred approach?

More detail around the role of the certifier

The certifier's statutory role is to determine whether they are satisfied that a freshwater farm plan complies with the legislative requirements.

However, a key question is whether certifiers can also play a role in the development of the content of a freshwater farm plan, or whether the certifier should be completely independent.

Note that neither option set out below precludes the farm operator from developing the freshwater farm plan by themselves or with relevant available support (eg, farm advisors, farm shed workshops, published guidance).

Option 1: A certifier can certify the freshwater farm plan and be involved in its development

In this option, the certifier can be directly involved in the development of freshwater farm plan content and certify this plan. This is more practical and less costly than Option 2. It is also likely to lead to less re-working of draft plans, since the certifier's expectations for what should be in the plan can be conveyed directly to the person preparing the plan. However, this option may create a conflict of interest where the certifier will have two roles: advisor and certifier.

There is arguably a risk of 'client capture', with farmers or growers potentially seeking out certifiers that will certify 'easy to achieve' plans that are not necessarily those that would achieve the best environmental outcomes.

If this option were chosen, a robust quality assurance process would be essential to mitigate these risks. In addition, the regulations or the professional standards under which certifiers

operate could include an explicit ethical requirement that controls and/or limits a certifier's involvement in the development of the plan, to further maintain a robust certification mechanism.

It would also be possible to limit the number of times a certifier can re-certify a freshwater farm plan (re-certification is discussed below). This would mean that every freshwater farm plan would eventually be subject to consideration by a different certifier, further reducing the risk of 'client capture'.

Under this option there would be no requirement for certifiers to develop freshwater farm plan content. If a certifier wished to remain impartial and only certify a plan prepared by a farm operator and/or in conjunction with an advisor, they would be free to do so.

Option 2: A certifier can only certify the freshwater farm plan and cannot be involved in its development.

Under this option, the certifier's only function would be to certify plans against the required legal standard. They would be prohibited from helping develop the freshwater farm plan content with the farm operator beyond giving advice of a general nature.

This option creates a clear separation between the freshwater farm plan preparer and the certifier. This provides for greater transparency of process and reduced potential for conflicts of interest.

However, this option may have a greater cost burden for farmers. It is also likely to require more of the farm operator's time, working through content with both an advisor (if using one) and a certifier. There is also risk of divergent understanding of what a 'certifiable' plan is between farm advisor and certifier.

This option is likely to increase workforce demand when capacity/capability is already low.

Preferred option

Option 1 is preferred, because it enables the certifier to better understand the farmer's objectives and goals for the farm, how they assess risk, and how they mitigate the adverse effects. As noted above, Option 1 would require robust ethical safeguards and independent quality assurance processes.

Questions – role of certifier

18. Do you agree with the following assumptions? If not, why not?
 - a. In most circumstances certifiers will need to 'walk the farm'.
 - b. Certifiers can call on expert advice for matters outside their areas of expertise.
19. Do you agree with our preferred option? If not, what is your preference?
20. Should there be a limit to the number of times a certifier can re-certify a freshwater farm plan for the same farm operator?
21. What are the likely impacts and cost implications of the preferred approach?

Engaging and paying for a certifier

We propose that the farm operator directly engages and pays for the services of certifiers (from a list of certifiers appointed to operate in their area). It is the simplest and most efficient approach from an administrative point of view, especially for regional councils. There is a risk of client capture under this approach, which could affect the quality of the plans, the delivery of environmental outcomes and cost-effectiveness of the system.

Questions – engaging and paying for a certifier

22. Do you agree with our preferred approach? If not, what is your preference?
23. What are the likely impacts and cost implications of the preferred approach?

Regular review and re-certification

The regulations will need to specify how often a freshwater farm plan must be reviewed and re-certified. We have set out two options for frequency of re-certification in ‘business-as-usual’ circumstances. Neither option prevents a farm operator reviewing their freshwater farm plan before the specified re-certification period is reached. If a farmer or grower is on track with the implementation of actions and no major changes have occurred, re-certification will be a simple process.

Option 1: Freshwater farm plans are re-certified every three years

Under this option, freshwater farm plans would automatically come up for review and re-certification every three years. In many cases, re-certification will be a simple review process to ensure the plan is still accurate and fit for purpose.

