

Submission from Straterra to the Ministry for the Environment proposed changes to the NPS-FM and NES-F (including wetland regulations) July 2022

Key points

- Straterra fully supports the Government’s proposal to provide a consent pathway for mining in the wetlands regulations and we broadly support the approach taken to achieve this. However, we have some concerns about the wording of the proposed regulations and National Policy Statement (NPS) and we request that the wording of these is shared with industry before finalisation to ensure workability.
- We strongly disagree with the proposal to differentiate between mining (i.e., solely mineral extraction) and other mining operations, and to allow the consenting pathway for extraction of the mineral only. The ancillary activities that go with mining (covered in the definition of ‘mining operations’) need to occur in conjunction with the extraction activities and therefore, have as much functional need to occur at a particular environment as does the extraction.
- Differentiating between mineral extraction and other mining operations would create uncertainty and add complexity to the resource consenting process for councils and mining companies.
- There should not be a distinction made between different types of minerals in the wetland regulations. These regulations are about addressing the effects of activities, which depend on the mining method, not the type of mineral being extracted. We disagree with the proposal to differentiate coal from minerals generally.

Introduction

1. Straterra is the industry association representing the New Zealand minerals and mining sector. Our membership is comprised of mining companies, explorers, researchers, service providers, and support companies.
2. We are grateful for the opportunity to comment on the recommendations for the proposed changes to the wetland regulations and exposure draft ([the consultation document](#)).
3. Straterra acknowledges the importance of high-quality wetlands and shares the Government’s desire to protect those wetlands.

4. We agree with the shortcomings in the existing regulations, as identified in the consultation document as well as the [September 2021 discussion document](#).
5. Under the existing regulations, “mineral and aggregate extraction” activity is prohibited on land deemed to be natural wetlands. The definition of natural wetlands is too broad, creating uncertainty and unintentionally capturing areas that cannot be described as genuine wetlands. The ‘prohibited’ activity status means there is no opportunity to assess the merits of proposed projects, or to consider mitigation of effects, including offsets, or compensation for any disturbance to wetlands.
6. We support the Government’s intention to amend the regulatory framework so that development can occur where appropriate, while still ensuring no net loss of natural wetlands occurs.
7. We support a regime which enables development applications to be considered on their merits on a case-by-case basis, and where such development meets appropriate environmental measures before being granted consent. This, including the ability to offset, will safeguard wetlands from further loss while also providing for both enhancement of wetlands and economic development.
8. Our comments in this submission are focused on the proposed consent pathways for mining (Part 2C) and the definition of a ‘natural wetland’ (Part 1) sections of the consultation document. We also comment on the exposure drafts for the [National Environmental Standards for Freshwater 2020 \(NES-F\)](#) and the [National Policy Statement for Freshwater Management 2020 \(NPS-FM\)](#).
9. We are assuming that the changes that result from this consultation process, as well as the existing discrepancies, will necessitate new exposure drafts and we request an opportunity to look at these before finalisation. This will be important to ensure the workability of the regulations to achieve the intended policy outcomes for the extractive sector.
10. Our responses to the main recommendations impacting on the mining sector are summarised at the end of this submission.

Consent pathway for mining

11. We support the Government’s proposal to allow certain activities a discretionary consent pathway where they meet the criteria of being nationally and/or regionally significant and locationally constrained.
12. We support the inclusion of mining in this list of activities. As the document says on page 45, mines can only be situated where the resource is located and the regulations, written as they are now, would prevent access to critical mineral deposits. There is a functional need for mining activities to occur in particular environments and in some situations, this may be within a natural inland wetland.
13. The discretionary consent pathway would require resource consents to be applied for, and this sets a high bar for applicants who would have to show they are able to avoid, remedy, mitigate, and/or offset and/or compensate adequately for the environmental effects of earthworks or drainage on natural wetlands.
14. The effects management hierarchy will deal with activities that may, or may not, be able to be located elsewhere, i.e., if it can be avoided it should be, if it can’t the effects should be mitigated etc.

