

# Essential Freshwater

## Wetlands

The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) came into force on 3 September 2020. (Regulation 37 to 56)

### Wetlands

There are now strict rules regarding what you can do in or near natural wetlands. The NES-F cover:

- Vegetation clearance within, or within a 10-metre setback of, a natural wetland
- Earthworks or land disturbance within, or within a 10-metre setback of, a natural wetland (or 100m if it is likely that the works will result in any drainage of a natural wetland)
- The taking, use, damming, diversion, or discharge of water within, or within a 100-metre setback of, a natural wetland
- Sphagnum moss harvesting within a natural wetland
- Intensive winter grazing within five metres of a waterbody

If you wish to undertake any activities near a wetland we recommend you first contact the Marlborough District Council for advice.

*Note: Regulation 55(2), please ensure you give prior notice of activity.*

Notification link: <https://www.marlborough.govt.nz/environment/compliance-service/national-environmental-standards-for-freshwater-nes-f/nes-f-forms>

### What is a natural wetland?

A natural wetland means a wetland (permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions) that is not:

- (a) constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or
- (b) a geothermal wetland; or
- (c) any area of improved pasture that, as at 3 September 2020, is dominated (more than 50%) by exotic pasture species and is subject to temporary rain-derived water pooling.

The Council may be able to help you identify whether an area is a natural wetland.

### What activities are excluded from the NES-F?

The customary harvest of food or resources, undertaken in accordance with tikanga Māori, are exempt.

Note also that where the same activity is covered by both the National Environmental Standards for Plantation

Forestry and the NES-F then the Standards for Forestry 'trump' the NES-F.

### What activities are allowed?

It is fine to continue grazing stock (outside the setback set by the Stock Exclusion Regulations), maintaining shelter belts, and constructing and maintaining fences (for excluding stock or marking property boundaries). Any intensive winter grazing must be at least five metres back from the wetland.

In addition, the following activities are permitted if they meet the strict criteria detailed on the next page:

- Wetland restoration
- Scientific research
- Maintenance of wetland utility structures
- Maintenance and operation of specified infrastructure and other infrastructure
- Arable and horticultural land use
- Natural hazard works
- Sphagnum moss harvesting

*Continued on next page*

Please see the last page of this factsheet for definitions of the aforementioned activities.

**If you can't meet the permitted activity criteria, or want to do something that is not on the list, you will either need a resource consent or the activity might be prohibited. Please contact the Council to discuss your situation.**

Only under **exceptional circumstances** can a resource consent be granted to undertake these activities.

## General conditions that permitted activities must comply with (Regulation 55)

### General condition for permitted activities: prior notice of activity:

2. If this regulation applies in relation to a permitted activity, the 1 or more persons responsible for undertaking the activity must, at least 10 working days before starting the activity, provide the relevant regional council with the following information in writing:

- (a) a description of the activity to be undertaken; and
- (b) a description of, and map showing, where the activity will be undertaken; and
- (c) a statement of when the activity will start and when it is expected to end; and
- (d) a description of the extent of the activity; and
- (e) their contact details.

### General conditions: water quality and movement:

3. The general conditions relating to water quality and movement are as follows:

- (a) the activity must not result in the discharge of a contaminant if the receiving environment includes any natural wetland in which the contaminant, after reasonable mixing, causes, or may cause, 1 or more of the following effects:
  - (i) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
  - (ii) a conspicuous change in colour or visual clarity;
  - (iii) an emission of objectionable odour;
  - (iv) the contamination of freshwater to the extent that it is not suitable for farm animals to drink;
  - (v) adverse effects on aquatic life that are more than minor; and

(b) the activity must not increase the level of flood waters that would, in any flood event (regardless of probability), inundate all or any part of the 1% AEP floodplain (but see sub clause (4)); and

(c) the activity must not alter the natural movement of water into, within, or from any natural wetland (but see sub clause (5)); and

(d) the activity must not involve taking or discharging water to or from any natural wetland (but see sub clause (5)); and

(e) debris and sediment must not —

- (i) be placed within a setback of 10 m from any natural wetland; or
- (ii) be allowed to enter any natural wetland.