Advantages of this option include:

- a higher quality plan through regular review
- the plan becomes a ‘living document’, which incorporates changes in circumstances and knowledge
- Farmers and growers are less likely to ‘leave the plan on the shelf’.

The disadvantages are that actions identified in the plan may not be given sufficient time to run their course before review, and the additional cost to farms. This option could also increase pressure on certifier capacity, although we expect the freshwater farm plan system to be rolled out nationally before the first tranche of freshwater farm plans came up for review and re-certification.

Option 2: Freshwater farm plans are re-certified every five years

Under this option freshwater farm plans would automatically come up for review and re-certification every five years. This would allow more time to complete the actions in a plan before a review and the plan would be audited more than once to ensure actions are being implemented. It would also reduce costs on farmers. However, this longer review and re-certification period risks plans becoming out-dated and possibly disregarded.

Preferred option

Option 1 is our preferred approach because it ensures freshwater farm plans are updated regularly, reflecting changes to the farming operation and innovations in avoiding, remedying, or mitigating farm risks.

Questions – review and re-certification

24. Do you agree with our preferred option? If not, what is your preference?
25. What are the likely impacts and cost implications of the preferred approach?

When a farm would need a new freshwater farm plan

When there is a change in circumstances sufficient to make the existing freshwater farm plan no longer fit for purpose, farmers would need to prepare a new freshwater farm plan and have it certified. We propose these triggers for requiring a new freshwater farm plan:

- major change in farming system
- change in land use
- change in ownership or farm operator where the new owner or operator does not take over the freshwater farm plan from the existing owner.

Outside these situations we would generally expect freshwater farm plans to be kept fit-for-purpose, either through the regular review and re-certification process, or the addendum and amending details processes described below. Regional councils will be responsible for monitoring and ensuring these processes are carried when appropriate.

When an addendum would be needed

Adding some kinds of new or updated information would require an addendum to a freshwater farm plan. We intend for this process to be low cost and easily administered; although it is still to be decided whether a certifier would need to sign off an addendum.

We propose the following triggers for requiring an addendum:

- additions to the farm area, such as leasing additional land
- new activities (such as adding an area of horticultural production) within an otherwise largely unchanged farming system.

Amending details in a freshwater farm plan

Updating the administrative details of an existing freshwater farm plan would be a straightforward amendment (and would not need re-certifying unless the new farm operator wishes to).

We propose the following triggers for requiring an amendment of details:

- change in farm operator (eg, sale of a farm) where the new operator intends to carry on a farm system that is substantially the same and the freshwater farm plan has been picked up by the new operator

- change in owner or lessee of land if a freshwater farm plan is also transferred.

Questions – new plans, addendums and amendments

26. Do you agree with the proposed categories and triggers for new freshwater farm plans, addendums, and amendments? If not, what is your preference?
27. What are the likely impacts and cost implications of the preferred approach?

Dispute resolution

A dispute resolution process ensures a reasonable solution to disputes between parties, such as farm operators and certifiers.

We expect that most disputes will be resolved through discussion and finding alternative solutions. However, in some instances where the risks are significant, or identified actions are costly (eg, where these involve significant capital investment by the farmer or significant change to farming systems), disputes may require a more substantive process.

We propose a three-stage dispute resolution process to be managed by the national certification body. Elevation to the next level occurs if the dispute cannot be resolved at that stage.

- a) a discussion between farm operator and certifier to resolve a dispute
- b) mediation between farm operator and certifier
- c) a formal arbitration process.

Questions – dispute resolution

28. Do you agree with our preferred approach? If not, what is your preference?
29. What are the likely impacts and cost implications of the preferred approach?

Complaints process

The national body would be responsible for establishing a process to resolve complaints and disciplinary matters for certifiers.

If a national accreditation body is not the preferred option during consultation, the complaints process would be managed by regional councils.

Questions – complaints process

30. Do you agree with our preferred approach? If not, what is your preference?
31. What are the likely impacts and cost implications of the preferred approach?

Removal of a certifier's accreditation

The regulations will outline a mechanism for removal of a certifier's accreditation. This will ensure that certifiers who do not maintain appropriate professional and ethical standards and technical competence, can no longer operate as certifiers.

