

INDEPENDENT ANALYSIS OF THE 2018/2019 COMPLIANCE MONITORING AND ENFORCEMENT METRICS FOR THE REGIONAL SECTOR

3 FEBRUARY 2020



CESIG

Compliance and Enforcement
Special Interest Group



THE CATALYST GROUP
planning and environment

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The Compliance and Enforcement Special Interest Group (CESIG)

CESIG comprises regulatory managers from the 16 regional and unitary councils making up the regional sector of Local Government within New Zealand. The focus of this special interest group is the development and maintenance of best practice, as it relates to compliance monitoring and enforcement (CME), particular to the Resource Management Act. They form part of a network of special interest groups (SIGs) reporting to the collective executive from the regional sector. This report has been commissioned by CESIG for the purpose of analysing practice across the sector, looking for opportunities to share strengths and to continuously improve.

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ACKNOWLEDGEMENTS:

Thanks is due to the councils that make up the regional sector for their strategic leadership in developing this reporting framework and for the provision of the data.



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FOREWORD

I'm pleased to present the Independent Analysis of the 2018/19 Compliance, Monitoring and Enforcement Metrics for the Regional Sector, which was written by Dr Marie Doole and commissioned by the Regional Sector. This report is the second of its kind, building on the previous year's efforts to provide a comprehensive review of the sector and its compliance, monitoring and enforcement functions under the Resource Management Act (RMA).

As a sector, we recognise that compliance, monitoring and enforcement (CME), sits alongside planning, consenting and non-regulatory steps as an essential tool for protecting the environment and implementing policy. This importance is reflected with the focus from Central Government on CME performance over the past two years. The report helps to quantify the efforts of Regional Councils across the country, and identifies opportunities for improvement, which will help to guide the work of our Compliance and Enforcement Special Interest Group (CESIG).

The data presented in this report shows that the sector collectively is very productive, with some large numbers representing the volume of work being achieved. For example, across the country, Regional Councils administer over 200,000 resource consents, and undertook over 7000 formal enforcement actions. Similarly, Regional Councils, on the whole, should take pride in the level of service being provided directly to the community, with over 98 percent of the 34,000 calls received from the public about pollution being responded to.

The report also helps to articulate a number of challenges, which will guide the efforts of the Regional Sector in this space. For example, the results would suggest that non-compliance for activities controlled by regional plan rules seems disproportionately high when compared with consented activities, prompting further analysis to understand the causes behind that.

Similarly, the report also acknowledges the limitations of comparing statistics across a regional sector comprised of 16 different agencies, who tailor their approaches within the bounds of a devolved framework, in order to meet the unique challenges of their respective regions. The challenge this presents for the sector in the future is to build consistency in the right areas, while continuing to provide for that variation; similarly, future iterations of this report will need to continue honing how it can measure and articulate the success of these regimes at a national level, and refine the linkages between regulatory and scientific data.

I'm pleased to see this reporting continue with this latest version, and look forward to seeing future iterations both demonstrate the efforts of the Regional Sector in tackling the challenges it currently faces, and provide a platform to identify emerging trends in this space at a national level.



Doug Leeder

Chair, Regional Sector

Local Government New Zealand

EXECUTIVE SUMMARY

This report is the second in a series of reports based on questions designed by the regional sector to improve and complement the present national monitoring system's compliance, monitoring and enforcement related questions and analysis. This report series represents a sector-led effort, under the leadership of CESIG, to improve the availability of data on CME functions. All 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participated in this second edition. The collective reports provide a useful sector level overview of RMA CME implementation by regional and unitary councils.

The second year of the CME reporting project demonstrates that the regional sector continues to give compliance prominence within their agencies and are working on continuously improving how the function is carried out by the 480 FTE that make up the sector. The sector administers more than 220,000 resource consents, up more than 10,000 from last year. Councils monitored approximately 89.5% overall of all consents under the RMA that were determined to require monitoring and responded to an overall average of 98.7% of complaints received. A range of non-compliance was encountered, and the regions differ significantly in the levels of different types of compliance and in the extent to which formal tools were employed to address that non-compliance. For the 2018/2019 year key trends remain consistent with the inaugural report.

Councils have well codified responses to managing consent monitoring and incident response, but very little for permitted activities (where resourcing demands are dominated by dairy and forestry). Strikingly, data from this year reflects that the overwhelming majority of confirmed breaches from complaint response are of activities that are not consented. This trend could well be reflective of some activities that are permitted being high risk activities, but at the least reflects that council complaint lines are one useful source of information about potential non-compliance.

Council resourcing remains variable and there is little change to this (except for Auckland). The resourcing for some councils appears concerning low and most are relatively static. It is difficult to ascertain what impact the resourcing shortfalls would be having on activity levels, although a quick analysis of FTEs/1000 compared with the number of formal actions on the same basis indicates there is some relationship between resourcing and the number of formal actions taken. If councils are to be credible regulators, it is vital that resourcing is adequate.

Councils continue to develop their internal policy frameworks, and most have the basic ingredients of them. Some still do not have an enforcement policy however and it is strongly recommended that this gap be addressed. This recommendation was made in 2017/2018 report and has yet to be implemented by all councils. All councils have a multi-party decision making process for prosecutions and delegation to approve a prosecution appears to stop with the CEO, with no instances of formal approval being required from elected representatives. Transparency and fair process are of utmost importance where the legal consequences are at their highest, and apolitical enforcement decision making is a fundamental requirement.

Where formal enforcement tools were employed, non-compliance with section 15 (discharges of contaminants) was again the dominant category of offence as last year. Overall the sector issued 7105 formal notices, more than half of which were section 15 based. Abatement notices following by infringement fines are the most commonly used instruments. Enforcement orders remain a relatively rare tool to use, with usage halving this year from 21 to 11. It would be useful to understand why the use of enforcement orders is so limited.

In the reporting year, the sector overall concluded 61 prosecutions and has 99 in progress. That activity is clustered

within just a few councils, with most councils only infrequently taking prosecutions, if ever. The sector collectively secured 106 convictions against 29 individuals and 102 convictions against 47 corporates, netting approximately \$1.8 million in fines. A prison sentence was also handed down. It is likely too soon in the reporting framework to know what level of enforcement constitutes 'the norm'. Councils are also increasingly communicating the results of their prosecutions to the general public in an effort to promote the importance of compliance.

The advent of the Ministry for the Environment Best Practice Guidelines is providing useful overarching guidance, and standardisation is emerging as an operational priority where it is helpful to do it. The data reflect three clear groups within the regional sector: Auckland Council, the smaller unitaries and the regional councils. These three subgroups are quite distinct across much of the data and do suggest that broad-brush sector approaches are likely to be only partially effective.

It is possible to further augment the richness of the data through tactical additional questions. For example, it would be useful to develop a more contiguous data set which links workload (incoming complaints, consents requiring monitoring and permitted activity monitoring) with compliance outcomes (i.e., instruments used to effect behaviour change, state of the environment reporting). It would be useful to be able to demonstrate how instances of significant non-compliance were followed up and how they were resolved. Further, it would be useful to better understand the reasons for the disparity in use of formal instruments particularly prosecution, to better understand the variables that are affecting the extent to which they are used on a council by council basis.

The continuation of the reporting process will only increase in value over time, particularly as councils progressively align their data management approaches and recording conventions. There were much fewer instances of 'unknown' data this year, and with all councils participating this makes for an increasingly robust suite of information. The ultimate test of a compliance programme is the quality of the environmental outcomes. This year the survey did not discuss the link between CME and SOE reporting, but it remains ever important to integrate the two. CME is clearly a key lever in implementing and achieving the purpose of the RMA.

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PART 1 OVERVIEW

This report is the second in a series of reports based on questions designed by the regional sector to improve and complement the present national monitoring system's compliance, monitoring and enforcement related questions and analysis. This report series represents a sector-led effort, under the leadership of CESIG, to improve the availability of data on CME functions. All 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participated in this second edition.

How to read this report

Each council was sent a survey comprising 46 questions (Appendix 1). This report sets out data provided for each section of the survey, as follows:

- A boxed section containing the exact questions relevant to that section
- An overview of the purpose of the questions
- The tables and graphs of the information
- A description of findings
- A short analysis of the findings, at both a regional and national scale

Responses to open-ended questions have been aggregated and analysed and the theme of the response presented in this report. Where responses reflected a sector-level trend that could not easily be articulated in text, verbatim answers are provided. In most cases unitary authorities and regional councils were tabulated separately, because with most matters they are not entirely comparable. The data specific to each regional council has been collated into single page summaries that are included in Part 3. The purpose of the one page summaries is to assist councils in communicating the survey findings.

Data limitations

The sector under the leadership of CESIG have expended significant time and resource in developing and refining the questions for this second round of reporting. It is hoped that this, in combination with rising sector capability and buy-in to the metrics project itself, will enrich the data available and improve comparability across agencies. There are several aspects of the metrics and the data that was submitted that should be kept in mind when reading this report:

- Not all requested information can be provided by all councils which results in gaps in the dataset. It should be noted however, that for the 2018/2019 reporting year there are fewer instances of an 'unknown' response, suggesting the sector have made inroads to enhancing the data they both collect and collate. Time was provided to councils to gather the data together and a draft was circulated to further check any errors that may have materialised at any stage of the process.
- The project does not include any data auditing and it is therefore unknown how accurate the information provided by councils is.

INTRODUCTION

CME under the Resource Management Act in New Zealand

Regional councils, unitary authorities and territorial local authorities have the primary role for compliance, monitoring and enforcement of the Resource Management Act 1991 (RMA). The Ministry for the Environment (MfE, the Ministry) has a system stewardship role which has been exercised to a limited extent throughout the history of the regime. Recently, a limited suite of powers was proposed to be granted to the Environmental Protection Authority (EPA).

Councils can choose how to exercise their CME role within the relatively broad framework of the RMA. There are few specific parameters set down in the Act other than procedural/tool-based sections. Because of this relatively high level of discretion and limited national direction, the role has evolved differently over different jurisdictions and culminated in high levels of variation nationwide. The regions are also quite different, with three obvious groupings being evident in the data: Auckland Council, the small unitary councils and regional councils.

In 2018, the Ministry released the Best Practice Guidelines on Compliance Monitoring and Enforcement, which continues to gain buy-in and appears to be effective in helping drive some measure of standardisation (e.g., compliance gradings). The guidelines were developed between the Ministry and an advisory panel comprised of CESIG members, a Crown Solicitor, and representatives from territorial authorities. Notwithstanding the differences between the three groupings highlighted above, where standardisation is possible and helpful it should be pursued.

Key definitions

Compliance: adherence to the RMA, including the rules established under regional and district plans and meeting resource consent conditions, regulations and national environmental standards.

Monitoring: the activities carried out by councils to assess compliance with the RMA. This can be proactive (e.g., resource consent or permitted activity monitoring) or reactive (e.g., investigation of suspected offences).

Enforcement: the actions taken by councils to respond to non-compliance with the RMA. Actions can be punitive (seek to deter or punish the offender) and/or directive (e.g. direct remediation of the damage or ensure compliance with the RMA).

What does success look like?

It is important that regulators – in this case unitary and regional councils – are credible. But what does it mean to be credible? Insights into the kinds of expectations that might be had of the credible regulator under the RMA can be found in the following documents:

- Solicitor General Prosecution Guidelines
- Best Practice Guidelines
- Basic Investigative Skills Manual
- Regional Sector Strategic Compliance Framework

Expectations relate to the kinds of resourcing that is available for compliance (including capacity and capability), the policy context for CME and the procedures and reporting in place to record and demonstrate effectiveness.

A brief review of the 2017/2018 report

The inaugural report in this series identified the significant volume of CME related activity under the RMA that the regional sector was responsible for and provided some key insights into that activity. Throughout the responses it was evident that standardisation could be more keenly focused upon and that this would have public interest benefits including greater transparency and comparability across the sector. Notwithstanding the variation, it was evident that the regional sector had made significant progress in professionalising the CME function at both an individual council level and a sector level.

Other observations included that the resources of several councils appeared very low, and likely too low to be able to effectively execute their role in CME. The variability in resourcing was significant, with some councils carrying a relative order of magnitude more staff than other agencies. The reasons for this resource disparity did not appear to be explained by relative wealth, land area or population. Staffing levels remain relatively static across the sector, with mostly minor increases or deductions in FTEs, other than Auckland Council which experienced a significant increase.

It is possible that requests for further resourcing are still underway given the delay in public release of the 2017/2018 report and that greater staff numbers may be reflected in the next reporting year. Local government funding processes make it difficult to respond quickly to resource needs (i.e., waiting on annual and long-term plan processes) so some time-lag is to be expected once a resource deficit is identified.

The information management capability of councils was the subject of criticism in the last iteration with many councils not being able to furnish relatively basic information. Further, unitary authorities were criticised for not demarcating their regional from their district functions to enable true comparisons with their regional cousins. The final key finding was that many councils had an incomplete internal policy framework, leaving them vulnerable to reputational issues and an inability to demonstrate fair and transparent decision making. Overall these aspects have improved, but there is still ample scope to enhance practice and policy.

How does this reporting process differ from the last?

The value of continuous reporting increases exponentially over time. As a result, there were minimal changes to core questions between the surveys. The questions have been condensed and rearranged, so the subsequent data collection broadly matches the structure of the first report. The data is also presented from the previous year's analysis. Stability in question wording and data analysis is vital to fair and authentic reporting over time. Questions were only changed, removed or added to increase clarity and data richness.

The analysis differs slightly from 2017/2018 in that Auckland data are often extracted from the fully aggregated dataset to ensure that changes in Auckland's data do not unreasonably influence sector totals and demonstrate trends where they do not exist at a sector level. It is possibly not going to be easy to develop a suite of metrics that can produce robust comparability between the three groupings (Auckland, the smaller unitary councils and the regional councils) in the short term.

PART 2 ANALYSIS

Regional context

All the councils, and the regional jurisdictions over which they preside are unique in certain ways. The purpose of this section is to set out the regional context for CME across those geographic areas.

Table 1: *Regional context data*

Regional council	Population (million) Census 2018	% change 2013-2018	Geographic area (square km)	Regional GDP (\$million) to March 2018
Northland Regional Council	181,047	16.2	13,778	7415
Waikato Regional Council	466,110	12.8	24,147	23,914
Bay of Plenty Regional Council	313,380	14.6	12,303	15,833
Hawkes Bay Regional Council	170,448	9.2	14,138	8070
Taranaki Regional Council	118,215	7.4	7256	8136
Horizons Regional Council	241,182	7.0	22,220	10,709
Greater Wellington Regional Council	514,752	7.6	8142	37,107
Environment Canterbury	614,628	10.8	44,633	35,392
Otago Regional Council	239,313	7.3	31,280	12,658
West Coast Regional Council	35,202	-3.0	23,277	1600
Southland Regional Council	101,571	3.8	32,184	5826
Unitary authorities				
Auckland Council	1,590,261	10.6	5945	107,754
Gisborne District Council	47,565	8.3	8386	2011
Tasman District Council	55,206	7.7	9764	5239
Nelson City Council	53,082	9.6	447	
Marlborough District Council	50,562	9.2	10,773	3020

These data demonstrate that the population, growth rates, areas and Gross Domestic Product (GDP) differ significantly across regions. These are just some of the possible variables, for example, dominant land use and other factors also vary between regions. The purpose of this section is to illustrate how different regions are placed in relation to others, and the figures are drawn upon later where relevant. Of particular note is the variance in population growth rates from a negative rate on the West Coast through to over 16% increase in Northland between the 2013 and 2018 Census.

