

20 September 2022

Ministry for the Environment
Wellington

Re: Managing our wetlands in the coastal marine area

1. Introduction

- 1.1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on *Managing our wetlands in the coastal marine area* (the **Discussion Document**), a discussion document on the application of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) to the coastal marine area (**CMA**).
- 1.2. This submission has been prepared with input from the Law Society's Environmental Law Committee.¹

2. Application of the NES-F wetland provisions in the coastal marine area

- 2.1. The extent to which the NES-F applies in the CMA has been the subject of ongoing litigation. There is no clear definition of coastal wetlands in the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) nor the NES-F, nor is there any guidance on their delineation or management. It is questionable whether activities affecting coastal water should be managed via documents addressing fresh water management.
- 2.2. Given this, the Law Society agrees with the identification of issues in the Discussion Document. In relation to the questions posed in the Discussion Document, the Law Society:
 - (a) Agrees that the current application of the NES-F to the CMA requires amendment;
 - (b) Agrees with the proposal to amend the NES-F to no longer apply to the CMA;
 - (c) Considers the wording changes proposed in the preferred option would make it clear the NES-F no longer applies to the CMA, for the reasons outlined below.
 - (d) Provides brief comment in relation to Questions 4 and 5 below.

¹ More information regarding this Committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/environmental-law-committee/>.

3. Preferred option – Amend the NES-F so its wetland provisions do not apply to the CMA

- 3.1. The Discussion Document states the Ministry’s preferred option (referred to as Option 2) is to amend the NES-F to replace all references to “natural wetland” with “natural inland wetland” and define “natural inland wetland” by reference to the NPS-FM definition.
- 3.2. The NPS-FM defines “natural inland wetland” as “a wetland that is not in the coastal marine area.”
- 3.3. The Law Society agrees that this proposed amendment is simple, clear and provides certainty to all parties that the NES-F wetland provisions do not apply in the CMA. With this amendment, coastal wetlands will be left to be managed by the New Zealand Coastal Policy Statement through relevant coastal plans.

4. Response to alternative option – Clarify where and how the NES-F applies to the CMA

- 4.1. As an alternative to the preferred option, the Discussion Document considers amending the NES-F to clearly define what is a natural coastal wetland for the purpose of the NES-F (referred to as Option 1).
- 4.2. The Law Society notes that the proposed definition for natural coastal wetland has the potential to create uncertainties in its application. The proposed definition is broad, capturing natural wetlands in the CMA which are part of a tidal estuarine hydrosystem and which do not exceed a depth of 6 metres at low tide. Without clear guidance as to how the definition is to be applied, it may capture a greater extent of the CMA than intended.
- 4.3. If this new definition is incorporated into the NPS-FM and/or NES-F, it is likely that uncertainty over natural coastal wetland identification will remain an issue. Any uncertainty in the identification of coastal wetlands only adds to the cost and complexity of the planning and consenting process for all parties. As such, the Law Society agrees with the Ministry's preferred option to expressly exclude coastal wetlands from the NES-F.

5. Next steps

- 5.1. We would be happy to discuss this feedback further, if that would be helpful. Please feel free to contact me via the Law Society’s Law Reform & Advocacy Advisor, Dan Moore (Dan.Moore@lawsociety.org.nz).

Nāku noa, nā



David Campbell
Vice-President