The proposal is that:

- the national body is responsible for accreditation of certifiers and has the authority to revoke this accreditation
- the national body establishes a code of conduct and professional standards for freshwater farm plan certifiers. This would establish under what circumstances a certifiers' accreditation could be revoked
- regional councils must be informed of any decision to revoke accreditation from a certifier
- regional councils may make a complaint to the national body against a certifier
- regional councils could revoke the appointment of a certifier to operate in their region.

Questions – removal of accreditation

32. Do you agree with our preferred approach? If not, what is your preference?

33. What are the likely impacts and cost implications of the preferred approach?

3.4 Audit

Overview of the audit process

The role of the auditor is set out in Part 9A of the RMA to “audit the farm for compliance with the certified freshwater farm plan.” Part 9A allows the auditor to establish a timeframe for compliance and provide recommendations on how a farm operator can achieve compliance. Audits must be completed by an auditor appointed by the regional council.

The role of the auditor is different from that of the certifier. The auditor's role is limited to auditing the farm for compliance with the freshwater farm plan (ie, have the actions listed been completed) – it does not include reviewing the quality and robustness of the freshwater farm plan or setting the actions to be undertaken.

Individuals could be both a certifier and an auditor if they meet the standards for both however, they it is proposed that they could not certify and audit the same freshwater farm plan.

Process for accreditation and appointment of auditors

While there are already professional auditors across different sectors, we need to outline in the regulations how freshwater farm plan auditors would be accredited and appointed. There are two options:

- Option 1: regional councils appoint auditors who have already been accredited by an existing accreditation body (such as JAS-ANZ).

- Option 2: establishing a specific national accreditation scheme for freshwater farm plan auditors, from which regional councils would appoint auditors to operate in their region.

Option 1: Regional councils appoint auditors who are accredited by an existing accreditation body

This option leverages the considerable infrastructure that already exists to oversee and accredit professional auditors.

Under Part 9A, regional councils are required to appoint freshwater farm plan auditors to operate in their regions. Central government would work with regional councils to ensure that auditors have any specific competencies necessary to undertake freshwater farm plan audits.

For example, while many auditing skills are transferable between different types of organisations and sectors, we consider that a reasonable knowledge of farming systems and practices would be needed for auditors to properly undertake a freshwater farm plan audit.

Option 2: A national accreditation system for auditors, with regional council appointment

Under this option, all auditors would first need to be accredited by a national accreditation body using a common set of standards, before being appointed by a regional council to operate in their region. This is similar to what the preferred option for certifiers.

Preferred option

Option 1 is preferred, as it leverages existing professional standards and entities, reducing administration and set-up costs and increasing the pool of auditors available to undertake the work. Under Option 1, any specific knowledge or competencies needed for a freshwater farm plan audits can be provided for through the council appointment process (probably based on nationally set guidance).

Questions – accreditation and appointment of auditors

34. Do you agree with our preferred option? If not, what is your preference and why?
35. What are the likely impacts and cost implications of the preferred approach?

Determining audit frequency

Regulations will set out the required frequency of audit. We propose a risk-based approach to setting audit frequency.

Initially, all farms would be considered high-risk until they passed their first audit. We propose that all farms be audited within 18 months of their freshwater farm plan being certified. A change in farm operator would also trigger the need for an audit within 18 months.

After that, farms that pass audit with no or only minor non-compliance would have the audit extended to a period of not more than three years.

Farms with significant but not serious non-conformities would need to be re-audited within 12 months.

Farms that fail audit with serious non-compliance would need to be re-audited within 6 months.

The auditor would determine the required re-audit frequency as part of the auditor's report to council

We also propose that regional councils retain discretion to increase audit frequency should circumstances require it, for example within catchments of poor environmental health, or at high risk of environmental degradation.

Approved industry assurance programmes could impose more frequent audits than laid out above, but not less frequent.

Questions – audit frequency

36. Do you agree with our proposed approach for determining audit frequency? If not, what is your preference and why?
37. What are the likely impacts and cost implications of the preferred approach?

Engaging and paying for an auditor

We propose that farmers directly engage and pay for the services of auditors (from a list of auditors appointed to operate in their area). This would allow farm operators to select an auditor who is already operating in their area and/or who may have other audit functions on their farm (for example as part of an industry assurance programme or for food safety).

This is also the most efficient approach from an administrative point view.