Working with iwi

Q3: In no more than 300 words describe your regional key commitments to work with iwi/Māori on CME. For example, joint management agreements or other co-management agreements.

Note: The report author may contact you for further information or clarification of your response.

This question has been analysed on a qualitative basis as the narrative responses generally preclude categorical examination. The full verbatim responses are included in Appendix 2. The survey results show that councils are increasingly engaging with iwi over CME matters. The breadth and depth of responses are greater than in the previous year and demonstrate the positive trend and indicate that this dimension of the relationship between agencies and iwi is likely to continue to grow and diversify.

Most councils have existing engagement opportunities with iwi and hapū and nine councils identify that this engagement may include CME matters. The second most common means of engaging with Māori over CME is considering the cultural impact of offences. Local iwi and hapū presenting victim impact statements appears to be a common strategy to help demonstrate the effects of noncompliance. Eight councils attest to utilising these techniques in prosecutions. Five councils are working towards developing new modes of engagement.

Key findings

Most councils have engagement with iwi and hapū that may include CME matters. While the responses to this question may be brief, the burgeoning co-governance space suggests that questions in this regard are likely to increase in number and scope over time.

CME Operations (managing the workload)

Responding to Complaints (Questions 4-9)

Q4. Does your council register/count:

- An individual “incident” per notification?
- One incident per event, regardless of the number of separate complainants?

Q5. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?

This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties but excludes information from council monitoring activity. Please note answer unknown if your council does not record the information requested.

Q6. How many of these notifications were responded to by council?

This response may be in any form – e.g., phone call, site visit, desktop audit

Q7. How many of these notifications were physically attended by council staff?

If one incident had multiple visits, only count this as one.

Q8. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?

Q9. How many of the breaches were for:

- Breach of a resource consent?
- Breach of permitted activity rules?

Q4: Registering notifications

Councils generally register complaints in one of two ways – as individual incidents in and of themselves, or one incident with multiple complainants. Logically, the latter number is usually smaller. Any comparative analysis between councils must take into consideration the differences that these recording conventions can make. In response to this question, councils appear to be exactly split. Half of councils record on a complaint basis and half generate an event to which multiple complaints are attributed. The unitaries are also split (Table 1).

The purpose of collecting this information is to gauge an approximation of workload. However, recording the number of complaints about a particular issue can usefully reflect the degree of public interest and the volume of communications workload that results. It would be optimal if the sector would work towards a standardised approach, perhaps in which both sets of data are collected, to enable it to be used for different purposes as needs arise.

Table 2: Recording conventions for incoming complaints across the regional sector

An individual “incident” per notification	One incident per event, regardless of the number of separate complainants
Waikato	Northland
Bay of Plenty	Taranaki
West Coast	Horizons
Southland	Greater Wellington
Auckland	Environment Canterbury
Nelson	Gisborne
Tasman	Marlborough
Otago	Hawkes Bay

Q5–9 Recording and responding to complaints

Questions 5–9 follow incident reports from notification through to whether or not the complaint is validated for compliance purposes (i.e. has identified a breach of the RMA). Not all complaints relate to a matter that is within the jurisdiction of councils, nor do they necessarily relate to any unlawful activity. Councils need robust internal processes to manage the appropriate directing of complaints (including well-trained front-line phone staff) to reduce this burden. Different complaints warrant different forms and urgency of responses. Attending to a complaint physically is the most resource-intensive response possible, but is important to 'ground truth' notifications and to enable officers to assess an issue first-hand. However, a physical response may not always be possible or necessary, and a range of alternative responses can be employed instead.

Measuring the number of complaints that link to genuine determinations of wrongdoing helps reflect the level of legitimacy of complaints as a whole and to some extent reflects the enforcement workload. For the 2018/2019 reporting year, an additional question (question 9) was added which requested that councils articulate what proportion of validated complaints related to breaches of permitted activity standards and what proportion related to breaches of an existing resource consent.

Analysis

Councils across New Zealand receive a highly variable number of complaints, as was recorded in the 2017/2018 reporting year also. However, the variation between councils would seem generally in-line with their population base. Regional council response levels continue to be very high, with all councils except for Environment Southland improving the proportion of complaints they respond to, and most responding to 100% (Table 3). Unitary councils all responded to 100% of complaints, consistent with last year’s reporting. The proportion of complaints physically attended was relatively static for regional councils, and as only one unitary authority provided the data this year (despite four providing it last year) there is no trend to discuss.

	Individual complaints		Individual incidents		Responded to		Physically attended		Confirmed as a breach		Resource consent	Non-consented activity
Regional Councils												
	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19 Number(%)	2017/18	2018/19 Number(%)	2017/18	2018/19 Number(%)	Percentage of # breaches 2018/2019 Number(%)	
Northland Regional Council			1052	1026	100%	1026 (100)	67%	698 (68)	Unknown	495 (48.2)	24 (4.8)	451 (91.1)
Waikato Regional Council	1543	1838			100%	1838 (100)	20.3%	522 (28.4)	24%	125 (6.8)	Unknown	Unknown
Bay of Plenty Regional Council	2834	3519			100%	3519 (100)	Unknown	1677 (47.7)	Unknown	868 (24.7)	Unknown	Unknown
Hawkes Bay Regional Council			1095	1116	100%	1116 (100)	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Taranaki Regional Council			414	452	100%	452 (100)	100%	452 (100)	37%	169 (37.4)	31 (18.3)	138 (81.7)
Horizons Regional Council			792	1298	100%	1298 (100)	23%	402 (31)	Unknown	Unknown	Unknown	Unknown
Greater Wellington Regional Council		1244	1308	1192	83%	1244 (100)	42%	482 (38.7)	17%	182 (14.6)	Unknown	Unknown
Environment Canterbury		4225	4735	3599	80%	3198 (88.9)	38%	1197 (37.4)	23%	1030 (28.61)	Unknown	Unknown
Otago Regional Council			1913	2056	Unknown	2056 (100)	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
West Coast Regional Council	102	233			100%	233 (100)	Unknown	121 (51.9)	50%	96 (41.2)	70 (72.9)	26 (27.1)
Southland Regional Council	742	813			90%	700 (86.1)	51%	305 (37.5)	17.20%	144 (17.7)	34 (23.6)	110 (76.4)
REGIONAL SUBTOTAL/AVERAGE (2018/19)	5221	11,872	11309	10739	95.30%	97.7%	48.70%	48.9%	24%	27.4%	29.9%	69.1%
Unitary authorities												
Auckland Council	9022	11,743			100%	11743 (100)	42.50%	Unknown	Unknown	3347 (28.5)	Unknown	Unknown
Gisborne District Council			147	539	100%	539 (100)	100%	Unknown	Unknown	Unknown	Unknown	Unknown
Nelson City Council	472	537			100%	537 (100)	70%	Unknown	70%	Unknown	Unknown	Unknown
Marlborough District Council			557	633	100%	633 (100)	48%	320 (50.5)	33.90%	145 (22.9)	4 (2.7)	141 (97.3)
Tasman District Council	2562	2631			100%	2631 (100)	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
UNITARY SUBTOTAL/AVERAGE (2018/19)	12,056	14,911	704	1172	100%	100	65%	50.5%	51.90%	25.7%	2.7%	97.3%
TOTAL/OVERALL AVERAGE					97.65%	98.7%	56.85%	49.7%	37.95%	26.6%		

Table 3: Managing and responding to complaints and identifying breaches



The validation of complaints levels was static across the regional councils and halved in the unitary authorities compared to the 2017/2018 reporting year. The highest validation rate was Northland at 48% but the average across the sector was approximately a quarter. The lowest validation rate was Waikato Regional Council at just 7%.¹ It remains important that councils probe further into the reasons for these figures. Possible contributing factors include:

- Low public knowledge of what the role of council is and therefore a high volume of irrelevant concerns being received
- Poor internal management of complaints meaning they are not appropriately filtered before reaching the RMA compliance team
- Vexatious complainants
- Systems that fail to capture the validation of complaints

In time, this question train could be lengthened to capture the link between complaints and enforcement action as at present there is a disjunct between the two. Ideally, questions (and data management) would preserve a chain of custody from notification of a concern through to any action taken as a consequence. Of particular interest is that where complaints are validated the issue tends to relate to a non-consented activity (i.e., a permitted activity or one which is unlawful) rather than a condition of resource consent. This is highly relevant strategically and warrants further discussion.²

For instance, if council is responding to a significant proportion of complaints about a permitted activity breach for a particular activity type, the approach to managing that activity may need to be reviewed (i.e., that activity may need to be more strictly regulated). Further, the council may not be able to recover the costs from incident response as easily as for consent monitoring, thus the ratepayers may bear a more significant proportion of the costs of regulation than is reasonable (e.g., recidivist offenders and industries that have significant compliance issues).

Key findings

- Councils record incoming complaints in different ways which limits national comparison. Councils should consider options for more standardised recording.

¹ In supplying the data required for the CME metrics survey Waikato Regional Council identified that the number, and more specifically the percentage, of calls that came from members of the public that were confirmed as breaches of environmental regulation seemed very low. This caused WRC to check their database and identified that there are a number of incidents where breaches of environmental regulation were confirmed but not 'captured' as such, as they did not result in formal enforcement action but were resolved by other mechanisms, such as education. WRC have changed their system and back captured, correctly, the data from 1 July 2019, however, understand that the data presented for 2018/19 is inaccurate in this respect. WRC see this, overall, as a positive as it has enabled them to identify a reporting fault and rectify it.

² It should be noted that resource consents on a site do not usually cover all activities on a site. So a resource consent and a breach of a permitted rule or an unlawful activity can obviously occur in the same location. There may be subtle variation in how councils account for this which should be kept in mind, there is likely some grey area in between. In future surveys it is suggested that 'non-consented' is used in place of permitted as has been used here.

- Most councils respond to all or a significant majority of their complaints, while – despite patchy data – an average of approximately half are physically attended (ranging from Taranaki at 100% through to less than 30% in the Waikato).
- Approximately one quarter of complaints are validated at a sector level with wide variation between councils.
- Except for one council (West Coast) all councils reported that the overwhelming majority of complaints arose in relation to non-consented activities rather than consent condition breaches.

Monitoring Resource Consents

Q10. How many individual, active resource consents exist in your region?

Exclude Land Use Consents where the activity is completed e.g., Land use subdivisions where the subdivision is complete, and certificates issued or land use – building where the building has been constructed.

Q11. How many consents required monitoring during this period, in accordance with your monitoring prioritisation model/strategy?

Q12. How many of these consents were monitored (including desktop audit) in the period?

Councils receive different numbers of consent applications and manage different numbers of them on an ongoing basis. Understanding the number of consents and the degree of consent monitoring gives insight into the relative workload of each council. Question 10 asked for the number of ‘active’ resource consents. Implicit within the question was that ‘inactive’ consents did not form part of the workload, and the question explicitly asked respondents to exclude ‘*Land use consents where the activity is completed. E.g., Land use-Subdivisions where the subdivision is complete and certificates issued or Land Use-Building where the building has been constructed*’. Question 11 determined the proportion of those total active consents that were considered by the council to ‘require’ monitoring, noting that this determination varies across sector. Finally, Question 12 asked for the actual proportion that was subject to monitoring (including by desktop audit) to provide an insight in the extent to which council’s efforts were keeping pace with its intentions.

Analysis

Councils administered a total of **222,783** active resource consents for the reporting year, up 20,000 on the previous year. Of those, 60,254 (27%) were deemed to require monitoring and 89.5% of those were monitored. At a sector level, this was an improvement on last years' monitored proportion of 74% (Table 4). All councils other than Gisborne³ were able to provide data on the number of consents monitored. This high reporting rate was perhaps enabled by the cost recovery capacity of the consent monitoring function demanding more accurate recording than for the other activities in the CME space. Nelson, Waikato, Taranaki and West Coast Councils all monitored 100% of the consents

³ Gisborne District Council is currently going through a change in how they manage information relating to compliance and enforcement. The CME function now has dedicated admin support which is helping to provide better processes to allow better capture of data. This will enable Council to respond and answer fully to this survey in coming years.

in their respective jurisdictions that required monitoring. The lowest proportion of consents monitored was Otago (52%). The average proportion monitored by regional councils and unitary authorities were similar .

In 2017/2018 it was noted that;

'A failure to monitor a consented activity at an appropriate frequency removes the ability for the regulator (absent a complaint) to detect non-compliance and therefore address environmental harm. Councils routinely set goals for proportions of consents to monitor and appear to meet these goals most of the time. Current best practice suggests that consents should be monitored in a way that reflects the level of risk the subject activity (risk-based approach) may pose to the environment and/or the wider community and given the relatively robust basis for cost recovery of consent monitoring, there is no good reason why councils should fall significantly short of fulfilling this expectation. For some, resourcing may simply be inadequate for the task, which places undue stress on staff and management and should be addressed at a council level.'

These comments stand and are reinforced by the figures in the 2018/2019 year.



Key findings

- Overall consent numbers increased and approximately one quarter were considered to require monitoring, and 89.5% of those were monitored.
- Councils may not be carrying enough resource to fulfil minimum monitoring requirements, and this is concerning as cost recovery in this instance is clearly provided for. It is likely that the resource shortfall is explained by other factors including political priority and difficulty with recruitment and retention of staff.