15. We oppose Recommendation 26, Option 1 which does not progress a consenting path for mining. As pointed out in the consultation document (Part 2C: Mining, Context): “In New Zealand, minerals such as gold, platinum group metals, nickel, copper and tungsten are present, and some may contribute to clean technologies as part of the transition to a low-emissions economy”. We would add silver (mined as a by-product of gold mining) to that list.
16. We support the Government’s preferred option, Option 2 (Recommendations 27, 28 and 29) to provide a consent pathway for mining. Yet we have some additional questions and comments that accompany our support for these recommendations.
17. The consent pathway proposed under this option is represented by 3.22(1)(e) of the NPS-FM as follows, and Regulation 45D of the NES-F (discussed in the next section under Definition of mining):

Clause 3.22 (1)

(e) the regional council is satisfied that:

- (i) the activity is for the purpose of extracting any mineral in its natural state from the land; and*
- (ii) extraction of the mineral will provide significant national or regional benefits; and*
- (iii) there is a functional need for the activity to be done in that location; and*
- (iv) the effects of the activity are managed through applying the effects management hierarchy;*

18. The terms *significant national or regional benefits* are subjective, (as are national and regional significance which are the words used elsewhere in the document) and there are risks around inconsistent interpretation here by different councils.
19. The benefits / significance of different mineral types and mines may be regional or national depending on what they are. National benefit / significance may be too high a hurdle for some. Thermal coal, for example, is nationally significant while it is needed to produce food and to heat hospitals.
20. We recommend deleting the word ‘significant’ so that 3.22 (1)(e)(ii) reads ‘national or regional benefits’. This is still a high enough test, and it would reduce the uncertainty, or subjectivity, that the word significant carries with it.
21. We note the wording of 3.22(1)(e)(ii) of the NPS-FM, as well as recommendation 28, refers to national ‘or’ regional benefit, but elsewhere in the document it is ‘and/or’. We agree it should be ‘or’ not ‘and’.
22. We do not support the wording of 3.22(1)(e)(i) and (ii) of the NPS-FM which restricts the activity to extraction. We comment further on this in the next section under Definition of mining.
23. We submit that clause 3.22(1)(e) must reflect the policy intent, and as stated earlier, we recommend that the revised wording of the regulations and NPS is shared with industry before finalisation to ensure workability.

Definition of mining

24. To instigate the consideration of mineral extraction activities on a case-by-case basis as a discretionary activity a new clause 45D in the NES-F is proposed. We support this but we strongly

disagree with the proposal to differentiate between ‘mining’ (i.e., solely the extraction of minerals) and other mining activities, and allow the consenting pathway for extraction activities only, i.e., we disagree with **Recommendation 30, Option 1** to apply the Crown Minerals Act 1991 definition of ‘mining’ but not include ‘mining operations’.

25. We understand and support the Government’s intention to restrict the discretionary consent pathway to activities that are locationally constrained, and to not apply it to activities that are not. However, in practice, it is difficult, or even impossible, to separate these categories of activities that are ancillary to mining. Applying only the definition of mining and not mining operations will not achieve the Government’s objectives.
26. In reality, ancillary mining activities (covered in the definition of ‘mining operations’) need to occur in conjunction with the extraction activities (covered in the definition of ‘mining’).
27. As an example, to extract a mineral from the ground necessarily involves the removal of the earth, or overburden, above the mineral. The removal of the overburden falls within the definition of ‘earthworks’ (under the National Planning Standards 2019) which is a prohibited activity under clause 53 of the NES. The removal of overburden is included in the definition of ‘mining operations’ but not necessarily within the definition of ‘mining’ (where that term is confined to extraction) so will be prohibited under the proposed wording. Including ‘mining operations’ as well as ‘mining’ at the heading to Regulation 45D will solve this anomaly.
28. Other examples of ancillary activities that are covered in the definition of ‘mining operations’ and need to occur in conjunction with the extraction activities include: constructing settlement ponds and water treatment facilities; building access roads; and mineral handling, processing, and loadout areas.
29. We argue that the ‘functional need’ test by itself achieves the Government’s objectives of only allowing locationally constrained activities and resolves this problem of what can and can’t be allowed, and that the split definition of ‘mining’ and ‘mining operations’ will only complicate matters.
30. Page 20 of the [‘Policy rationale for exposure draft amendments 2022’ document](#) acknowledges this when it says, “over the course of drafting it became apparent that the scope of mining operations need not be constrained through a definition in the NPS-FM, as the ‘functional need’ test will achieve this.” We agree with this.
31. As an example, if there is no alternative route for an access road to take, there is a functional need for it to be at that location along with the mine it is serving. If there is an alternative route, there is not functional need.
32. Our opposition to restricting the definition to just ‘mining’ arises partly from the uncertainty it would throw up and the complexity it would add to the resource consenting process for councils and mining companies. In practice, a consent will bundle the ‘mining’ and ‘mining operation’ activities together and it will be difficult, or impossible, to separate the two when the application is considered.
33. We also want the Government’s policy intent to be achieved, that is, for activities that are locationally constrained to be given a consent pathway.