4. Sub clause (3)(b) does not apply if the person undertaking the activity —

(a) owns or controls the only land or structures that would be affected by a flood in all or any part of the 1% AEP floodplain; or

(b) has —

- (i) obtained written consent to undertaking the activity from each person who owns or controls

the land or structures that would be affected by a flood in all or part of the 1% AEP floodplain, after informing them of the expected increase in the level of flood waters; and

(ii) satisfied the relevant regional council that they have complied with subparagraph (i).

5. Despite sub clause (3)(c) and (d), the temporary taking, use, damming, or diversion of water around a work site, or discharges of water into the water around a work site, may be undertaken if the following conditions are complied with:

- (a) the activity must be undertaken during a period when there is a low risk of flooding; and
- (b) the activity must be undertaken only for as long as necessary to achieve its purpose; and
- (c) before the activity starts, a record must be made (for example, by taking photographs) of the original condition of any affected natural wetland's bed profile and hydrological regime that is sufficiently detailed to enable compliance with paragraph (d) to be verified; and
- (d) the bed profile and hydrological regime of the natural wetland must be returned to their original condition no later than 14 days after the start of the activity; and
- (e) if the activity is damming, the dam must be no higher than 600 mm; and
- (f) if the activity is a diversion that uses a pump, a fish screen with mesh spacing no greater than 3 mm must be used on the intake.

6. In sub clauses (3) and (4), 1% AEP floodplain means the area that would be inundated in a flood event of a size that has a 1% or greater probability of occurring in any one year.

### General condition: earth stability and drainage:

7. The general condition relating to earth stability and drainage is that the activity must not create or contribute to —

- (a) the instability or subsidence of a slope or another land surface; or
- (b) the erosion of the bed or bank of any natural wetland; or
- (c) a change in the points at which water flows into or out of any natural wetland; or
- (d) a constriction on the flow of water within, into, or out of any natural wetland; or
- (e) the flooding or overland flow of water within, or flowing into or out of, any natural wetland.

### General conditions: earthworks, land disturbance, and vegetation clearance:

8. The general conditions on earthworks, land disturbance, and vegetation clearance are as follows:

- (a) during and after the activity, erosion and sediment control measures must be applied and maintained at the site of the activity to minimise adverse effects of sediment on natural wetlands; and
- (b) the measures must include stabilising or containing soil that is exposed or disturbed by the activity as soon as practicable after the activity ends; and
- (c) the measures referred to in paragraph (b) must remain in place until vegetation covers more than 80% of the site; and
- (d) if the activity is vegetation clearance, it must not result in earth remaining bare for longer than 3 months.

### General conditions: vegetation and bird and fish habitats:

9. The general conditions relating to vegetation and bird and fish habitats are as follows:
- (a) only indigenous species that are appropriate to a natural wetland (given the location and type of the natural wetland) may be planted in it; and
  - (b) the activity must not result in the smothering of indigenous vegetation by debris and sediment; and
  - (c) the activity must not disturb the roosting or nesting of indigenous birds during their breeding season; and
  - (d) the activity must not disturb an area that is listed in a regional plan or water conservation order as a habitat for threatened indigenous fish; and
  - (e) the activity must not, during a spawning season, disturb an area that is listed in a regional plan or water conservation order as a fish spawning area.

### General condition: historic heritage:

10. The general condition relating to historic heritage is that the activity must not destroy, damage, or modify a site that is protected by an enactment because of the site's historic heritage (including, to avoid doubt, because of its significance to Māori), except in accordance with that enactment.
11. In sub clause (10), enactment includes any kind of instrument made under an enactment.

### General conditions: machinery, vehicles, equipment, and construction materials:

12. The general conditions on the use of vehicles, machinery, equipment, and materials are as follows:
- (a) machinery, vehicles, and equipment used for the activity must be cleaned before entering any natural wetland (to avoid introducing pests, unwanted organisms, or exotic plants); and
  - (b) machinery that is used for the activity must sit outside a natural wetland, unless it is necessary for the machinery to enter the natural wetland to achieve the purpose of the activity; and
  - (c) if machinery or vehicles enter any natural wetland, they must be modified or supported to prevent them from damaging the natural wetland (for example, by widening the tracks of track-driven vehicles or using platforms for machinery to sit on); and
  - (d) the mixing of construction materials, and the refuelling and maintenance of vehicles, machinery, and equipment, must be done outside a 10 metre set-back from any natural wetland.