Table 4: Monitoring workload from consents

	Total consents		Required monitoring		Number monitored	
	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19 Number(%)
Regional councils						
Northland Regional Council	3812	9738	3724	3847	94%	3561 (92.6)
Waikato Regional Council**	4500	4787	1500^	525	77%	1157 (100+)
Bay of Plenty Regional Council	5500	9057*	1900	2380	68.60%	1656 (69.6)
Hawkes Bay Regional Council	3144	5928	3144	3446	93%	3198 (92.8)
Taranaki Regional Council	4837	4784	2930	2743	100%	2743 (100)
Horizons Regional Council	4700	5204	1700	1648	82%	1318 (80)
Greater Wellington Regional Council	6375	6604	1544	1782	94.40%	1692 (94.9)
Environment Canterbury	20,417	18,500	Unknown	4625	28%	3315 (71.7)
Otago Regional Council	5984	5588	3827	1161	66%	607 (52.3)
West Coast Regional Council	Unknown	3474	Unknown	868	Unknown	891 (100+)
Southland Regional Council	5376	5590	3188	4586	100%	3594 (78.4)
SUBTOTAL	60,145	79,254	21,957	27611	80%	23,732 (86)
Unitary authorities						
Auckland Council	103,690	108,326	17,759	11,778	70%	7057 (59.9)
Gisborne District Council	1250	Unknown	699	Unknown	34%	Unknown
Nelson City Council	1200 (est)	784	550	619	100%	619 (100%)
Marlborough District Council	20,802	21,377	2686	3261	83%	2895 (88.7%)
Tasman District Council	15,764	13,042	4250	2478	46%	1870 (75.5%)
SUBTOTAL	142,706	143,529	25,944	18,136	67%	81.02%
TOTAL	202,851	222,783	47,901	60,254	73.50%	89.5%

* Significant increase in total consents granted by Bay of Plenty Regional Council is linked to a change in reporting and data collection to be in line with recent legal decisions about how different activities within a single broad application are counted. For instance, earthworks will include land use, water take and discharge consents, which would previously have been collated into a single consent and counted as one. Bay of Plenty Regional Council currently has 9057 individual consents, which sit under 5560 application/parent consents

^Waikato Regional Council records consents and determines monitoring priority on a 'per site' basis

** The monitoring prioritisation model at Waikato Regional Council was amended after the 2017/18 year resulting in resources being focused more on high priority consented sites resulting in a reduction in the total number of sites monitored. More consents were monitored than 'required' under the new prioritisation model.

Compliance gradings

Q13. In the 2018/19 year, did you use the four compliance grades as recommended by Ministry for the Environment?

- Yes
- No

Q15. When will your council be adopting the four compliance grades recommended by Ministry for the Environment?

The MfE Best Practice Guidelines were released in 2018, and contained a recommended suite of compliance categories, in the hope that the regional sector would take them up and make data on compliance levels nationally comparable. It is foreseen that councils may retain subcategories for regional purposes, but it is desirable that the broad categories are standard.

Responses demonstrated that a total of eight councils (five regional, three unitary) have already assimilated the framework into their recording system. A further three councils specifically identify that the gradings will be adopted in the 2019/2020 year. Greater Wellington Regional Council is the only council to not indicate a short-term intention to adopt the gradings, answering 'unknown'. The remainder all councils indicated they would be adopted but were less specific as to when (i.e., Taranaki Regional Council indicated they would be adopted 'as soon as possible').

Based on these responses, 11 councils will be using a consistent recording system for compliance gradings by the next reporting year. The fairly rapid uptake of this framework is illustrative of the value of nationally consistent guidance and standardisation where it is appropriate.

Key findings

- Half of all councils have implemented the suggested categorisation of compliance levels.
- A further three will adopt the framework in the upcoming reporting year.
- All councils indicated that the framework would be adopted, with the exception of Greater Wellington Regional Council.

Compliance assessment

Q14. What grades do you apply to non-compliance? (e.g., technical non-compliance, significant non-compliance)

- Fully Compliant
- Technical/Low Non-Compliance
- Moderate Non-Compliance
- Significant Non-Compliance
- Other (please specify)

Q16. What were the levels of compliance with consents according to the grades you use?

Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g., a consent may be monitored four times in the year: on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add three to the total of Fully Compliant and one to the total for Technical Non-compliance.

Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g., a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance)

Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Councils record compliance levels in varying ways and this report does not analyse them. Instead the focus of this section is on the levels of compliance found among the consents monitored in line with the MfE suggested framework (although allowing for an 'other' category during the transition period).⁴ It should be noted that numbers provided will not exactly equate with the figures in Table 4, because some sites had more than one monitoring visit over the year. Hence Table 5 relates to the percentage of monitoring visits (not consents) that fit within the different categories. The grading is based on the worst grade recorded across all monitoring events and consent conditions (e.g., a consent with five conditions fully compliant and one condition moderately non-compliant has an overall compliance grade of Moderate Non-Compliance).

Analysis

These data reflect the compliance gradings of more than 50,000 consent monitoring events sector-wide. The spread across the gradings is similar to last year, however with a slightly lower proportion considered fully compliant and larger proportions in Low Risk/Technical and Moderate Non-Compliance. The unitary authorities had a greater cumulative proportion in 'other' categories, but less than last year. As recording becomes standardised, these data will become more helpful. The highest proportion of gradings in the 'other' category was Nelson at 40% compared with last year were Auckland Council recorded the highest proportion in the 'other' category (52%). There have been clear efforts to align with the national framework.

Approximately two thirds of consents in the regional sector are reported to be fully compliant, and just over 60% for

⁴ It is expected that councils may maintain sub-categories within the four key categories prescribed in the Best Practice Guidelines, but that those categories can be merged to generate a nationally consistent picture.

unitary authorities. This indicates that most of the non-compliance is reported to be moderate in nature. It is difficult to validate and compare the levels of compliance until every council is working with the same framework. It is also difficult to validate at a national level that the categorisation of the compliance issues is fair and reasonable.

The levels of compliance varied considerably between councils (Table 5). The highest proportion considered to be fully compliant was in Hawkes Bay (95%) and the lowest was in the Waikato (25%). The average for the regional councils was slightly higher than the unitary authorities, but this change was largely driven by changes in Auckland's recording framework as it moves to align with the new categories. The levels of significant non-compliance detected was reasonably static among the unitary authorities (0.68 to 0.73%) but increased from 2.21 to 3.84% for the regional councils. The levels of significant non-compliance seem surprisingly low with some councils recording less than 1% to fall within this category (e.g., Hawkes Bay Regional Council at 0.01% of almost 3200 consent monitoring visits). The degree of variance suggests that – notwithstanding increasing consistency in the framework applied – that the definition of full compliance in practice varies across regions.

Where councils are encountering significant levels of non-compliance, they are likely to need to employ project or programme-based approaches to improve behaviour in the relevant industry or activity area. Such approaches would be supported in a risk-based context and potentially lead to better outcomes. Overall however, the focus should be on ensuring that what counts as significant non-compliance is the same at a sector level and that behaviour resulting in significant unauthorised effects is addressed. Further, high levels of compliance can potentially indicate that regulatory bottom lines are insufficiently stringent, leading to poor environmental outcomes, a variable not captured by this survey. Further analysis would be required, including additional data, to determine what is driving these trends and they may differ region to region.

Key findings

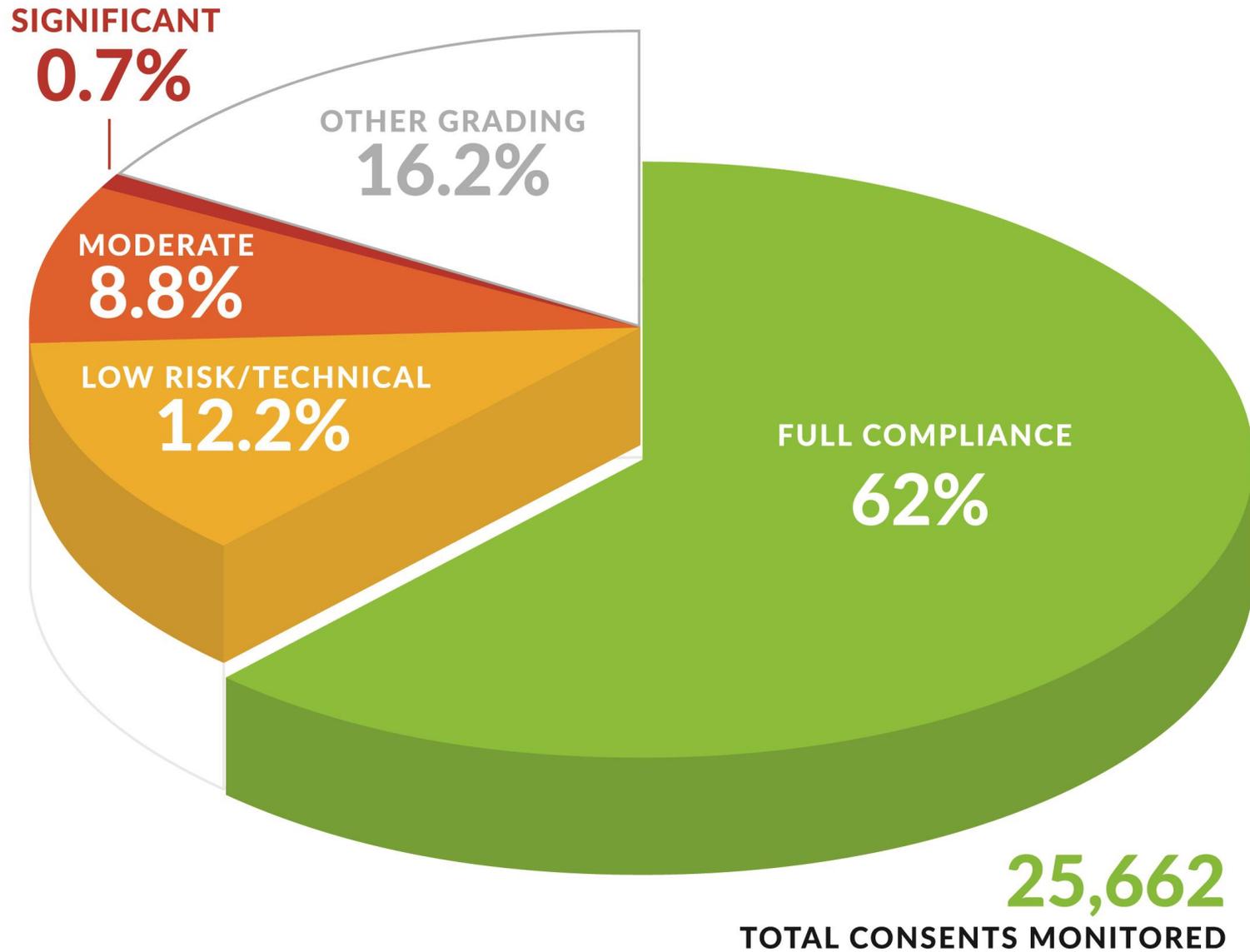
- Councils report encountering relatively low levels of significant non-compliance (3.84% in the regional sector and 0.7% in the unitary councils).
- Most non-compliance encountered is reported to be moderate or less
- Councils record varying levels of full compliance suggesting that what counts as 'fully compliant' may vary between regions.

Table 5: Percentages of consents in different categories of compliance on a per monitoring event basis

	Full Compliance		Low Risk/Technical Non-Compliance		Moderate Non-Compliance		Significant Non Compliance		Other compliance grading		TOTAL number of consents (#)	
	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19
Regional Councils												
Northland Regional Council	72.7	75.9	0	0	19.6	18.7	7.7	5.40	0.00	0.00	3803	3561
Waikato Regional Council	44.4	25	22	35	30.9	25	2.7	12.00*	0.00	3.00	1078	1157
Bay of Plenty Regional Council	76.4	80.5	14.4	23.6	7.3	5.75	1.9	0.95	0.00	0.00	1842	3059
Hawkes Bay Regional Council	92.8	95.35	0	0.01	6.90	2.09	0.30	0.01	0.00	0.00	2943	3198
Taranaki Regional Council	94.2	88.5	0	4.2	0	5.35	0.8	1.90	5.00	0.00	4119	2743
Horizons Regional Council	84	44.54	0	22.49	8.1	10.37	7.9	8.84	0.00	13.70	1131	916
Greater Wellington Regional Council	76.3	63.6	17.5	14.78	0	0	0	7.98	6.20	13.60	1457	1692
Environment Canterbury	63	85.16	5.2	4.01	8.3	9.47	1.40	1.35	21.80	0.00	7274	3315
Otago Regional Council	59.5	35.9	9.6	6.09	7.8	36.24	1.60	1.98	21.50	19.77	7025	607
West Coast Regional Council*	96.3	95.29	0	2.84	0	0.98	0.00	0.89	3.70	0.00	1309	1126
Southland Regional Council	70.6	83.11	0	8.82	0	7.18	0.00	0.89	29.40	0.00	3188	3594
Average (RCs)	75.47	70.26	6.25	11.08	8.08	11.01	2.21	3.84	7.96	4.55	35,169	24,968
Unitary Authorities												
Auckland Council	22.1	59.13	21.3	18.38	3	2.86	1.20	0.50	52.40	19.12	18732	20,188
Gisborne District Council	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Nelson City Council	86.4	59.52	0	0	0	0	0.00	0.00	13.60	40.49	550	1245
Marlborough District Council	65	64.26	2	2.92	31	27.38	0.00	0.08	2.00	5.34	2219	2359
Tasman District Council	63	65.03	7.1	27.54	5.2	5.08	1.50	2.35	23.10	0.00	1940	1870
Average (unitaries)	59.13	61.99	7.6	12.21	9.8	8.83	0.68	0.73	22.78	16.24	23,441	25,662

- The noncompliance rating system used at WRC considers multiple factors, and not solely whether the noncompliance results in actual significant environmental effect. As such the data is not directly comparable to those Councils that apply the MfE compliance rating system

COMPLIANCE RATING OF CONSENTS MONITORED



Monitoring permitted activities

Q17. Which permitted activities do you have a monitoring programme for?

List of activities with tick box if yes:

- Agriculture (excluding dairy)
- Aquaculture
- Construction
- Dairy
- Forestry
- Horticulture
- Mining
- Oil and gas
- Tourism
- Vineyards
- Wineries
- Other (please specify)

Permitted activity status is generally reserved for low risk activities. They are the things people can do without seeking resource consent, and most entail implicit or explicit standards. Permitted activity monitoring programmes are structured or semi-structured approaches to managing the risk of a particular type or group of permitted activities.

There is substantial regional variation in (a) the numbers and types of activities which are permitted, (b) the extent to which those activities warrant regular oversight and (c) the resources consequently allocated to monitoring them. With the exception of forestry (within the limits of the National Environmental Standard: Plantation Forestry), virtually all permitted activity monitoring programmes are conducted without the option of cost-recovery from the proponents of those activities.

Analysis

Dairy and forestry account for 60% of all permitted activity monitoring programmes (Figure 1). The 'other' category includes wastewater (HBRC), earthworks (Waikato) and stock access to water (Otago) and forestry. Last year the report observed:

'The robustness of the CME regime is underpinned by whether it is appropriate in the first place for the activity in question to be approached in a non-regulatory way. If activities that potentially constitute significant environmental risk are permitted, then they may cause an unreasonable burden on the CME unit, particularly considering opaque cost recovery mechanisms.'

These observations stand and are reinforced by the very high proportion of complaints that relate to breaches of permitted activity standards compared with those relating to breaches of consent.