This approach could create a perceived risk of client capture, although as discussed in [engaging and paying for a certifier](#) there would be quality assurance and professional standards in place to address such risks. Further, direct engagement of auditors by those being audited is used successfully in many areas of regulation, including where there is high risk to human health, such as in food safety.

Questions – engaging and paying for an auditor

38. Do you agree with our proposed approach? If not, what is your preference and why?
39. What are the likely impacts and cost implications of the preferred approach?

Section 4: Quality assurance of freshwater farm plans

The quality assurance mechanism is a key part of the freshwater farm plan system. Its purpose is to ensure that certified freshwater farm plans are of an acceptable standard to achieve the intended freshwater outcomes.

We propose the freshwater farm plan quality assurance mechanism is overseen by a national public entity, such as a Ministry or other Crown entity, in partnership with regional councils and tangata whenua representatives.

In the case of quality assurance of certifiers, this would largely be the responsibility of the national accreditation body.

Quality assurance would be administered and coordinated nationally but quality checks (such as randomly selecting freshwater farm plans for review) would be carried out by regionally-based assessors.

Regional councils would have discretion to trigger the quality assurance process should they identify concerns with how the freshwater farm plan system was operating in their region. We propose the quality assurance system would be funded jointly by certifiers (via the national accreditation body), regional councils and central government.

Questions – quality assurance

40. Do you think quality assurance should be undertaken by a national body, with checks undertaken regionally?
41. What should the triggers be for quality assurance checks?
42. What are the likely impacts and cost implications of the proposed approach?

Section 5: Enforcement mechanisms

The regulations will outline how the enforcement mechanism of the freshwater farm plan system will operate.

5.1 Role of auditors

An auditor is required to report significant non-compliance of a farm operator with the freshwater farm plan regulations to the relevant regional council. The auditor has no enforcement powers or further role in the enforcement process.

5.2 Role of regional councils

The role of regional councils in enforcement is laid out in Part 9A of the RMA. It requires regional councils “to monitor compliance by farm operators with their duties under this Part and with any requirements in regulations”. Regional councils can employ all the tools available to them under the RMA to enforce compliance with the freshwater farm plan regulations. Regional councils have the discretion to decide whether to impose an infringement fee for non-compliance on a farm operator.

5.3 Proposed offences

The regulations will outline offences for farm operators for non-compliance with duties under both Part 9A of the RMA and the regulations themselves.

The regulations will also outline the infringement fees that are payable if a farm operator is found to have committed an offence under the freshwater farm plan regulations. We are proposing an infringement fee structure based on the significance of the offence. In addition, the fee would either be a daily rate or a fixed fee, based on the offence. We are interested in feedback on the proposed amounts.

Table 2: Proposed offences and fees for non-compliance

Proposed offence	Proposed fee range
Farm operator does not have a certified farm plan within the specified timeframe	\$1,000–\$1,500
Farm operator does not have an audited farm plan within the specified timeframe	\$1,000–\$1,500
Farm operator does not seek re-certification of their freshwater farm plan in line with the re-certification triggers	\$1,000–\$1,500
Farm operator does not implement actions in line with the agreed timeline	\$1,000–\$1,500
Farm operator does not lodge an addendum or update details	\$500

Questions – enforcement mechanisms

43. Are the proposed offences and infringement fees appropriate? If not, what would be appropriate?

Section 6: Implementation options

6.1 Phasing and staging

We anticipate the regulations will apply no earlier than in the first half of 2022. Freshwater farm plans will not be required across the country all at once and it will take time for every farm in New Zealand to have a certified freshwater farm plan. This is due to the limited capacity of certifiers, auditors, advisors, and regional councils to implement the freshwater farm plan system.

We are proposing two options for the rollout of freshwater farm plans – a collective approach (catchment by catchment) or an individual approach (based on farm characteristics and risks).

Option 1: Catchment-by-catchment prioritisation

This approach would see freshwater farm plans phased in on a catchment-by-catchment basis. Catchments would be determined in consultation with the regional council, and could be a sub-catchment or freshwater management unit (FMU). The selection of catchments would be based on set criteria.

This approach would align well with the proposed regulated outcome of reflecting the catchment context in freshwater farm plans. Catchment context documents can be developed by regional councils prior to freshwater farm plans being required in a catchment. Community engagement in the catchment areas can add value to the freshwater farm plans and create an atmosphere of social pressure to improve practice.