34. It is important to include ‘exploration’ and ‘prospecting’, as defined by the Crown Minerals Act, as well as ‘mining’ and ‘mining operations’. These are essential activities that must occur prior to any economic mine being identified for consenting. Exploring and prospecting are explicitly separated from the definition of ‘mining’ in the Crown Minerals Act and are not included in the definition of ‘mining operations’.

35. For these reasons, Straterra agrees with **Recommendation 31, Option 2** Specifically:

31: Apply the Crown Minerals Act 1991 definition for both ‘mining’ and ‘mining operations’ in the NPS-FM and NES-F

36. It is important to note that we believe that the Crown Minerals Act 1991 definitions of ‘exploration’ and ‘prospecting’ need to be included as well. Essentially, the heading above 45D in the NES-F should say ‘Mining and Mining Operations, Prospecting and Exploration’ and not just ‘Mining’.

Additional controls on minerals to be mined

37. We disagree with the proposal to differentiate coal, specifically thermal coal (or non-coking coal), from minerals generally. There should not be a distinction made between different types of minerals in the wetland regulations.

38. We disagree with **Recommendation 33** to exclude coal from minerals able to be mined under the proposed consent pathway and we oppose proposed 45D(6) in the NES-F:

45D(6) On and from 1 January 2030, mining for coal, other than coking coal, is excluded from the purposes for which consent may be obtained under this regulation.

39. The regulations are about addressing the effects of activities, including those of the extractive sector, on wetlands. These effects depend on the mining method, not on the type of mineral being extracted.

40. We acknowledge the Government’s climate change policy, but argue this regulation is not the way, or the place, to achieve it. It adds a political component to these regulations that is inappropriate for their scope and intent. Meeting climate change imperatives is better left to the Emissions Trading Scheme and other provisions of the Climate Change Response Act. The document acknowledges the “ongoing requirements for the provision of coal” in New Zealand which further highlights the lack of logic in singling it out in this regulation. To reinforce this, it should be noted that coal was tagged as an essential service and a key utility for its role in providing food and heating hospitals in the Government’s response to Covid 19 through the country-wide and regional lockdowns.

41. We oppose thermal coal being separated out and being provided for only to 2030, particularly in the absence of any evidence-based commentary on this being a viable cut-off date. It should be noted that coal’s contribution to emissions occurs when it is consumed, not mined, and if the coal destined for combustion is not produced locally, then it will be imported and still burned here. Arguably, this contravenes New Zealand’s climate change imperatives far more than sourcing coal in our own backyard. It should also be noted there are a growing number of alternative technologies and uses for coal such as carbon foam and filters. Coal is not mined solely for combustion for heat, as seems to be assumed by this proposal.

42. Discriminating against coal mining in this way to achieve a separate goal of reducing coal consumption is unprincipled and not in line with best practice policy, regulation and law making.
43. We acknowledge the recognition of coking coal in the document and support it being treated the same as minerals generally.
44. The reasons for setting a coal sunset clause of 2030 are flawed. The document makes reference to the Government's aspiration to transition to 100% renewable electricity generation by 2030 as the rationale. But this goal has been displaced by firmer goals for renewable energy generally (as opposed to just electricity) to be halved by 2035 (partly because it's likely New Zealand will still be dependent on fossil fuels for electricity generation by this date).
45. Industrial process heat is a larger user of coal than electricity generation and it is likely New Zealand will still be dependent on thermal coal for industrial process heat well beyond 2030, for example, for dairy and food production, industries that are critical to the economic success of New Zealand as a trading nation. The Government is phasing out coal boilers by 2037.
46. A 2030 sunset year would have the perverse consequence of forcing coal imports to replace production in the period leading up to the 2037 coal boiler changes. This would add not only costs but also the burden of pushing our environmental obligations offshore. We don't believe "out of sight, out of mind" fits with New Zealand's climate change narrative on the global stage.
47. We note under proposed 45D (6) of the NES-F that the proposed 2030 cutoff refers to consent applications and not actual mining. There is some ambiguity in the text of the discussion document on this point.
48. It will also be important to ensure that existing rights are grandfathered i.e., those with consents have the ability to see them through.