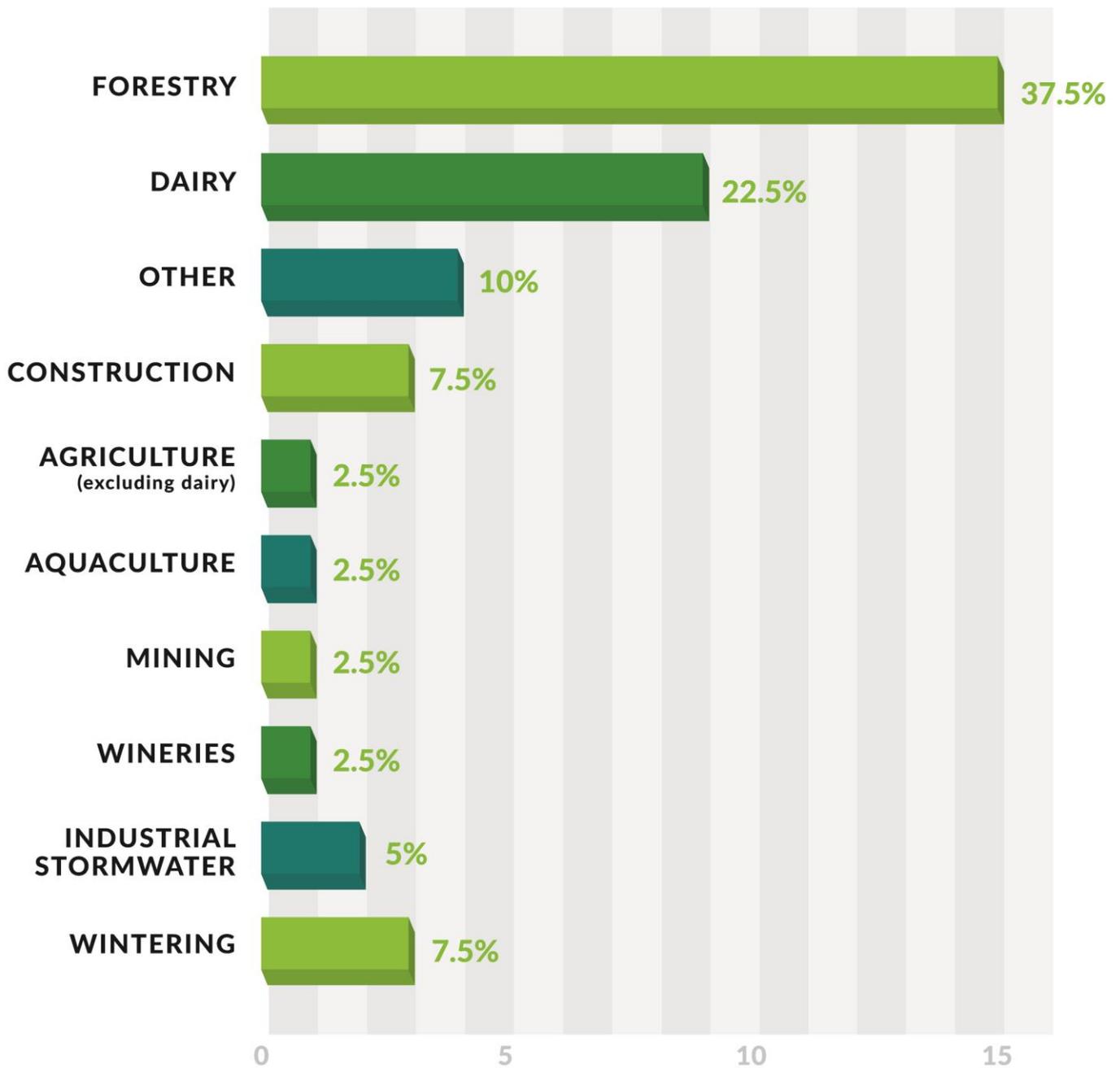


Figure 1: Proportion of permitted activity monitoring programmes for different industries

Key findings

- Dairy (22%) and forestry (38%) account for collectively 60% of all proactive permitted activity monitoring programmes.
- Systematic permitted activity monitoring programmes for activities beyond these two are rare

Making decisions on priorities

Q18. What basis is used for determining what notifications/complaints/incidents are physically attended and with what urgency or priority?

Q19. Describe how you determine which consents are monitored and how frequently?

If there is a prioritisation model or compliance strategy, add link

Q20. Describe the basis, which was used for determining what, if any, permitted activities were monitored.

If there is a prioritisation model or compliance strategy, add link

In any regulatory compliance system, robust prioritisation should ensure that the most important matters are addressed, and the attention other matters enjoy depends on relative importance (i.e., risk to the environment and people) and available resources.

Questions 18–20 inquired of councils their rationale for prioritising the three main workstreams. As in the previous survey, it was out of scope to assess the effectiveness of the individual risk-based approaches and the extent to which they are implemented in practice. It would be expected that the extent to which the council aligns in practice with its risk matrix may vary. Further questions or analysis would be needed to understand the level of adherence and the factors that influence it.

Analysis

Most councils have some form of codification as to the response that a complaint will receive. The factors that influence urgency include the degree and nature of the environmental impact, the type of activity, effects on humans and amenity among other issues (e.g., staff safety). Based on the narrative responses, most councils determine these on a 'case by case' basis having regard to a suite of issues. The greatest degree of codification was in regard to the monitoring of resource consents, for which most councils have a detailed structured response protocol in place, influenced by the type of activity and the risks involved, among other factors (e.g., commitments in annual plans etc.). Permitted activity response remains the least well-codified response stream and appears heavily focused on two industries (Figure 1).

The 2017/2018 report demonstrated that most councils had implemented a risk-based approach in their prioritisation of their incoming workloads. Some also had annual plan undertakings that required a certain level of response. The key outtake from the questions last year was that while there was clear codification of incident response and consent monitoring, permitted activity monitoring was much less systematic overall. The exception to this was where a national instrument (with a provision for cost recovery) was in place, specifically the National Environmental Standard for Plantation Forestry. These same trends are still evident.

The 2017/2018 report noted the following;

'It is acknowledged that the cost recovery mechanisms for both incident response and permitted activity monitoring are opaque and not fit for purpose. Providing councils with a more clear-cut statutory context for cost recovery would assist in addressing this matter. In addition, if significant non-compliance events are occurring from permitted activity standards, then it may – in the long term- be desirable for that council to reconsider its non-regulatory approach to that activity.'

These comments still stand.

Key findings

- Councils have well established systems generally for determining the relative priority of consents and incidents.
- There is limited codification of permitted activity monitoring across most of the sector.
- Cost recovery mechanisms appear influential in determining priorities.

Staffing levels

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than one role then calculate what portion of their time is generally spent in each role, or only answer question 24 if your officers do a combination of roles. An example of an answer to each of the questions in this section might look like 22 FTEs spread across 40 individuals. Exclude any in-house or contract lawyers. Include managers in your count. Include any vacant positions in your counts.

Q21. How many FTEs does your council have who carry out monitoring roles?

Q22. How many FTEs does your council have who carry out environmental incident or pollution response roles?

Q23. How many FTEs does your council have who carry out investigation or enforcement roles?

Q24. How many FTEs does your council have who carry out a combination of the above roles?

Note 1: Include contractors

Note 2: Only answer this question if you have not included these staff in questions 21, 22 or 23

Q25. How many FTEs does your council have in CME support roles?

This includes administrative roles, e.g., staff who assist with issue of notices, reminder notices, upload of unpaid infringements to Ministry of Justice.

Questions 21–25 asked councils to provide details of the resourcing available to the RMA CME function. The purpose of using FTEs compared with number of individuals is to recognise that a mix of duties for the same person is commonplace, particularly in smaller councils. It is reasonable to assume that resourcing would differ substantially across the sector, given differences in population, area, development type and intensity and council funding base. Auckland manages approximately half of all resource consents and is a very large organisation, to account for this the totals in this section were separated to distinguish trends relevant to the sector and those applying only to Auckland (Table 6).

Table 6: Council FTEs for different aspects of the CME role

	Monitoring		Environmental incident or pollution		Investigation or enforcement		Combination	Support		Total	
	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19	2018/19	2017/18	2018/19	2017/18	2018/19
Regional Councils											
Northland Regional Council	13.3	0	4	0	2.7	1	20	2.4	2	22.4	23
Waikato Regional Council	22.5	19.65	9	8.7	6	9.5	0	9	7.08	46.5	44.93
Bay of Plenty Regional Council	14	17	2	3.5	3	3.5	0	12	11.5	31	35.5
Hawkes Bay Regional Council	6	9	3	2	0	1	0	1	2	10	14
Taranaki Regional Council	27	27	3	3	4	4	2	2	2	36	38
Horizons Regional Council	4	0	4	0	1	1	9.5	1	1	10	11.5
Greater Wellington Regional Council	10	0	4	0	1	0	12.5	0.5	1	15.5	13.5
Environment Canterbury	28	31	10.5	8	3	4	0	2.2	1	43.7	44
Otago Regional Council	9.7	14.6	6.3	0	1.7	0	8	5.5	1	23.2	23.6
West Coast Regional Council	1.5	0	1.5	0	1.5	0	4.5	0.5	1	5.5	5.5
Southland Regional Council	7.5	7.5	1	1	2	2	0	2.6	2.6	13.1	13.1
Regional subtotal	143.5	125.75	48.3	26.2	25.9	26	56.5	38.7	32.18	256.9	266.63
Unitary authorities											
Auckland Council	54	65	31	32	35	49	19	26	14	146	179
Gisborne District Council	6	4	1	0	1	1	0	0	1	8	6
Nelson City Council	1.33	0	1.33	0	1.34	0	5	0.5	0.5	4.5	5.5
Marlborough District Council	2.6	2	3.2	0	2.6	1	7	1	0.25	9.4	10.25
Tasman District Council	2	0	3	0	4	0	10	2	2	11	12
Unitary subtotal	65.93	71.00	39.53	32.00	43.94	51.00	41.00	29.50	17.75	178.90	212.75
Unitary minus Auckland	11.93	6.00	8.53	0.00	8.94	2.00	22.00	3.50	3.75	32.90	33.75
TOTAL	209.43	196.75	87.83	58.20	69.84	77.00	97.50	68.20	49.93	435.80	479.38
TOTAL (minus Akl)	155.43	131.75	56.83	26.20	34.84	28.00	78.50	42.20	35.93	289.80	300.38

Analysis

Staffing numbers sector wide stayed relatively static, but Auckland Council staffing levels sharply increased (see case study on prioritisation of resourcing away from bylaws). It is difficult to assess the changes in the individual categories as several councils altered how they counted the same FTEs from last year and the category of 'combined FTE' was added, so for this report the focus is on the aggregated numbers per council.

The largest change besides Auckland (see case study) was Bay of Plenty Regional Council with an increase of 4.5 FTE. At a sector level there was an overall increase of 10.58 FTE (virtually all confined to regional councils). In comparison, Auckland alone grew by 33 staff. Most councils had an increase (albeit usually marginal). These changes occur against a background of varying workload and changing populations, and to provide regional context, FTEs are presented per 1000 head of population (Table 7). It is noted that there are many possible drivers for resourcing and determining what these are as part of a dedicated analysis would likely be quite interesting.

Case study - shifting priorities from bylaws to RMA

In the 2017/2018 year, Auckland Council reported a total FTE for CME of 146. In 2018/2019 this number rose dramatically to 179 (an increase of 33 FTE). This marked change was, in part due to additional compliance functions being funded out of a Natural Environment Targeted Rate but was mostly due to resource being reallocated from bylaw compliance and deployed to focus on higher harms, including RMA compliance. The former bylaws team were given additional duties and a new operating model – focusing on quick response and resolution rather than a single statutory focus. This is the primary driver for the increase in staffing covering RMA matters.

This change represents a real example of prioritisation of complaints based on risk to the environment and the community. The change in FTE still represents largely the same individual staff members. Where additional duties are allocated to people that have had different jobs, it is important to ensure they are adequately trained to manage in that new role and to undertake the RMA CME role effectively.

Table 7: Comparison of council FTEs, population and number of formal actions (excluding prosecutions but including warnings)

Councils	FTE/1000 2017/2018	FTE 2018/2019	Population (2018)	FTE/1000 2018/019	Formal actions/1000
Northland Regional Council	0.13	23	181,047	0.13	2.56
Waikato Regional Council	0.10	44.93	466,110	0.10	1.17
Bay of Plenty Regional Council	0.10	35.5	313,380	0.11	0.38
Hawkes Bay Regional Council	0.06	14	170,448	0.08	0.83
Taranaki Regional Council	0.31	38	118,215	0.32	2.98
Horizons Regional Council	0.04	11.5	241,182	0.05	0.84
Greater Wellington Regional Council	0.03	13.5	514,752	0.03	0.17
Environment Canterbury	0.07	44	614,628	0.07	0.46
Otago Regional Council	0.10	23.6	239,313	0.10	0.23
West Coast Regional Council	0.17	5.5	35,202	0.16	2.13
Southland Regional Council	0.13	13.1	101,571	0.13	0.91
Regional Council average/total	0.11	24.24	272,350	0.12	1.15
Auckland Council	0.09	179	1,590,261	0.11	2.77
Gisborne District Council	0.19	6	47,565	0.13	0.25
Marlborough District Council	0.20	10.25	50,562	0.20	2.25
Tasman District Council	0.15	12	55,206	0.22	2.57
Nelson City Council	0.10	5.5	53,082	0.10	0.63
Unitary council average/total	0.15	42.55	359,335	0.15	1.67
AVERAGE	0.13			0.14	

Staffing relative to population was relatively static compared with 2017/2018, rising to 0.14FTE/1000 instead of 0.13FTE/1000. The lowest relative resourcing remains in Wellington, followed by Horizons, Canterbury and Hawkes Bay Councils. Highest relative resourcing remains at Taranaki Regional Council, followed by Tasman then Marlborough District Councils. A further analysis was undertaken which compared the population level with the number of formal

actions taken (excluding prosecution). The purpose of this was to determine if there was a relationship between the number of staff and the number of formal enforcement actions taken. There was something of a trend wherein councils which have on or above average levels of resourcing tended to take a higher number of enforcement actions.

The low n value (n = 16, i.e., number of councils) does not ensure these trends are robust, but it is interesting to note that some relationship is evident. It is very likely that other factors are in play. The completeness of the function's execution is the ultimate indicator of adequate resourcing however, and It may be that a clear picture will only emerge once a more robust dataset can be compiled. In the meantime, indications of the percentage of consents needing monitoring that get monitored and the like are useful litmus tests of resourcing adequacy.

It is difficult to ascertain what level of staffing is 'enough' however. Certainly, councils should have resource to address the important issues, to undertake necessary monitoring and to carry out proactive programmes such as education and engagement. Last year staffing levels were compared with population. Feedback indicated that that may not be an optimal yardstick (which was acknowledged last year). However, it does provide an indication of relative resourcing. This year both population and the number of formal actions (excluding prosecutions) per 1000 head of population were compared and trends were evident in respect of both, despite a relatively low n value (n = 16) (Figure 2).