This approach would allow efforts to be targeted to benefit the catchment. This aligns well with Te Mana o te Wai, as well as increasing the likelihood of the cumulative impacts of mitigations implemented through freshwater farm plans leading to meaningful improvement in the receiving environments.

A catchment-by-catchment approach should simplify compliance, monitoring and enforcement as it would be clear to farmers, growers and regional councils when freshwater farm plans are required.

An unintended consequence of this approach would be that low-risk farms in prioritised catchments would require freshwater farm plans before high-risk farm systems in lower prioritised catchments.

Option 2: Prioritisation by farm characteristics and risks

This option would base the prioritisation of the requirement to have a freshwater farm plan on the characteristics and risks of individual farms. Characteristics could include farm size, farm system (e.g., dairy, horticulture), farm activity (intensive winter grazing, irrigation), or current farm environment plan status. Prioritisation of farm characteristics would be based on criteria that are still to be determined.

This approach would allow for precise targeting of highest risk farming practices. However, it would be a complex roll-out and may make it difficult for farmers and growers to understand when and where the regulations apply, and difficult for regional councils to monitor compliance.

Preferred option

Option 1 is the preferred option, as it embeds a catchment context focus into the implementation of freshwater farm plans, and it allows for greater coordination of resources (information, guidance, catchment information, upskilling of farmers, growers, advisors, certifiers, and auditors).

Questions – implementation

44. Do you agree with our preferred option? If not, what is your preference and why?
45. Should we explore whether it should be possible for farmers and growers to opt into the freshwater farm plan system?
46. What are the likely impacts and cost implications of the preferred approach?

6.2 Understanding catchment values and context

If incorporating catchment context in freshwater farm plans is to be practical, there needs to be a process to bring the relevant information together in an accessible format for farm operators and certifiers. We think regional councils, partnering with tangata whenua, are best placed to achieve this.

We also do not consider that individual farmers or growers should shoulder the burden of identifying catchment values and context. It is not reasonable to expect farm operators and/or certifiers to assimilate such a wide amount of information for incorporation into a freshwater farm plan.

Initially, regional councils will need to collate the best available information and make it accessible for farm operators and certifiers. The information should be clearly expressed and able to be understood by farmers and other stakeholders.

Farm operators and certifiers would then be able to refer to the relevant catchment context information when designing and certifying freshwater farm plans.

Over time, this collated catchment context information could become a one-stop-shop for farmers to understand their catchment's values and the related prioritisation of actions needed at the farm level. It would bring together updated regional plans, action plans, catchment data analysis and community priorities.

Making catchment context information publicly available will help make the freshwater farm plan system transparent and trusted.

Question – understanding catchment values and context

47. Should we consider any other ways to support farmers, growers and certifiers to understand and incorporate catchment values and context?

Section 7: Reporting and review

Data from freshwater farm plans could inform environmental reporting and allow farmers and growers to assess the success of the actions they are taking on farm to improve freshwater. Over time, this will allow farmers, growers and regional councils to refine the actions they are taking to further improve water quality.

Reporting on the impact of the freshwater farm planning system will be of interest to many including tangata whenua, farmers and growers, industry bodies, catchment groups, consumers in New Zealand and overseas, the financial sector, and will help regional and central government as regulators.

We also propose a review of the freshwater farm plan system in five years.

7.1 Collection of data from freshwater farm plans

A key question is what data could be collected from the freshwater farm plan certification and audit process to ensure councils have the information they need to undertake compliance, monitoring and enforcement, and to help report on and evaluate the system.

Data will likely need to cover three broad areas:

- numbers and coverage of certified freshwater farm plans
- numbers of certified freshwater farm planners, certifiers, and auditors
- implementation and evaluation of on-farm actions.

Our expectation is that over time, freshwater farm plans will be digital rather than paper based. Any material that the regulations require to be reported from the freshwater farm plan certification and audit processes will need to be reported digitally.

We acknowledge that reporting on indicators needs to be done with care for privacy and commercial sensitivity. Possible priority areas to be regulated for reporting nationally include:

- length of waterways with stock excluded
- length of waterways with riparian areas planted
- erodible land treated
- wetland areas protected.