The definition of a 'natural wetland'

49. The definition of natural wetlands in the existing regulations creates uncertainty due to the way it's written, and unintentionally captures land that is not in any normal sense of the word, a wetland.
50. The changes to part (c) of the definition recommended in the September 2021 discussion document went a long way to rectifying this and were supported by Straterra.
51. We agree with the recommendations in the June 2022 discussion document that these changes be retained, and we support the new definition as proposed, but have some concerns about the list of exotic species.

Improved pasture

52. The recommendation to replace 'improved pasture' with 'pasture' in part (c) of the definition is supported as this will further reduce uncertainty as to what is, or isn't, pasture.

Commencement date

53. We support the deletion of 'at the commencement date' from part (c) of the definition.

Exotic pasture

54. We support the clarification around exotic species in the wording of part (c) of the definition. However, the list of exotic pasture species excluded from the definition looks to be very narrow. In practice, this will mean that what is normally considered wet pasture, will be captured by the wetlands definition unintentionally.

Temporary rain derived water pooling

55. We agree with the deletion of 'and is subject to temporary rain-derived water pooling' from part (c) of the definition. The phrase does not help to distinguish between wet pasture and a natural wetland, and its removal will clarify the definition and further reduce the scope for uncertainty.

Recommendations

Part 1 - Changes to part (c) of the definition of a 'natural wetland'

Improved pasture

1. Proceed as proposed and delete the term 'improved pasture' from the NPS-FM definition of a 'natural wetland' and replace with 'pasture'; remove the definition of 'improved pasture' from the NPS-FM

~~agree/disagree~~

Commencement date

2. Proceed as proposed and delete 'at the commencement date' from part (c) of the definition of 'natural wetland' in the NPS-FM

~~agree/disagree~~

Exotic pasture species

3. Proceed as proposed and delete 'is dominated by (that is, more than 50% of) exotic pasture species' from part (c) the definition of 'natural wetland' in the NPS-FM

~~agree/disagree~~

4. Replace with 'that has 50% or more ground cover comprising exotic pasture species', or words to that effect

~~agree/disagree~~

5. Incorporate by reference into the NPS-FM, under section 46B of the RMA, a national list of exotic pasture species that will define what is included and meant by the phrase 'exotic pasture species'

~~agree/disagree~~*

**We have concerns about the proposed list as it is too broad*

Rain derived pooling

6. Proceed as proposed and delete 'and is subject to temporary rain-derived water pooling' from part (c) of the definition of 'natural wetland' in the NPS-FM

~~agree/disagree~~

7. Do not replace with an alternative measure of wetland hydrology within the exclusion for pasture-dominated wetlands in part (c) of the definition of 'natural wetland'

~~agree/disagree~~

Part 2C - Providing a consent pathway for mining

26. **Option 1:** Do not progress a consent pathway for mining or associated activities in the NES-F

agree/disagree

OR

27. **Option 2: (recommended)**

Provide a consent pathway for mining by including mining in the list of activities exempt from the general policy to avoid natural inland wetland loss, protect their values and promote their restoration in 3.22(1)(a) of the NPS-FM

AND

28. Apply the same provisions to mineral mining as in the NPS-FM at 3.22(b)(i), including the gateway test of national or regional benefit in 3.22(b)(ii) and functional need in (iii); and the effects management hierarchy as per 3.22(b)(iv)

AND

29. Provide for mineral mining as a discretionary activity in the NES-F and subject to the same provisions already in place for the construction of specified infrastructure.

agree/disagree

Defining 'mining' and the scope of the consent pathway

30. **Option 1:** Apply the Crown Minerals Act 1991 definition of 'mining' in the NPS-FM and NES-F but do not include 'mining operations' (**recommended**)

agree/disagree

OR

31. **Option 2:** Apply the Crown Minerals Act 1991 definition for both 'mining' and 'mining operations' in the NPS-FM and NES-F

agree*/disagree

***The Crown Minerals Act 1991 definitions of 'exploration' and 'prospecting' also need to be added.**

Additional controls on types of minerals mined

32. **Option 1:** Do not place any controls on minerals able to be mined under the proposed consent pathway in the NES-F

agree/disagree

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OR

33. **Option 2:** Exclude coal from minerals able to be mined under the proposed consent pathway in the NES-F

~~agree~~/disagree

OR

34. **Option 3:** Apply the following conditions to the ability to mine coal under the proposed consent pathway in the NES-F (recommended)

Condition (a) – Include a sunset clause for mining that makes thermal coal mining a noncomplying activity after 1 March 2030, but;

Condition (b) – Allow the mining of coking coal past 2030

agree/disagree*

*We prefer Option 3 over Option 2, but we do not agree with a sunset clause for coal.