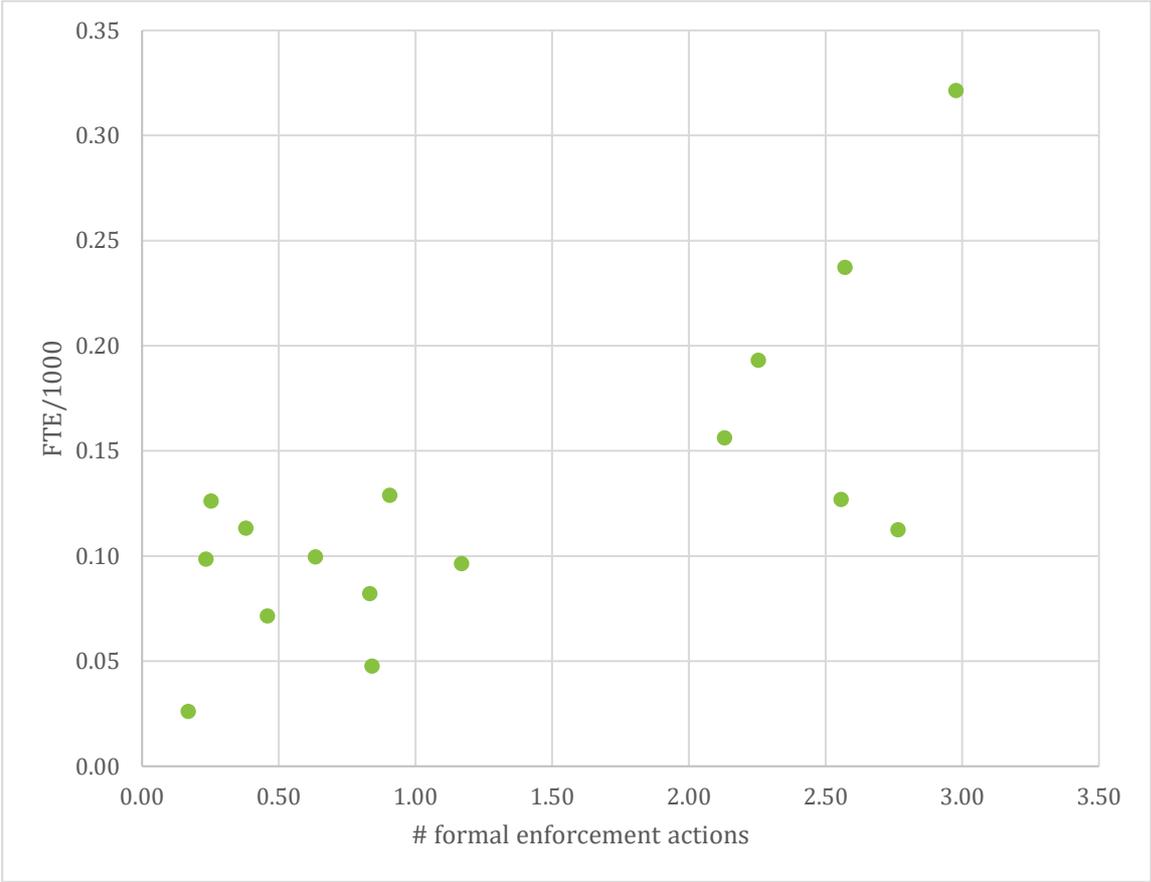


Figure 2: Comparison of CME resourcing and number of formal enforcement actions

Key findings

- Across the sector, 480 FTE work within RMA CME, with the majority in monitoring or combination roles.
- Changes in categories constrained sector level trend analysis, but overall FTE numbers marginally increased and there were no very significant reductions in staffing.
- Staffing levels have a moderate relationship with the number of formal enforcement actions taken per 1000 head of population (excluding prosecutions).
- The number of formal enforcement actions per 1000 head of population, when compared with staffing levels indicate that better resourcing leads to greater use of formal actions (because logically more people can do more things).

CME policies and procedures

- Q26. Does your council have an enforcement policy? Yes No
- Q27. What is your process for making decisions on prosecutions?
- Q28. Who has the delegation to authorise filing of charges for a prosecution at your council?
- Q29. Does your council have a conflict of interest policy? Yes No

Provision of a coherent policy context for CME within the councils' overall operations is important to maintain the credibility of a regulator. Questions 26–29 addressed the ways in which policy informed councils' CME operations and the role of individuals involved in decision-making. Question 28 was a new addition for the reporting year and concerned the role of Chief Executives in decision-making.

The decision-making process for prosecutions can vary between councils. It is important that it is fair, transparent and consistent, and much detail is contained within the MfE Best Practice Guidelines on them. The Guidelines state that all councils *'should have an operational enforcement policy, which the council uses to determine what enforcement action (if any) to take in response to non-compliance'*.⁵ For this reporting year, in addition to a question relating to the process, a question was added that inquired as to who had the delegation to authorise the filing of charges.

Analysis

Only Otago and Gisborne Councils do not have enforcement policies, although Gisborne District did have informal guidelines in place (rather than a policy accepted by the elected representatives) last year. All other councils have an enforcement policy in place. The need for an active enforcement policy is set out in the newly promulgated Best Practice Guidelines. Note that for the purposes of the analysis, enforcement policies in draft were still counted in this year's survey, as was the case in the 2017/2018 reporting year also. It is understood that Gisborne Council is currently preparing a new enforcement policy.

Gisborne District Council also does not have a conflict of interest policy, and is the only council lacking one. A conflict of interest policy is strongly recommended for public entities. There is a high potential for local government matters to generate conflicts of interest for elected representatives and staff, as their activities are so wide-ranging. Where councils do not have one, or it is not up to date or adhered to, they should address that gap as a matter of priority.

Within CME, the potential for conflicts is also very acute, and most intense where the proponent is close to the decision-making circle (i.e., is an offender). Having a clear process for managing both conflicts of interest more generally and those that apply to enforcement matters is critical to maintaining integrity as a regulator. Many councils encounter instances where they are faced with the prospect of prosecuting council itself, an elected representative or a staff member, and clear decision-making frameworks are needed. There is of course no easy way to capture the degree to which policies are adhered to but having them in the first place is important.

⁵ MfE Best Practice Guidelines at p73

All councils use a multi-party process to consider prosecutions – usually called an Enforcement Decision Group (EDG) or similar. The membership of the panels varies but usually includes senior management and often legal advice. In the case of four councils, the Chief Executive has the sole delegation to approve the filing of charges. Several councils have a panel comprised of senior managers and the Chief Executive, and the remainder have processes that confine technical decisions on prosecution to Tier 2 managers and below (Table 8).

Table 8: Council decision-making and delegations for prosecutions

	Enforcement policy?	Decisions on prosecution	Delegation	Conflict of interest policy?
Regional Councils				
Northland Regional Council	Yes	An enforcement decision group (EDG) meeting is held to consider and make a decision. The composition of the group changes depending on the activity which is being considered for prosecution. However, the group always consists of the officer(s) who have done the investigation and at least two managers (one of which is the GM or Deputy GM).	Two GMs and the Reg Services Deputy GM.	Yes
Waikato Regional Council	Yes	Investigating officer reports to a panel of three senior managers with recommendations. If the panel authorises prosecutions, this will be conditional on an independent legal review, which studies the file in entirety and applies the Evidential and Public Interest Tests. If the legal review is satisfied that the tests are met, charges are filed.	3 senior managers	Yes
Bay of Plenty Regional Council	Yes	Investigators present case to an EDG (consisting of compliance management team, investigators and legal representatives). Compliance managers sign off on recommendations to prosecute, based on consensus of EDG, which is passed to counsel for legal advice. Legal advice presented to GM for regulatory services to make final decision.	General Manager for Regulatory Services	Yes
Hawkes Bay Regional Council	Yes	Enforcement Decision Group makes recommendations through to Compliance Manager, then Group Manager and then to CEO. Legal review undertaken prior to consideration by CEO.	CEO	Yes
Taranaki Regional Council	Yes	Chief Executive in consultation with Director Resource Management and Compliance Manager	Chief Executive	Yes
Horizons Regional Council	Yes	Upon completion of a formal investigation, staff make a recommendation to the Regulatory Manager and Strategy and Regulation Group Manager, which is also accompanied by a legal review of the file by the Crown.	Chief Executive or Group Manager Strategy and Regulation	Yes

	Enforcement policy?	Decisions on prosecution	Delegation	Conflict of interest policy?
		This review assesses both the evidential sufficiency and public interest matters. The matter is then put to the Chief Executive, via a formal report, for consideration.		
Greater Wellington Regional Council	Yes	Case summary with recommendation for prosecution is taken to an Enforcement Decision Group (EDG), if decision is to prosecute then legal opinion is sought, this then goes to a Prosecution Decision Group consisting of Investigating Officer, Team Leader – Environmental Protection, Manager – Environmental Regulation and General Manager – Environment Group	General Manager – Environment Group	Yes
Environment Canterbury	Yes	ECan takes all possible prosecutions through an Enforcement Decision Panel (EDP) who review a case before deciding on what further action is to be taken. This panel may include three from: Regional Leader RMA Investigations, Zone Lead, Zone Manage, Zone Delivery Manager, Regional Leader Compliance Delivery	CEO	Yes
Otago Regional Council	No	Council has an Enforcement Decision Group (EDG). The case is presented by the Team Leader Investigations with the Investigating Officer in attendance. The EDG is made up of Compliance Manager, Legal Counsel and CEO (prosecutions)	The CEO in consultation with the other members of the EDG.	Yes
West Coast Regional Council	Yes	Compliance officer prepares a recommendation report for the Enforcement Decision Panel (EDP) who make the decision. The EDP consists of the CEO and one other manager. Decisions are reviewed by a lawyer.	CEO or one of two other managers (Consents & Compliance, Planning & Science).	Yes
Southland Regional Council	Yes	Incident response – investigation – enforcement decision group meeting – legal opinion – CEO approval	Chief Executive	Yes
Unitary authorities				

	Enforcement policy?	Decisions on prosecution	Delegation	Conflict of interest policy?
Auckland Council	Yes	Officer in charge presents case to panel consisting of Regulatory Compliance Manager, Investigations Manager and Legal Team Leader	Manager	Yes
Gisborne District Council	No	Enforcement Decision Group	Either Director or CME Manager after consultation with the Chief Executive.	No
Nelson City Council	Yes	Investigating officer prepares a report that is reviewed by a team leader and manager. Discussed with Group Manager (Tier 2), legal advice obtained then GM makes decision	Group Manager	Yes
Marlborough District Council	Yes	Stage one QA peer review panel Stage two Enforcement and Prosecution Committee Stage three Legal Counsel review	Officers, Compliance manager or Consents and Compliance Manager following approval from Enforcement and Prosecution Committee.	Yes
Tasman District Council	Yes	Through a decision-making group.	Tier 2 Manager.	Yes

The MfE Best Practice Guidelines are clear that elected representatives should not be involved in any enforcement decision-making. In relation to the involvement of Chief Executives the guidelines are much less clear. They acknowledge that there is a risk of actual or perceived bias because Chief Executives are appointed by the elected Council and note that it is *'good practice for final enforcement decisions to be delegated to the regulatory manager or other suitable decisionmaker in the council'*.

The final paragraph in that section goes on to qualify that statement, suggesting that the Chief Executive having the delegation to approve prosecutions is acceptable *'provided appropriate measures are in place to ensure a robust and transparent decision-making process. The chief executive must be independent of political influence, have enforcement knowledge and experience, and an understanding of the council's enforcement policies and priorities'*. Ensuring the Chief Executive is independent of political influence would require very robust systems, a high degree of transparency and a sound culture of fair governance, as the direct employer of the Chief Executive is the elected Council.

Key findings

- Two councils still do not have an enforcement policy and this gap should be addressed.
- All councils involve multiple parties in a discussion of whether a prosecution should proceed, and delegation to file charges sits at a range of levels
- Four Councils give sole delegation to approve prosecution to the Chief Executive

Educating and engaging with the regulated community

Q45. Does your council have, or support, any education or engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, workshops for earthworks contractors around erosion and sediment controls. Yes No
If yes, briefly describe

A robust approach to CME includes giving clear direction on what is expected to the regulated community (in line with the 'four E approach'). Engaging with the regulated community in appropriate ways gives important balance to a CME regime. This question related to whether councils undertook programmes to educate or engage and to describe what they were. It is unlikely that councils' descriptions of their activities are exhaustive. Most councils are likely to do more than they would list in response to this question and that is understood. However, it is interesting to see what some of the common and novel approaches are to enable the sharing of ideas. In an ideal situation, education and engagement programmes would be subject to outcome monitoring to consider how effective they have been in improving compliance levels.

Analysis

The most common (9 councils) form of education and engagement are the running of workshops in specific matters for the regulated community (commonly erosion and sediment control), followed by targeted industry engagement (that may also include specific workshops). The third most common is 'general outreach' (7 councils). General outreach is considered to be reactive information provided on request to the community, such as during site visits or on phone calls. It may be incidental to the purpose of the visit also. Although only 7 councils noted they provided it, there is a reasonable chance that all do.

Four councils referred to media releases and education campaigns, while four others referred to liaison committees with territorial local authorities (TLAs) with the purpose of working together more effectively, and attendance at events and expos respectively. One council (Gisborne District) noted that their education and engagement programmes were under development, but all others had at least one initiative in place. All in all, a reasonable breadth and depth of initiatives are undertaken sector-wide.

From a policy perspective, it is important to consider the overall costs and benefits of education and engagement programmes. But most important is to consider whether they are effective in improving rates of compliance. The question did not ask, nor did councils provide, an indication of the effectiveness of these interventions and this is perhaps ground next year's survey could seek to break. It is acknowledged that capturing the efficacy of informal approaches to engendering compliance can be technically difficult, but knowing 'what works' can help prioritise the strategies used in this space.

Key findings

- All councils are active in education and engagement approaches to regulated communities.
- There is no evidence that the effectiveness of those programmes is assessed.

Acting on non-compliance

Questions 30–33 relate to the instruments issued in relation to the different sections of the Act (listed once for brevity)

- Section 9 Use of land
- Section 12 Coastal marine area
- Section 13 Beds of lakes and rivers
- Section 14 Water
- Section 15 Discharges of contaminants
- Section 17 Duty to avoid, remedy & mitigate
- Other breach e.g., Section 22

Q30. Formal warnings issued

Q31. Abatement notices issued

Q32. Infringement notices issued

Q33. Enforcement orders applied for

Question 30–33 required councils to not only report on the formal instruments used, but to also advise of the section of the act the offence applied to. This is important to understand what – at a sector level – occupies the largest proportion of resources, helps identify priorities for compliance programmes and helps us understand the challenges that the regulated community are facing in achieving compliance. The data generated by this question are complex and effort has been made to streamline their presentation.

Analysis

In the 2017/2018, Section 15 offences dominated the use of formal instruments (excluding prosecutions). This year the trend is the same. The complexity of the table means it is not reproduced here – instead a summary table is included. Overall as a sector the councils issued 642 formal warnings, 4353 abatement notices, 2141 infringement fines and applied for 10 enforcement orders. More than half of the total number of notices in each case were section 15 offences. Section 15 concerns discharges of contaminants into the environment. In total across the sector, 7105 notices were issued. Of these 4018 were section 15 offences. The next largest group were offences under 'other breaches' including section 22 (Table 9).