Work is needed to identify how precisely any such indicators could be specified. It will be critical to have agreed definitions of key terms (data standards) so that there is consistency in how the information is recorded, used and interpreted. This will also allow data captured for freshwater farm plans to be applied to other uses such as greenhouse gas reporting. Aligning reporting requirements is a key objective to reduce the reporting burden on farmers.

Questions – data collection

48. What are your thoughts on the proposed indicator areas for evaluating the difference the freshwater farm planning system is making to water quality and ecosystem health?
49. What other information should we consider, and why?
50. What are the likely impacts and cost implications of this approach?

7.2 What regional councils report publicly

The proposal is for regional councils to report selected information to show progress of the freshwater farm plan system. This transparency will help build tangata whenua, public and consumer confidence in the system.

Disclosure of any information will be consistent with the obligations under the Privacy Act 2020, the Official Information Act (OIA) and the Local Government Official Information and Meetings Act 1987 (LGOIMA).

To protect the privacy of farm operators, data that is reported publicly will be aggregated where possible. This could include aggregating data down to groups of farms by catchments or regions.

Questions – reporting publicly

51. Do you agree with our preferred approach? If not, what is your preference and why?
52. Is there any information in a freshwater farm plan that you would not want to be shared publicly? For what reason?

How to have your say

The Government welcomes your feedback on this consultation document. To ensure your point of view is clearly understood, you should explain your rationale and provide supporting evidence where appropriate.

Timeframes

This discussion document was published on 14 July 2021. We are accepting submissions via [the online submission tool](#) from 26 July until 12 September 2021. For more information, contact freshwaterfarmplans@mfe.govt.nz.

Following the end of consultation, we will publish a summary and make all submissions publicly available on our website. We cannot reply to individual submitters.

We will continue to work with iwi/Māori and affected stakeholders to gather information and refine the thinking on preferred options for the freshwater farm plan regulations. This consultation document is part of ongoing engagement.

The freshwater farm plan regulations will likely take effect in the first half of 2022

This is the proposed timeline for freshwater farm plan regulations and the staged roll-out of plans:

- refinement of options and development of regulations from the end of consultation to early 2022
- the proposed regulations would come into force in the first half of 2022, if agreed by Ministers
- the freshwater farm plans will be gradually rolled out across New Zealand – the exact date farmers require certified freshwater farm plans may vary across the country.

How to make a submission

You can send us your comments in two ways.

- via Citizen Space, our consultation hub, available at <https://consult.environment.govt.nz/>
- Write your own submission.

If you want to provide your own written submission you can provide this as an uploaded file in Citizen Space.

We request that you don't email or post submissions as this makes analysis more difficult. However, if you need to please send written submissions to Freshwater Farm Plan regulations consultation, Ministry for the Environment, PO Box 10362, Wellington 6143 and include:

- your name or organisation
- your postal address

- your telephone number
- your email address.

If you are emailing your submission, send it to freshwaterfarmplans@mfe.govt.nz as a:

- PDF
- Microsoft Word document (2003 or later version).

Submissions close at 5pm, 12 September 2021.

For more information

Please send any queries to:

Email: freshwaterfarmplans@mfe.govt.nz

Postal: Freshwater Farm Plan regulations consultation, Ministry for the Environment,
PO Box 10362, Wellington 6143

Publishing and releasing submissions

All or part of any written comments (including names of submitters), may be published on the Ministry for the Environment's website, environment.govt.nz. Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting of both your submission and your name.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to the Ministry for the Environment (including via email). Please advise if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 2020 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including the Ministry for the Environment. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in relation to the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

Appendix 1: Proposed regulated ‘base information’ of freshwater farm plan and guidance