### General conditions: miscellaneous:

13. The other general conditions are as follows:
- (a) the activity must be undertaken only to the extent necessary to achieve its purpose; and
  - (b) the activity must not involve the use of fire or explosives; and
  - (c) if there is existing public access to a natural wetland, the activity must not prevent the public from continuing to access the natural wetland (unless that is required to protect the health and safety of the public or the persons undertaking the activity); and
  - (d) no later than 5 days after the activity ends,—
    - (i) debris, materials, and equipment relating to the activity must be removed from the site; and
    - (ii) the site must be free from litter.

## Relevant definitions

### Earthworks

means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.

### Land disturbance

means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) that does not permanently alter the profile, contour or height of the land.

### Vegetation clearance

(a) means the disturbance, damage, destruction, or removal of vegetation by any means (for example, by cutting, crushing, application of chemicals, or burning); and

(b) includes activities that result in the disturbance, damage, destruction, or removal of vegetation (for example, over-planting, applying the seed of exotic pasture species, mob-stocking, or draining away water); but

(c) does not include —

(i) the removal of sphagnum moss for the purpose of a harvest in accordance with regulation 48 or 49; or

(ii) the crushing of other vegetation for the purpose of maintaining the dominance of sphagnum moss, if the crushing is carried out during a harvest of sphagnum moss or to rehabilitate the moss after it is harvested; or

(iii) an activity described in paragraph (a) or (b) that is for the maintenance or construction of fencing for the purpose of excluding stock or marking property boundaries; or

(iv) an activity described in paragraph (a) or (b) that is for the maintenance of shelter belts; or

(v) the grazing of improved pasture within the relevant setback from a natural wetland.

### Arable land use

means the use of land to grow any of the following crops for harvest:

(a) grain cereal, legumes, or pulse grain:

(b) herbage seed:

(c) oilseed:

(d) maize grain, maize silage, cereal silage, or mangels:

(e) crops grown for seed multiplication:

(f) a crop prescribed in regulations made under section 217M(1)(a) of the Resource Management Act.

### Horticultural land use

means the use of land to grow food or beverage crops for human consumption (other than arable crops), or flowers for commercial supply.

### Wetland restoration

means active intervention and management, appropriate to the type and location of the wetland, aimed at restoring its ecosystem health, indigenous biodiversity, or hydrological functioning.

## Wetland utility structure

(a) means a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring; and

(b) for example, includes the following structures that are placed in or adjacent to a wetland for a purpose described in paragraph (a):

- (i) jetties
- (ii) boardwalks and bridges connecting them
- (iii) walking tracks and bridges connecting them
- (iv) signs
- (v) bird-watching hides
- (vi) monitoring devices
- (vii) maimai

## Specified infrastructure

(a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002)

(b) regionally significant infrastructure identified as such in a regional policy statement or regional plan

(c) any public flood control, flood protection, or drainage works carried out:

- (i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or
- (ii) for the purpose of drainage by drainage districts under the Land Drainage Act 1908.

## Infrastructure

(a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:

(b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:

(c) a network for the purpose of radio communication as defined in section 2(1) of the Radio Communications Act 1989:

(d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person —

- (i) uses them in connection with the generation of electricity for the person's use; and
- (ii) does not use them to generate any electricity for supply to any other person

(e) a water supply distribution system, including a system for irrigation:

(f) a drainage or sewerage system:

(g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:

(h) facilities for the loading or unloading of cargo or passengers transported on land by any means:

(i) an airport as defined in section 2 of the Airport Authorities Act 1966:

(j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:

(k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:

(l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166 of the Resource Management Act 1991.