NATIONWIDE: ENFORCEMENT ACTIONS AND SECTIONS BREACHED

	 Formal warnings 642	 Abatement notices 4353	 Infringement fines 2141	 Enforcement orders 10	TOTAL BREACHES 7146
SECTION 9 Use of land	67	246	146	4	463
SECTION 12 Coastal marine area	13	46	8	0	67
SECTION 13 Beds of lakes and rivers	64	74	62	0	200
SECTION 14 Water	9	87	67	0	163
SECTION 15 Discharges of contaminants	299	2843	870	6	4018
SECTION 17 Duty to avoid, remedy & mitigate	0	3	0	0	3
OTHER e.g. Section 22	18	1014	909	0	1941

Table 9:

Total use of formal instruments against relevant section of the Act (i. e., group of possible offences - summary of Table 10). Figures do not exactly match those in Table 10.

Table 10: Total use of formal instruments (excluding prosecution)

	Total formal warnings		Total abatement notices		Total Infringement fines		Total enforcement orders		Total formal actions (including warnings)		Total formal actions (excluding warnings)	
	2017/18	2018/19	2017/18	2018/19	2017/18	2018/19	2017/2018	2018/19	2017/18	2018/19	2017/18	2018/19
Regional Councils												
Northland	6	4	373	271	253	187	0	1	632	463	626	459
Waikato	198	301	89	134	100	107	0	3	387	545	189	244
Bay of Plenty	DNA	0	106	87	29	31	2	1	137	119	137	119
Hawke's Bay	14	0	46	40	91	101	0	1	151	142	137	142
Taranaki	0	0	200	240	67	112	1	0	268	352	268	352
Horizons	46	52	41	82	23	69	0	0	110	203	64	151
Wellington	57	43	11	17	25	27	0	0	93	87	36	44
Canterbury	415	172	72	39	127	71	1	0	615	282	200	110
West Coast	50	28	24	20	10	27	0	0	84	75	34	47
Otago	5	5	12	14	22	36	0	1	39	56	34	51
Southland	19	31	80	29	35	32	3	0	137	92	118	61
Subtotal	810	636	1054	973	782	800	7	7	2653	2416	1843	1780
Unitary Councils												
Auckland	DNA	0	648	3186	456	1210	10	2	1114	4398	1114	4398
Gisborne ¹	50*	0	19	11	4	1	1	0	74	12	24	12
Nelson	41	0	28	18	13	17	1	0	83	35	42	35
Marlborough	4	6	45	56	11	50	2	2	62	114	58	108
Tasman	DNA	0	33	67	23	63	0	0	56	130	56	130
Subtotal	45	6	773	3338	507	1341	14	4	1389	4689	1294	4683
TOTAL (excluding Auckland)	855	642	1179	1125	833	931	11	9	2928	2707	2023	2065
TOTAL	855	642	1827	4311	1289	2141	21	11	4042	7105	3137	6463

Councils issue a highly variable number of notices year on year and between different agencies. Relatively fewer formal warnings were issued this year and the vast majority were issued by regional councils (mainly Waikato and Canterbury Councils). The total number of abatement notices more than doubled this year, but the increase was almost entirely a result of a special compliance programme administered by the Auckland Council. Infringement fines exhibited a similar trend and for the same reasons. Enforcement orders halved however (Table 10).

Auckland Council quadrupled its CME activity for the reporting year, issuing 4398 formal actions up on last year's 1114 (Table 10). This is a result of project-based focus on erosion and sediment control and other bespoke approaches that netted additional actions. The council also significantly increased its FTE by reprioritising multiple staff engaged in enforcing bylaws and adding RMA responsibilities (see case study). These significant shifts in resourcing and focus have dominated the dataset this year.

Auckland Council aside, the regional councils had an overall decrease in enforcement activities while the unitaries had a mix of halving and doubling. There is no 'right number' with formal notices, it is instead most important that the right type of notice is used in the right instance. Further improvement to data recording and management and enhanced reporting requirements would help to address this gap.

Key findings

- Section 15 (discharges of contaminants) is the dominant category of offence.
- The sector issued 7105 formal notices, more than half of which were section 15 based.
- Abatement notices following by infringement fines are the most commonly used instruments.
- Notwithstanding Auckland's significant changes, the remainder of the sector issued a relatively similar amount of formal notices compared to last year.
- The number of enforcement orders halved from 21 to 11, and further analysis as to why the use of this instrument continues to be so low could be useful.

Prosecutions

Q34. How many RMA prosecutions were:

Note: For this question please consider an entire case (regardless of number of charges and defendants) as one prosecution.

- Concluded in the period?
- Still in progress in the period?

Q35. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?

Q36. For all of these (person) defendants what is the total number of convictions entered against them?

For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.

Q37. What is the total number of corporate (e.g., Crown, company, body corporate etc.) defendants convicted as a result of RMA prosecutions concluded in this period?

Q38. For all of these (corporate) defendants what is the total number of convictions entered against them?

For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.

Q39. Total number of convictions against an individual [see categories for sections of the Act as above]
Total fine potential (Total x \$300,000)

Q40. Total number of convictions against a corporate entity [see categories for sections of the Act as above]
Total fine potential (Total x \$600,000)

The degree to which prosecution is used in a regulatory regime can reflect the willingness of agencies to use tools at the heavy end of the spectrum. Use of such tools where appropriate is critical for engendering compliance and deterring offenders.

Analysis

In the reporting year, the sector overall concluded 61 prosecutions and has 99 in progress. Overall the sector convicted 29 individuals on a total of 106 charges (compared with 49 individuals of 114 charges last year) (Table 11). This may be indicative of the seriousness of the offences and the complexity of the cases varying year to year. This trend was reflected in an identical number of convictions (102) being entered against 47 corporates this year compared with 60 last year. It is likely too soon in the reporting framework to know what level of enforcement constitutes 'the norm' as there are so many variables in play

Table 11: Prosecutions across the regional sector for the 2018/2019 year

	Number concluded	Number in progress	Number of individuals convicted		Number of convictions entered		Number of corporates convicted		Number of convictions entered	
	2018/2019	2018/2019	2017/2018	2018/2019	2017/2018	2018/2019	2017/2018	2018/2019	2017/2018	2018/2019
Regional Councils										
Northland Regional Council	0	4	1	0	1	0	0	0	0	0
Waikato Regional Council	15	27	3	8	4	25	8	12	18	37
Bay of Plenty Regional Council	12	17	6	4	6	8	2	10	2	12
Hawkes Bay Regional Council	1	4	1	0	2	0	3	0	5	0
Taranaki Regional Council	1	0	3	0	3	0	1	3	2	8
Horizons Regional Council	5	2	0	1	0	3	0	5	0	5
Greater Wellington Regional Council	0	3	0	0	0	0	0	0	0	0
Environment Canterbury	2	7	1	Unknown	2	Unknown	4	Unknown	8	Unknown
Otago Regional Council	4	2	10	0	12	0	10	5	13	5
West Coast Regional Council	3	0	0	0	0	0	1	1	1	1
Southland Regional Council	6	5	11	5	41	11	11	4	25	9
REGIONAL SUBTOTAL	49	71	36	18	71	47	40	40	74	77
Unitary Authorities										
Auckland Council	7	12	11	7	35	47	16	4	18	15
Gisborne District Council	0	12	0	0	0	0	0	0	0	0
Nelson City Council	0	0	0	0	0	0	1	0	3	0
Tasman District Council	1	0	2	2	8	6	2	1	5	3
Marlborough District Council	4	4	0	2	0	6	1	2	2	7
UNITARY SUBTOTAL	12	28	13	11	43	59	20	7	28	25
TOTAL	61	99	49	29	114	106	60	47	102	102



CONCLUDED **61**

IN PROGRESS **99**

Waikato Regional Council concluded 15 prosecutions in the reporting year and has 27 in progress, and Bay of Plenty concluded 12 with 17 in progress. Auckland Council concluded 7 prosecutions, and still has 12 in progress. Auckland is very active in issuing lower order notices, but the marked increase in numbers there has not been evident in increased prosecutions – both conviction numbers and defendant numbers have reduced this reporting year. Environment Canterbury was unable to provide a significant proportion of the data, despite reporting last year – it is not clear why this is the case.

Five councils concluded no prosecutions for the reporting year, and the same number have none in progress. Taranaki and Tasman Councils both concluded one and have none in progress. Gisborne District Council also concluded no prosecutions, but has 12 in progress, two of which are awaiting sentencing. West Coast Council concluded 3 prosecutions, securing a conviction against one corporate defendant only. Nelson appears to have secured convictions however despite reporting having concluded no hearings.

There is a high degree of variability in prosecutions being taken, and it is unlikely that this is only due to variation in levels of compliance region to region. Where councils are demonstrably unlikely to take prosecutions, they may struggle to achieve behaviour change, as it may be perceived that non-compliance is unlikely to result in serious consequences. Many councils report limited resourcing and these two matters may be related. The growing role of the Environmental Protection Authority may be useful in this space, enabling poorly resourced councils to access assistance with often time-consuming enforcement processes. The sector should consider the pattern of use of formal instruments and conduct analysis at a strategic level to consider why it occurs as it does.

Key findings

- Waikato, Bay of Plenty and Auckland collectively carried out approximately half of the prosecutions in the sector, and many councils did little or none
- Geographical variation in prosecution is evident, with most enforcement activity occurring in 3 jurisdictions

Penalties

Q41. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period? Individual / Corporate

Q42. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?

Prison sentence / Enforcement order / Reparation / Community Service / Discharge without conviction / Other

Q43. How many prosecutions involved restorative justice, diversion or other alternative justice process?

- Restorative justice
- Diversion
- Alternative justice

Q44. Describe any outcomes relating to these processes.

Questions 41– 44 asked councils to report on the sanctions they had secured as part of their prosecutions. Upon a successful prosecution under the RMA, a fine is the most common sanction. Other sanctions included enforcement orders, community service and processes such as diversion (Table 12).

Table 12: *Other sanctions handed down under the RMA*

Other sanctions	Number
Prison sentence	1
Enforcement orders	9
Reparation	3
Community service	6
Discharge without conviction	5
Other	9
Restorative justice	5
Diversion	0
Alternative justice	2
TOTAL	40

More than \$1.8 million in fines were handed down in 2018/2019. For the reporting year, councils secured \$1.3 million in corporate fines and half a million dollars in individual fines (Table 13). The majority of both figures were secured collectively by Waikato and Bay of Plenty Regional Councils. Eleven councils secured no individual fines, and six secured no corporate fines. In the 2017/2018 reporting year, it was noted that the fines issued were a very small subset of the potential fines (c.2%) and this trend is also present this year. A total of 106 convictions against individuals had the potential to net \$31.8 million in fines, while 102 convictions against corporates had a total potential fine quantum of \$61.2 million (\$93 million total). Auckland Council also secured a prison sentence in the last year, which is a rare event under the RMA. A range of other sanctions were also handed down. Several councils secured no penalties of any kind as they undertook no prosecutions.



Table 13: Prosecution outcomes

	What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?		What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?						How many prosecutions involved restorative justice, diversion or other alternative justice process?		
	Individual fines	Corporate fines	Prison sentence	Enforcement order	Reparation	Community Service	Discharge without conviction	Other	Restorative justice	Diversion	Alternative justice
Regional Councils											
Northland Regional Council	-	\$ -	0	0	0	0	0	0	0	0	0
Waikato Regional Council	\$250,740.00	\$588,837.50	0	3	0	1 (40hrs)	1	0	1	0	0
Bay of Plenty Regional Council	\$101,200.00	\$ 419,325.00	0	1	0	2 (1*95hr, 1*400hr)	0	0	0	0	0
Hawkes Bay Regional Council	-	\$-	0	0	0	0	0	0	0	0	0
Taranaki Regional Council	-	\$ 204,000.00	0	0	0	0	0	0	0	0	0
Horizons Regional Council	-	\$ 290,000.00				1	0		0	0	0
Greater Wellington Regional Council	-	\$ -	0	0	0	0	0	0	0	0	0
Environment Canterbury	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Otago Regional Council	-	\$ 87,975.00	0	1	0	0	0	0	1	0	0

	What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?		What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?						How many prosecutions involved restorative justice, diversion or other alternative justice process?		
	Individual fines	Corporate fines	Prison sentence	Enforcement order	Reparation	Community Service	Discharge without conviction	Other	Restorative justice	Diversion	Alternative justice
West Coast Regional Council	-	\$ 33,750.00	0	0	0	0	0	0	0	0	2
Southland Regional Council	\$ 59,550.00	\$ 101,775.00	0	2	0	0	2	8	0	0	0
REGIONAL SUBTOTAL	\$ 411,490.00	\$ 1,136,825.00	0	7	0	5	3	8	2	0	2
Unitary authorities											
Auckland Council	\$ 84,775.00	\$ 24,975.00	1 (2 years)	1	1 (173095.61)	1 (300 hours)	0	1 (3 months home detention)	1	0	0
Gisborne District Council	\$ -	\$ -	0	0	0	0	0	0	0	0	0
Nelson City Council	\$ -	\$ -	0	0	0	0	0	0	0	0	0
Marlborough District Council	\$ 5,000.00	\$ 85,250.00		1	2	0	1	0	2	0	0
Tasman District Council	\$ -	\$ 76,500.00	0	0	0	0	1	0	0	0	0
UNITARY SUBTOTAL	\$ 89,775.00	\$ 186,725.00	1	2	3	1	2	1	3	0	0
TOTAL	\$ 501,265.00	\$ 1,323,550.00	1	9	3	6	5	9	5	0	2



**INDIVIDUAL
\$501,265**

**CORPORATE
\$1,323,550**

CME reporting

Q46. What mechanisms do your council use to report CME data to the public? (e.g., annual reports, reports to councillors) *Provide links or examples.*

- Annual Report
- Report to Councillors
- Snapshot
- Report(s) to Council committee meetings (open to public)
- Other (please specify)

Except for the contribution of data to the National Monitoring System, councils are responsible for determining the scope and content of the reporting on their RMA CME functions. Question 46 addressed the ways in which this operational function was carried out, providing a range of 'standard' options and giving council respondents space to describe alternate approaches.

The most common type of reporting (14 councils) is a report to committees of councillors (open to the public) about CME activities and outcomes followed closely by the inclusion of CME information in an annual report (11 councils). Canterbury, West Coast, Southland, Marlborough and Northland Councils all report across all four standard reporting approaches. Overall results are similar to last year, with subtle variations in the reporting undertaken, and a greater number of reporting identified in the 'other' category.