Draft proposals for what the freshwater farm plan regulations would <u>require</u> all plans to contain	Additional information that could be contained in supporting guidance
Property and business details	
Farm business name, address and geospatial location of the farm business	<p>Map showing farm boundary (including leased land); reference to title and land parcels; and relevant digital farm business identifiers, such as NZBN, Fonterra supply number.</p> <p>Run-off blocks on land not owned by the business (and being managed by a different farm operator) will need to be part of a separate freshwater farm plan prepared by the applicable farm operator. However, the main freshwater farm plan will need to reference any such arrangements.</p>
Name and contact details of the farm operator	<p>Farm operator means the person with ultimate responsibility for the day-to-day operation of the farm. This is the person responsible for preparing the freshwater farm plan, submitting the plan to a certifier for certification; ensuring the farm operates in compliance with the plan; and arranging for audit of the plan (see section 217E of Part 9A of the RMA).</p>
Name and contact details of the owner(s) of the land covered by the freshwater farm plan (where different from the farm operator).	<p>Landowner likely to change less frequently than the farm operator, especially for leased land.</p>
Total farm area (ha), effective farm area (ha), irrigated farm area (ha)	<p>Effective area is the operational areas of the farm (excludes houses, raceways, etc.)</p>
References to existing resource consents	<p>Consent number and the nature of the consent. Farm planner can include reference to conditions from the consent in the freshwater farm plan where relevant.</p>
<p>Guidance needs to encourage the risk assessment process and identification of mitigation actions to identify applicable national requirements in the Freshwater NES and stock exclusion regulations (eg, intensive winter grazing of forage crops; wetlands; fish passage, fertiliser reporting) and any applicable regional council rules.</p>	
Nature of the farming activities undertaken	
Identification of the predominant farming activities (eg, dairy, sheep, beef, deer, cropping, arable, horticulture, other). Provide for primary land use and if applicable secondary land use.	<p>This will help reporting of numbers of certified freshwater farm plans in a given catchment or region by sector.</p>
<p>Guidance Freshwater farm plan should include a high-level summary of the farming operation. Information on stock class and numbers, irrigation (how much, type, water source), support blocks, effluent management, crop area and types, climate data, soils and topography. These things can be dynamic, so the summary needs to be a high-level overview.</p>	

Farm information and maps

Map(s) of the farm (including owned and leased paddocks that are managed as a single economic unit) that clearly show the following natural and man-made features.

Natural environment:

- waterways, lakes, wetlands and riparian areas
- significant indigenous freshwater biodiversity and habitat
- mahinga kai sites
- any covenants
- farmed (grazed and cropped) areas including:
 - soil type
 - land slope
 - land management units
 - critical source areas.

Built environment:

- property boundary (land parcels and any designations)
- feed pads, yards and other stock holding infrastructure
- accessways (roads, gateways and underpasses)
- river crossings (culverts, bridges and stream crossings)
- stock water system (bores, dams)
- point source discharges (rubbish dumps, offal pits and silage pits)
- drainage system (tiles, drains, sumps and pumps)
- erosion control assets (detention dams, debris dams, drop structures, flumes)
- irrigation system (intakes, bores, dams and irrigation areas)
- effluent system (sumps, storage, pump shed and effluent areas)
- drinking water protection zones.

The items to be mapped will provide both a geospatial representation of the farm and form part of the risk assessment process.

A single economic unit is not intended to mean that land must be contiguous but would likely need to be in the same catchment (or sub-catchment) so that the catchment context for the freshwater farm plan is appropriate.

Land management unit is intended to mean a homogeneous block of land that responds in a similar way under similar management.

Significant biodiversity means areas identified as such in regional plan or catchment context document.

Any mahinga kai gathering areas would need to be identified with tangata whenua and the wider community.

Critical source areas (CSAs) are hydrological (or physical) features in the landscape where water flow naturally accumulates and where there is a connection to water.

Guidance would also note risks associated with CSAs increase with slope, length of slope, soil factors (heavy vs light soils), intensity of land use and activity type and moisture.

Guidance would also distinguish CSAs from what could be termed as hotspots (eg, stock camps, stream crossings, yards and stock holding areas, silage pits, etc).

Maps could identify flat land, easy rolling country, and steeper hill country (eg, as used in land management units).

Guidance could also include other matters that could be included such as paddock layout; hazardous substance storage and mixing areas; and flood protection areas like stop banks.

Risk/impact assessment information

Any relevant information gathered through the risk/impact assessment process.

Information for actions to avoid, remedy or mitigate risks/impacts

Any relevant information on the chosen actions to avoid, remedy or mitigate identified risks/impacts

Administrative info

Dates of certification (and re-certification) of freshwater farm plan and names of certifier(s)

Note details and timeframes for this to come from work on certification, auditing and compliance, monitoring and enforcement.

Date(s) of audit of freshwater farm plan; name and contact details of auditor

As above.