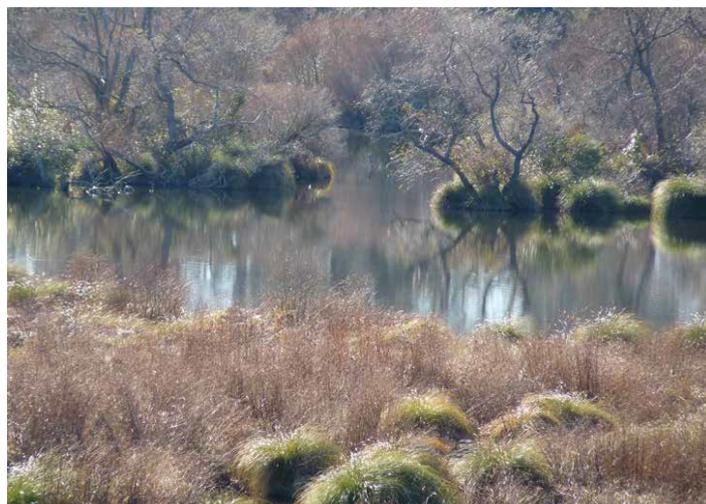
## Natural hazard

means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment.

## Contact us

If you are planning or considering activities in or near wetlands, or have questions about any aspect of the NES-F, please contact the Council on 03-5207400 or via email [monitoring@marlborough.govt.nz](mailto:monitoring@marlborough.govt.nz)

Our website at [www.marlborough.govt.nz](http://www.marlborough.govt.nz) will also be regularly updated with guidance.



Vegetation clearance within, or within a 10-metre setback from, a natural wetland; unless otherwise specified	Earthworks or land disturbance within, or within a 10-metre setback from, a natural wetland; unless otherwise specified
<p><b>Wetland restoration</b> that complies with conditions in regulation 55 and does not occur over more than 500m<sup>2</sup> or 10% of the area of the natural wetland, whichever is smaller.</p> <p><b>Scientific research</b> that complies with conditions in regulation 55 and the activity does not result in new pathways, boardwalks or other accessways or occur over a single area within the wetland that is more than 10m<sup>2</sup> in a single are or 100m<sup>2</sup> in total.</p> <p><b>Maintenance of wetland utility structures</b> that complies with the conditions in regulation 55 and must not increase the size of the utility structure, form new boardwalks, pathways or other accessways and must not occur over more than 2m<sup>2</sup> around the base of each pile or post of the wetland utility structure, or 10% of the area of the natural wetland, whichever is a smaller area in total.</p> <p><b>Maintenance and operation of specified infrastructure</b> and other infrastructure that complies with the conditions in regulation 55 (but regulation 55(2), (3)(b) to (d), and (5) do not apply if the activity is for the purpose of maintaining or operating hydro-electricity infrastructure). The activity also must not increase the size of the infrastructure, result in new pathways, boardwalks or other accessways or occur over more than 500m<sup>2</sup> or 10% of the area of the natural wetland, whichever is smaller.</p> <p><b>Arable and horticultural land use</b> outside a natural wetland but within a 10m setback in an area that was used for these purposes at any time between the start of 1 January 2010 and the close of 2 September 2020, and that complies with the general conditions on natural wetland activities in regulation 55 (except regulation 55(2)).</p> <p><b>Natural hazard works</b> (for the purpose of removing trees, debris and sediment, that is deposited as the result of natural hazard and is causing, or is likely to cause, an immediate hazard to people or property). The activity must not result in land becoming unstable or result in / involve debris or other material being deposited in the wetland. It must only be done to the extent necessary and if the activity changes the profile of the bed of the natural wetland, the profile must be restored so that it does not inhibit the passage of fish. As soon as practicable (but no later than 3 months) after the activity ends debris, materials, and equipment relating to the activity must be removed from the site and the site must be free from litter.</p>	<p><b>Wetland restoration</b> that complies with regulation 55 and does not occur over more than 500m<sup>2</sup> or 10% of the area of the natural wetland, whichever is smaller*.</p> <p><b>Scientific research</b> that complies with conditions in regulation 55 and the activity does not result in new pathways, boardwalks or other accessways or occur over a single area within the wetland that is more than 10m<sup>2</sup> in a single are or 100m<sup>2</sup> in total.*</p> <p><b>Maintenance of wetland utility structures</b> that complies with the conditions in regulation 55 and must not increase the size of the utility structure, form new boardwalks, pathways or other accessways and must not occur over more than 2m<sup>2</sup> around the base of each pile or post of the wetland utility structure, or 10% of the area of the natural wetland, whichever is a smaller area in total.*</p> <p><b>Maintenance and operation of specified infrastructure</b> and other infrastructure that complies with the conditions in regulation 55 (but regulation 55(2), (3)(b) to (d), and (5) do not apply if the activity is for the purpose of maintaining or operating hydro-electricity infrastructure). The activity also must not increase the size of the infrastructure, result in new pathways, boardwalks or other accessways or occur over more than 500m<sup>2</sup> or 10% of the area of the natural wetland, whichever is smaller*. In addition, any trenches dug (for example, to maintain pipes) must be backfilled and compacted no later than 48 hours after being dug and the activity must not result in drains being deeper, (relative to the natural wetland's water level), than they were before the activity.</p> <p><b>Arable and horticultural land use</b> outside a natural wetland but within a 10m setback in an area that was used for these purposes at any time between the start of 1 January 2010 and the close of 2 September 2020, and that complies with the general conditions on natural wetland activities in regulation 55 (except regulation 55(2)).</p> <p><b>Natural hazard works</b> (for the purpose of removing trees, debris and sediment, that is deposited as the result of natural hazard and is causing, or is likely to cause, an immediate hazard to people or property). The activity must not result in land becoming unstable or result in / involve debris or other material being deposited in the wetland. It must only be done to the extent necessary and if the activity changes the profile of the bed of the natural wetland, the profile must be restored so that it does not inhibit the passage of fish. Erosion and sediment control measures must (during and after the earthworks), be applied and maintained at the site of the activity to minimise adverse effects of sediment on the natural wetland; and include stabilising or containing soil that is exposed or disturbed by the activity as soon as practicable after the activity ends.</p> <p>As soon as practicable (but no later than 3 months) after the activity ends debris, materials, and equipment relating to the activity must be removed from the site and the site must be free from litter.</p> <p><i>* the size restriction doesn't apply if the earthworks / land disturbance is for planting.</i></p>