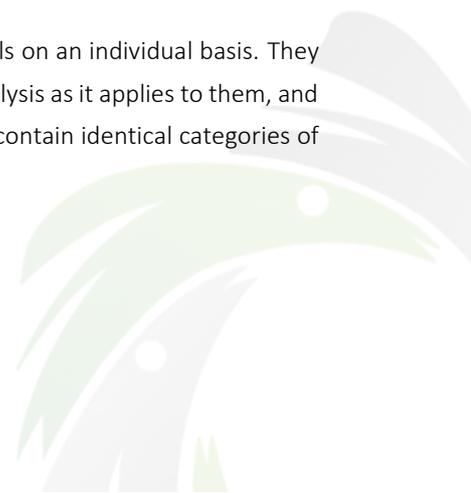
Table 14: CME reporting channels

Regional councils	Annual report	Report to councillors	Snapshot	Report to council committee (open to public)	Other	Total
Regional councils						
Northland Regional Council	1	1	1	1	0	4
Waikato Regional Council	0	0	0	1	1	2
Bay of Plenty Regional Council	1	0	1	1	1	4
Hawkes Bay Regional Council	1	0	0	0	0	0
Taranaki Regional Council	1	1	0	1	0	3
Horizons Regional Council	0	0	0	1	0	1
Greater Wellington Regional Council	1	1	0	1	0	3
Environment Canterbury	1	1	1	1	0	4
Otago Regional Council	0	1	0	0	1	2
West Coast Regional Council	1	1	1	1	0	4
Southland Regional Council	1	1	1	1	0	4
Unitary authorities						
Auckland Council				1	1	2
Gisborne District Council				1	1	2
Nelson City Council	1			1	1	3
Marlborough District Council	1	1	1	1	0	4
Tasman District Council	1	1		1	0	3

Whether the enforcement regime is having the right effect is ultimately going to be reflected in state of the environment reporting. Last year, a question was asked regarding the linkage between CME reporting and SOE reporting. There didn't appear to be a strong relationship. Most councils had relatively underdeveloped links between reporting on CME activities and the council's overall state of the environment reporting programme. It is important to foster these links and to ensure that the effectiveness of council's CME regime is recognised as a key lever in implementing and achieving the purpose of the Act.

PART 2 REGIONAL SCORECARDS

The following pages are summaries of the key data for the regional and unitary councils on an individual basis. They enable councils to quickly and easily communicate the findings of the national scale analysis as it applies to them, and to use these figures as a basis for regional scale performance improvement. All pages contain identical categories of information, all of which is based on tables found elsewhere throughout the report.



NORTHLAND REGIONAL COUNCIL



181,047

Population (2018)



16.2%

Population growth (2013-2018)



13778km²

Geographic area



\$7,415m

Regional GDP to March 2018



STAFF

Full time employees **23**

FTE/1000 **0.13**

National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



9738

Administered



3847

Required monitoring



Consents monitored of those requiring it

92.6%

National average > 89.5%

INCIDENTS



1026

INCIDENTS



100%
RESPONSE RATE

National average > 98.7%

ENFORCEMENT

4

Warnings issued

271

Abatement notices issued

187

Infringement fines issued

1

Enforcement order applications

0

Prosecutions concluded
2018/2019

4

Prosecutions in progress

WAIKATO REGIONAL COUNCIL

 **466,110**
Population (2018)

 **12.8%**
Population growth (2013-2018)

 **24147km²**
Geographic area

 **\$23,914m**
Regional GDP to March 2018



 **STAFF**

Full time employees **45**

FTE/1000 **0.10**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS

 **4787**
Administered

 **525**
Required monitoring

 Consents monitored of those requiring it
100%
National average ↗ 89.5%

INCIDENTS

 **1838**
INCIDENTS

 **100%**
RESPONSE RATE
National average ↗ 98.7%

ENFORCEMENT

301
Warnings issued

134
Abatement notices issued

107
Infringement fines issued

3
Enforcement order applications

15
Prosecutions concluded
2018/2019

27
Prosecutions in progress

BAY OF PLENTY REGIONAL COUNCIL



313,380

Population (2018)



14.6%

Population growth (2013-2018)



12303km²

Geographic area



\$15,833m

Regional GDP to March 2018



STAFF

Full time employees **35.5**

FTE/1000 **0.11**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



9057

Administered



2380

Required monitoring



Consents monitored of those requiring it

69.6%

National average ↗ 89.5%

INCIDENTS



3519

INCIDENTS



100%

RESPONSE RATE

National average ↗ 98.7%

ENFORCEMENT

0

Warnings issued

87

Abatement notices issued

31

Infringement fines issued

1

Enforcement order applications

12

Prosecutions concluded
2018/2019

17

Prosecutions in progress

HAWKES BAY REGIONAL COUNCIL

 **170,448**
Population (2018)

 **9.2%**
Population growth (2013-2018)

 **14138km²**
Geographic area

 **\$8,070m**
Regional GDP to March 2018



 **STAFF**

Full time employees **14**

FTE/1000 **0.08**
National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS

 **5928**
Administered

 **3446**
Required monitoring

 Consents monitored of those requiring it
92.8%
National average ↗ 89.5%

INCIDENTS

 **1116**
INCIDENTS

 **100%**
RESPONSE RATE
National average ↗ 98.7%

ENFORCEMENT

0
Warnings issued

40
Abatement notices issued

101
Infringement fines issued

1
Enforcement order applications

1
Prosecutions concluded
2018/2019

4
Prosecutions in progress

TARANAKI REGIONAL COUNCIL



118,215

Population (2018)



7.4%

Population growth (2013-2018)



7256km²

Geographic area



\$8,136m

Regional GDP to March 2018



STAFF

Full time employees **38**

FTE/1000 **0.32**

National average **> 0.14**

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



4784

Administered



2743

Required monitoring



Consents monitored of those requiring it

100%

National average **> 89.5%**

INCIDENTS



452

INCIDENTS



100%

RESPONSE RATE

National average **> 98.7%**

ENFORCEMENT

0

Warnings issued

240

Abatement notices issued

112

Infringement fines issued

0

Enforcement order applications

1

Prosecutions concluded
2018/2019

0

Prosecutions in progress

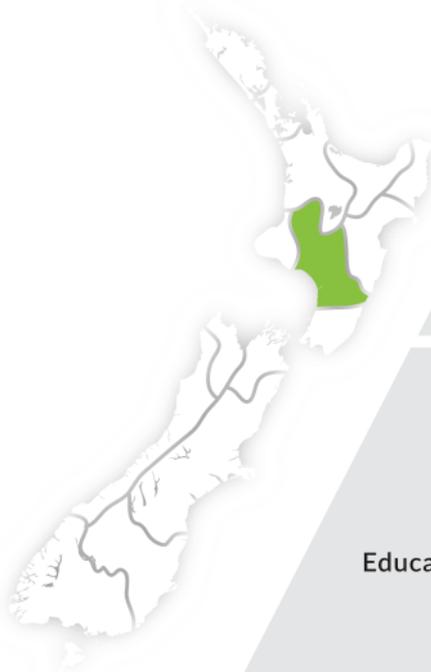
HORIZONS REGIONAL COUNCIL

 **241,182**
Population (2018)

 **7.0%**
Population growth (2013-2018)

 **22220km²**
Geographic area

 **\$10,709m**
Regional GDP to March 2018



 **STAFF**

Full time employees **11.5**

FTE/1000 **0.05**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

CONSENTS

 **5204**
Administered

 **1648**
Required monitoring

 Consents monitored of those requiring it
80%
National average > 89.5%

INCIDENTS

 **1298**
INCIDENTS

 **100%**
RESPONSE RATE
National average > 98.7%

ENFORCEMENT

52
Warnings issued

82
Abatement notices issued

69
Infringement fines issued

0
Enforcement order applications

5
Prosecutions concluded
2018/2019

2
Prosecutions in progress

GREATER WELLINGTON REGIONAL COUNCIL

 **514,752**
Population (2018)

 **7.6%**
Population growth (2013-2018)

 **8142km²**
Geographic area

 **\$37,107m**
Regional GDP to March 2018



 **STAFF**

Full time employees **13.5**

FTE/1000 **0.03**
National average \nearrow 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

CONSENTS

 **6604**
Administered

 **1782**
Required monitoring

 Consents monitored of those requiring it
94.9%
National average \nearrow 89.5%

INCIDENTS

 **1244**
INCIDENTS

 **100%**
RESPONSE RATE
National average \nearrow 98.7%

ENFORCEMENT

43
Warnings issued

17
Abatement notices issued

27
Infringement fines issued

0
Enforcement order applications

0
Prosecutions concluded
2018/2019

3
Prosecutions in progress

ENVIRONMENT CANTERBURY



614,628

Population (2018)



10.8%

Population growth (2013-2018)



44633km²

Geographic area



\$35,392m

Regional GDP to March 2018



STAFF

Full time employees **44**

FTE/1000 **0.07**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



18,500

Administered



4625

Required monitoring



Consents monitored of those requiring it

71.7%

National average ↗ 89.5%

INCIDENTS



3599

INCIDENTS



88.9%

RESPONSE RATE

National average ↗ 98.7%

ENFORCEMENT

172

Warnings issued

39

Abatement notices issued

71

Infringement fines issued

0

Enforcement order applications

2

Prosecutions concluded 2018/2019

7

Prosecutions in progress

OTAGO REGIONAL COUNCIL

 **239,313**
Population (2018)

 **7.3%**
Population growth (2013-2018)

 **31280km²**
Geographic area

 **\$12,658m**
Regional GDP to March 2018



 **STAFF**

Full time employees **23.6**

FTE/1000 **0.10**

National average \nearrow 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

CONSENTS

 **5588**
Administered

 **1161**
Required monitoring

 Consents monitored of those requiring it
52.3%
National average \nearrow 89.5%

INCIDENTS

 **2056**
INCIDENTS

 **100%**
RESPONSE RATE
National average \nearrow 98.7%

ENFORCEMENT

5
Warnings issued

14
Abatement notices issued

36
Infringement fines issued

1
Enforcement order application

4
Prosecutions concluded
2018/2019

2
Prosecutions in progress

WEST COAST REGIONAL COUNCIL



35,202

Population (2018)



-3.0%

Population decrease (2013-2018)



23277km²

Geographic area



\$1,600m

Regional GDP to March 2018



STAFF

Full time employees **5.5**

FTE/1000 **0.16**

National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



3474

Administered



868

Required monitoring



Consents monitored of those requiring it

100%

National average > 89.5%

INCIDENTS



233

INCIDENTS



100%

RESPONSE RATE

National average > 98.7%

ENFORCEMENT

28

Warnings issued

20

Abatement notices issued

27

Infringement fines issued

0

Enforcement order applications

3

Prosecutions concluded
2018/2019

0

Prosecutions in progress

SOUTHLAND REGIONAL COUNCIL



101,571

Population (2018)



3.8%

Population growth (2013-2018)



32184km²

Geographic area



\$5,826m

Regional GDP to March 2018



STAFF

Full time employees **13.1**

FTE/1000 **0.13**

National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



5590

Administered



4586

Required monitoring



Consents monitored of those requiring it

78.4%

National average > 89.5%

INCIDENTS



813

INCIDENTS



86.1%

RESPONSE RATE

National average > 98.7%

ENFORCEMENT

31

Warnings issued

29

Abatement notices issued

32

Infringement fines issued

0

Enforcement order applications

6

Prosecutions concluded 2018/2019

5

Prosecutions in progress

AUCKLAND COUNCIL



1,590,261

Population (2018)



10.6%

Population growth (2013-2018)



5945km²

Geographic area



\$107,754m

Regional GDP to March 2018



STAFF

Full time employees **179**

FTE/1000 **0.11**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



108,326

Administered



11,778

Required monitoring



Consents monitored of those requiring it

59.9%

National average ↗ 89.5%

INCIDENTS



11743

INCIDENTS



100%

RESPONSE RATE

National average ↗ 98.7%

ENFORCEMENT

0

Warnings issued

3186

Abatement notices issued

1210

Infringement fines issued

2

Enforcement order applications

7

Prosecutions concluded
2018/2019

12

Prosecutions in progress

GISBORNE DISTRICT COUNCIL



47,565

Population (2018)



8.3%

Population growth (2013-2018)



8386km²

Geographic area



\$2,011m

Regional GDP to March 2018



STAFF

Full time employees **6**

FTE/1000 **0.13**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

CONSENTS



Unknown
Administered



Unknown
Required monitoring



Consents monitored of those requiring it

Unknown

National average ↗ 89.5%

INCIDENTS



539
INCIDENTS



100%
RESPONSE RATE

National average ↗ 98.7%

ENFORCEMENT

0

Warnings issued

11

Abatement notices issued

1

Infringement fines issued

0

Enforcement order applications

0

Prosecutions concluded
2018/2019

12

Prosecutions in progress

TASMAN DISTRICT COUNCIL



55,206
Population (2018)



7.7%
Population growth (2013-2018)



9764km²
Geographic area



\$5,239m
Regional GDP to March 2018
(Includes Nelson City Council)



STAFF

Full time employees **12**

FTE/1000 **0.22**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



13042
Administered



2478
Required monitoring



Consents monitored
of those requiring it
75.5%
National average > 89.5%

INCIDENTS



2631
INCIDENTS



100%
RESPONSE RATE
National average > 98.7%

ENFORCEMENT

0

Warnings issued

67

Abatement notices issued

63

Infringement fines issued

0

Enforcement order applications

1

Prosecutions concluded
2018/2019

0

Prosecutions in progress

NELSON CITY COUNCIL

 **53,082**
Population (2018)

 **9.6%**
Population growth (2013-2018)

 **477km²**
Geographic area

 **\$5239m**
Regional GDP to March 2018
(Tasman District Council region)



 **STAFF**

Full time employees **5.5**

FTE/1000 **0.10**
National average > 0.14

POLICY CHECKLIST

- Conflict of interest policy
- Education / engagement programmes
- Enforcement policy

CONSENTS

 **784**
Administered

 **619**
Required monitoring

 Consents monitored of those requiring it
100%
National average > 89.5%

INCIDENTS

 **537**
INCIDENTS

 **100%**
RESPONSE RATE
National average > 98.7%

ENFORCEMENT

0
Warnings issued

18
Abatement notices issued

17
Infringement fines issued

0
Enforcement order applications

0
Prosecutions concluded
2018/2019

0
Prosecutions in progress

MARLBOROUGH DISTRICT COUNCIL



50,562

Population (2018)



9.2%

Population growth (2013-2018)



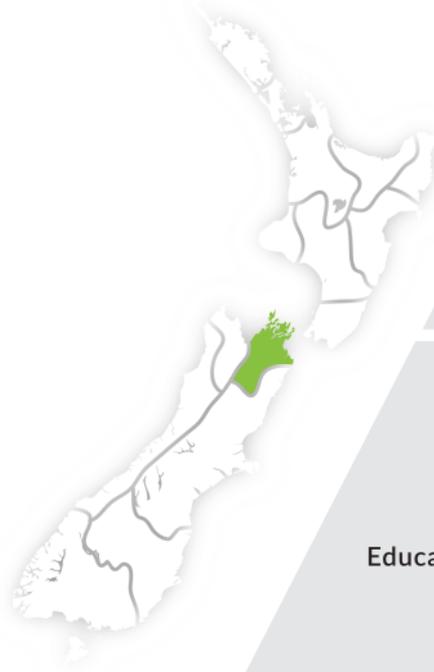
10773km²

Geographic area



\$3,020m

Regional GDP to March 2018



STAFF

Full time employees **10.3**

FTE/1000 **0.20**

National average ↗ 0.14

POLICY CHECKLIST

- Conflict of interest policy ✓
- Education / engagement programmes ✓
- Enforcement policy ✓

CONSENTS



21,377

Administered



3261

Required monitoring



Consents monitored of those requiring it

88.7%

National average ↗ 89.5%

INCIDENTS



633

INCIDENTS



100%

RESPONSE RATE

National average ↗ 98.7%

ENFORCEMENT

6

Warnings issued

56

Abatement notices issued

50

Infringement fines issued

2

Enforcement order applications

4

Prosecutions concluded
2018/2019

4

Prosecutions in progress

APPENDIX 1 – SURVEY QUESTIONS

1. Which council are you completing this survey on behalf of? [Regional/ Unitary]
2. What is your name and contact details?

Regional context

In contrast to the 2017/2018 report, the 2018/2019 report drew regional context data from common national sources (e.g. Statistics New Zealand) instead of requiring councils to submit it. This also helped ensure comparability

3. In no more than 300 words describe your regional key commitments to work with iwi/Maori on CME. For example, joint management agreements or other co-management agreements.

Note: The report author may contact you for further information or clarification of your response.

CME Operations (managing the workload)

Complaints

4. Does your council register/count:
an individual “incident” per notification?
one incident per event, regardless of the number of separate complainants?
5. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?
This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties, but excludes information from council monitoring activity. Please note answer unknown if your council does not record the information requested.
6. How many of these notifications were responded to by council?
This response may be in any form – e.g. phone call, site visit, desktop audit
7. How many of these notifications were physically attended by council staff?
If one incident had multiple visits, only count this as one.
8. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?
9. How many of the breaches were for:
 - Breach of a resource consent?
 - Breach of permitted activity rules?

Resource consents

10. How many individual, active resource consents exist in your region?
Exclude Land Use Consents where the activity is completed e.g. Land use subdivisions where the subdivision is complete and certificates issued or land use – building where the building has been constructed.
11. How many consents required monitoring during this period, in accordance with your monitoring prioritisation model/strategy?
12. How many of these consents were monitored (including desktop audit) in the period?

Compliance gradings

13. In the 2018/19 year, did you use the four compliance grades as recommended by Ministry for Environment?
Yes/No

14. What grades do you apply to non-compliance? (e.g. technical non-compliance, significant non-compliance)
- Fully Compliant
 - Technical/Low Non-Compliance
 - Moderate Non-Compliance
 - Significant Non-Compliance
 - Other (please specify)
15. When will your council be adopting the four compliance grades recommended by Ministry for Environment?
16. What were the levels of compliance with consents according to the grades you use?

Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g. a consent may be monitored 4 times in the year on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add 3 to the total of Fully Compliant and one to the total for Technical Non-compliance.

Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g. a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance)

Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Monitoring permitted activities

17. Which permitted activities do you have a monitoring programme for?

List of activities with tick box if yes:

- Agriculture (excluding dairy)
- Aquaculture
- Construction
- Dairy
- Forestry
- Horticulture
- Mining
- Oil and gas
- Tourism
- Vineyards
- Wineries
- Other (please specify)

Making decisions on priorities

18. What basis is used for determining what notifications/complaints/incidents are physically attended and with what urgency or priority?
19. Describe how you determine which consents are monitored and how frequently?
If there is a prioritisation model or compliance strategy, add link
20. Describe the basis, which was used for determining what, if any, permitted activities were monitored.
If there is a prioritisation model or compliance strategy, add link

Staffing levels

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than

one role then calculate what portion of their time is generally spent in each role, or only answer question 24 if your officers do a combination of roles. An example of an answer to each of the questions in this section might look like 22 FTEs spread across 40 individuals. Exclude any in-house or contract lawyers. Include managers in your count. Include any vacant positions in your counts.

21. How many FTEs does your council have who carry out monitoring roles?

Include contractors.

22. How many FTEs does your council have who carry out environmental incident or pollution response roles?

Include contractors.

23. How many FTEs does your council have who carry out investigation or enforcement roles?

24. How many FTEs does your council have who carry out a combination of the above roles?

Note 1: Include contractors

Note 2: Only answer this question if you have not included these staff in questions 21, 22 or 23

25. How many FTEs does your council have in CME support roles ?

This includes administrative roles, e.g. staff who assist with issue of notices, reminder notices, upload of unpaid infringements to MoJ.

CME policies and procedures

26. Does your council have an enforcement policy? Yes No

27. What is your process for making decisions on prosecutions?

28. Who has the delegation to authorise filing of charges for a prosecution at your council?

29. Does your council have a conflict of interest policy? Yes No

Acting on non-compliance

Questions 30-33 relate to the instruments issued in relation to the different sections of the Act (listed once for brevity)

- Section 9 Use of land
- Section 12 Coastal marine area
- Section 13 Beds of lakes and rivers
- Section 14 Water
- Section 15 Discharges of contaminants
- Section 17 Duty to avoid, remedy & mitigate
- Other breach e.g. Section 22

30. Formal warnings issued

31. Abatement notices issued

32. Infringement notices issued

33. Enforcement orders applied for

Prosecution

34. How many RMA prosecutions were:

Note: For this question please consider an entire case (regardless of number of charges and defendants) as one prosecution.

- Concluded in the period?
- Still in progress in the period?

35. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?

36. For all of these (person) defendants what is the total number of convictions entered against them?

For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.

37. What is the total number of corporate (e.g. Crown, company, body corporate etc) defendants convicted as a result of RMA prosecutions concluded in this period?
38. For all of these (corporate) defendants what is the total number of convictions entered against them?
For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.
39. Total number of convictions against an individual [see categories for sections of the Act as above]
Total fine potential (Total x \$300,000)
40. Total number of convictions against a corporate entity [see categories for sections of the Act as above]
Total fine potential (Total x \$600,000)
41. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?
 - Individual fines
 - Corporate fines
42. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?
 - Prison sentence
 - Enforcement order
 - Reparation
 - Community Service
 - Discharge without conviction
 - Other
43. How many prosecutions involved restorative justice, diversion or other alternative justice process?
 - Restorative justice
 - Diversion
 - Alternative justice
44. Describe any outcomes relating to these processes.

Educating and engaging with the regulated community

45. Does your council have, or support, any education or engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, workshops for earthworks contractors around erosion and sediment controls. Yes/No
If yes, briefly describe

CME reporting

46. What mechanisms do your council use to report CME data to the public? (e.g. annual reports, reports to councillors) *Provide links or examples.*
 - Annual Report
 - Report to Councillors
 - Snapshot
 - Report(s) to Council committee meetings (open to public)
 - Other (please specify)



APPENDIX 2 - LONG FORM RESPONSES (QUESTION 3)

Northland Regional Council	NRC has a range of initiatives to work in partnership with Maori. The main one is the Te Tai Tokerau Maori & Council Working Party (TMAC), which is an advisory committee established in 2014. Membership of this standing committee consists of 26 hapu/iwi representatives and four regional councillors. This group meet monthly. Council is currently working with TMAC to develop a Mana Whakahono ā Rohe (a binding statutory arrangement that provides for a structured relationship under the Resource Management Act 1991 between tangata whenua and councils). It is expected it will include an agreed process for hapū signatories to meet with the Northland Regional Council to discuss opportunities for hapū to be involved in a range of council compliance and monitoring activities.
Auckland Council	Regular contact with 19 Mana Whenua groups through Kaitiaki forum (hosted by AC) and more recently have held a series of wananga to workshop our CVA processes. Work specifically on CME includes assistance with impact statements in enforcement proceedings and remediation.
Waikato Regional Council	The WRC has operative Joint Management Agreements (JMAs) with five "River" Iwi – Waikato-Tainui, Raukawa, Te Arawa, Ngati Maniapoto and Ngati Tuwharetoa – as required by legislation. A key purpose of JMAs is to provide a framework for Iwi and the Council to discuss and agree processes for enabling co-management of planning, regulatory and other functions within the relevant Iwi's geographic area of interest. For all currently operative JMAs, this includes RMA compliance, monitoring and enforcement (CME) functions of Council. Whilst each of the JMAs was individually negotiated, there are common themes across all in relation to CME. The key commitments relating to CME within the JMAs generally include biannual operational meetings to discuss monitoring priorities, extent and methods; the potential for Iwi involvement in monitoring and enforcement processes; responses to non-compliance; consent review opportunities; the effectiveness of conditions and the effectiveness of compliance policies and procedures generally. The JMAs require various CME-related information to be provided, at different times – for example, summary updates of enforcement actions (prosecutions, enforcement orders, abatement notices and infringement notices) undertaken by the Council under the RMA for the JMA area. Agreed outcomes and actions from biannual operational meetings will, where appropriate, be reported up to the corresponding co-governance committees.
Bay of Plenty Regional Council	We do not currently have any formal CME focussed arrangements with tangata whenua; however, the role and importance of maori is considered in the day to day implementation of our compliance programme. In practical terms, this may include ensuring tangata whenua are notified of incidents in their rohe ("no surprises" approach) and involved in project where appropriate (eg. marae wastewater). CME information is also formally reported to co-governance groups (eg. Rangitaiki River Authority and Te Maru o Kaituna)



Hawkes Bay Regional Council	<p>A fundamental relationship exists between HBRC and the Treaty settlement groups within Hawke's Bay. While this is tangibly demonstrated through the Regional Planning Committee (RPC) (a co-governance arrangement created by statute and responsible for the development and review of regional policy statements and regional plans) HBRC regularly meets with the Post settlement governance entities to discuss matters of concern beyond the remit of the RPC. This includes regulatory matters within the relevant rohe and CME issues.</p> <p>In the 2018/19 financial year HBRC created the role of Tumuaki to strengthen our knowledge of Mātauranga Māori and to further enhance relationships with tangata whenua within the region on matters of importance to them. The Māori Partnerships Unit now has three fulltime staff who liaise with staff in other areas including CME.</p> <p>HBRC staff and councillors attend hui throughout the region involving particularly marae communities to listen to particular issues that those communities have and to assess where Council can best help.</p> <p>Finally since 1991 we have had a Māori Committee as a representative group of Ngāti Kahungunu tangata whenua. This committee is where formal reporting on CME issues, including formal reports, are put forward for discussion and recommendations to Council.</p>
Taranaki Regional Council	<p>The Council has 3 iwi appointed representatives on each of its Consents and Regulatory and Policy and Planning Committees. This provides for CME input at this level. In addition the Council engages directly with iwi over prosecutions and obtains victim impact statements for sentencing. The 4 local authorities in the region are currently trying to develop Iwi Relationship Agreements, under the Mana Wakahono a Rohe provisions of the RMA, with the 8 iwi in the region, which potentially includes CME provisions.</p>
Gisborne District Council	<p>Yes. Council have joint management plans in place with local iwi as part of the resource consent application process. Part of this is around obligations of the consent holder to provide management plans in consultation with local iwi.</p>
Horizons Regional Council	<p>No formal agreements at this stage with Iwi around CME, however, in the event of a comprehensive investigation or major incident Iwi are advised. Regarding the former, Council endeavours to obtain cultural impact statements from Iwi that are then put before the court as part of the sentencing process.</p>
Greater Wellington Regional Council	<p>As well as the items referred to in last years response. Introduction Chapter to our proposed Natural Resources Plan lays out the collaborative work and strategy for involving iwi. http://www.gw.govt.nz/assets/Proposed-Natural-Resources-Plan/Web-update-docs/Chapter-1-Introduction.pdf The Whaitua Committee Pages expand on the above and how we will engage and collaborate with Iwi and communities in the CME space http://www.gw.govt.nz/whaitua-committees/</p>
Nelson City Council	<p>There are no formal agreements for CME. Consent holders are sometimes required to engage an iwi monitor. Council is currently updating procedures/agreements for working with iwi for both undertaking works and processing resource consents. It is anticipated CME agreements will follow the resource consent processing agreements.</p>
Marlborough District Council	<p>Draft Iwi Engagement Policy Iwi Impact statements sought for enforcement proceedings.</p>
Tasman District Council	<p>We don't currently have any formal agreements with iwi in respect to CME activities.</p>

Environment Canterbury	<p>While the Local Government Act 2002 sets out provisions relating to all Māori, it is recognised that within the Canterbury region, Ngāi Tahu are the tangata whenua. They have special status in terms of Environment Canterbury's resource management activities and are not just another interest group. The Resource Management Act 1991 gives regional councils specific obligations regarding kaitiakitanga, the principles of the Treaty of Waitangi and the relationship between Māori and their culture and their traditions with their ancestral lands, sites, wāhi tapu and other taonga. To give effect to the obligations under the Local Government Act 2002 and the related obligations under the Resource Management Act 1991, we have committed with Ngāi Tahu to improve relations and interaction and integrate improved working practices across Environment Canterbury. The way we do this falls under the umbrella of our joint work programme Tuia. Best practice examples of working with Ngāi Tahu are also included. This is especially noted in our co-governance agreement for Te Waihora and the way we implement improvements under Tuia.</p>
Otago Regional Council	<p>We have used iwi recently for cultural impact assessment reports on prosecution cases.</p>
West Coast Regional Council	<p>Representatives from iwi sit on the Council Resource Management Committee with full voting rights. All complaints received, noncompliance and enforcement action is reported to this committee. A list of all consent applications received is reported to iwi. WCRC is in the process of developing a mana whakahono a rohe agreement with iwi.</p>
Southland Regional Council	<p>Ngāi Tahu ki Murihiku (tangata whenua) have a particular interest in the work of Environment Southland. And mutually, the council has responsibilities towards Māori and Māori cultural and spiritual values. The approach we have in Southland today is unique in the South Island. Its aim is to ensure Māori values are reflected in the council's decision-making, so that Southland's mauri is protected for now and generations to come. Te Aō Marama Incorporated (the environmental arm of Ngāi Tahu ki Murihiku) was one of the key facilitators when the relationship between the council and iwi began in the early 90s. Te Aō Marama was delegated the responsibility of dealing with councils on environmental matters, on behalf of the four papatipu rūnanga who hold mana whenua over all ancestral lands in Murihiku – Awarua, Hokonui, Ōraka Aparima and Waihōpai. For 25 years the relationship with Environment Southland continues to grow, with various protocols being developed to ensure smooth and efficient processes for plan development and consents management, a jointly funded iwi policy advisor position, an iwi management plan Te Tangi a Tauira, and a partnership to improve Southland's water and land through the People Water and Land programme – Te Mana o te Tangata, te Wai, te Whenua. The most recent milestone in the council's relationship with iwi is the inclusion of mana whenua positions on two of Environment Southland's committees. The successful candidates for these positions will start their work after the elections in October. Environment Southland, refers to the iwi relationship as te kōura tuia – the 'golden thread' that we weave through all our work. It's just part of how we operate. There is a commitment to the responsibility of improving Southland's local government understanding of all things Māori.</p>





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