<p><b>The taking, use, damming, diversion, or discharge of water within, or within a 100-metre setback from, a natural wetland; unless otherwise specified</b></p>	<p><b>Sphagnum moss harvesting within a natural wetland</b></p>
<p><b>Wetland restoration</b> that complies with conditions in regulation 55.</p> <p><b>Scientific research</b> that complies with conditions in regulation 55 and the activity does not result in new pathways, boardwalks or other accessways.</p> <p><b>Maintenance of wetland utility structures</b> that complies with the conditions in regulation 55 and must not increase the size of the utility structure, form new boardwalks, pathways or other accessways.</p> <p><b>Maintenance and operation of specified infrastructure and other infrastructure</b> that complies with the conditions in regulation 55 (but regulation 55(2), (3)(b) to (d), and (5) do not apply if the activity is for the purpose of maintaining or operating hydro-electricity infrastructure). The activity also must not increase the size of the infrastructure, result in new pathways, boardwalks or other accessways.</p> <p><b>Natural hazard works</b> (for the purpose of removing trees, debris and sediment, that is deposited as the result of natural hazard and is causing, or is likely to cause, an immediate hazard to people or property). The activity must not result in land becoming unstable or result in / involve debris or other material being deposited in the wetland. It must only be done to the extent necessary and if the activity changes the profile of the bed of the natural wetland, the profile must be restored so that it does not inhibit the passage of fish. As soon as practicable (but no later than 3 months) after the activity ends debris, materials, and equipment relating to the activity must be removed from the site and the site must be free from litter.</p>	<p><b>Sphagnum moss harvesting</b> in areas where sphagnum moss was harvested, or actively managed for harvest, at any time between the start of 1 January 2010 and the close of 2 September 2020. The harvest must comply with the conditions in regulation 48(2) of the National Environmental Standards for Freshwater.</p>