

**Submission**

**by**

**THE  
NEW ZEALAND  
INITIATIVE**

**to the Primary Production Committee**

**on the**

**Resource Management (Freshwater and Other Matters)  
Amendment Bill**

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## **1. INTRODUCTION AND SUMMARY**

- 1.1 This submission on the Resource Management (Freshwater and Other Matters) Amendment Bill is made by The New Zealand Initiative (the **Initiative**), a Wellington-based think tank supported primarily by major New Zealand businesses. In combination, our members employ more than 150,000 people.
- 1.2 The Initiative undertakes research that contributes to developing sound public policies in New Zealand. We advocate for the creation of a competitive, open and dynamic economy and a free, prosperous, fair and cohesive society.
- 1.3 The Initiative's members span the breadth of the New Zealand economy; a well-functioning and efficient approvals regime for infrastructure and development projects is important to them. The views expressed in this submission are those of the author rather than the New Zealand Initiative's members.
- 1.4 In summary, we submit:
- (a) The Resource Management Act (RMA) and associated regulations are a handbrake on economic growth and development;
  - (b) The Resource Management (Freshwater and Other Matters) Amendment Bill is a necessary interim step to restore balance and streamline processes. It should proceed;
  - (c) The ultimate goal should be an RMA that makes it much easier for beneficial projects to proceed. It should allow businesses and individuals to go about their day-to-day activities efficiently. It should balance these objectives with respect for property rights while protecting important environmental values; and
  - (d) A new resource management system should include greater use of economic instruments, where practicable.

## **2. THE CASE FOR THE AMENDMENT BILL**

- 2.1 The Government has introduced the Resource Management (Freshwater and Other Matters) Amendment Bill to reduce the regulatory burden on key economic sectors, particularly the primary sector.
- 2.2 The Bill makes the following amendments to the RMA and associated regulations:
- Excludes the hierarchy of obligations contained in the National Policy Statement for Freshwater Management (the NPSFM 2020) from resource consent application and decision-making processes until the NPSFM 2020 is replaced.
  - Aligns the consenting pathway for coal mining with other mineral extraction activities across the NPSFM 2020, the National Policy Statement for Indigenous Biodiversity 2023 (the NPSIB 2023) and Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (the NES-F).
  - Modifies local authority obligations under the NPSIB 2023 to identify and include in district plans new significant natural areas (SNAs) for three years.
  - Amends the Resource Management (Stock Exclusion) Regulations 2020 in relation to sloped land.
  - Repeals the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing from the NES-F.

- Makes amendments to speed up the process to prepare or amend national direction under the RMA.
- 2.3 There is a strong case for these amendments. The productivity of the primary sector is very important for New Zealand’s prosperity. The sector accounts for over 80 percent of goods exports.<sup>1</sup> Legislation and regulations should be fit for purpose and not burden producers with unnecessary or unreasonable costs and restrictions on their activities.
- 2.4 Many in the primary sector regard the NPSFM 2020, the NPSIB 2023, the NES-F, SNAs, and the Stock Exclusion Regulations as impractical and unworkable.<sup>2,3,4</sup> They have severely dented confidence, which is critically important for the prospects of individual producers and the businesses servicing them, processors and exporters, and the wider economy. Federated Farmers’ six-monthly Farm Confidence Survey has consistently shown regulation and compliance costs to be among the biggest concerns for farmers and one of the highest priorities farmers want governments to address. The survey has also shown deeply negative sentiment over the past few years about farm profitability, production, and the general economy<sup>5</sup>.
- 2.5 The changes in this Bill are intended to restore balance between economic and environmental factors and confidence for primary producers. They would provide time to ensure that regulations on freshwater management, indigenous biodiversity and SNAs are fit-for-purpose. They are intended to protect important environmental values in ways that do not impose an unreasonable burden on producers.
- 2.6 At a more macro level, it has been widely reported that New Zealand has a significant productivity problem, with its growth slowing in recent decades, particularly over the 2019-23 cycle.<sup>6</sup> For most of the past year the economy has flirted with recession and GDP has been unambiguously negative when expressed per capita.<sup>7</sup>
- 2.7 New Zealand is not alone among developed economies in experiencing sluggish productivity and slowing growth. Little can be done to dramatically increase the size of New Zealand’s small domestic market or shorten the large physical distances from international markets. But plenty can and should be done to ‘make the boat go faster’. Investing in the supply side of the economy would help, including infrastructure and skills. The investment must also be supported by policy settings that reduce red tape, encourage efficiency and competitiveness to reduce costs and make producing more goods and services easier.<sup>8</sup>

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<sup>1</sup> Ministry for Primary Industries Situation & Outlook for Primary Industries, June 2024: <https://www.mpi.govt.nz/dmsdocument/62637-Situation-and-Outlook-for-Primary-Industries-SOPI-June-2024>

<sup>2</sup> Federated Farmers of New Zealand General Election Platform, June 2023: <https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/National/2023/2023-Election-Platform-Restoring-Farmer-Confidence.aspx>

<sup>3</sup> Red Meat Sector Manifesto, January 2023: <https://mia.co.nz/news-and-views/new/>

<sup>4</sup> Dairy NZ View from the Cowshed, September 2023: <https://www.dairynz.co.nz/news/view-from-the-cowshed-finances-and-regulations-top-concerns-for-farmers/>

<sup>5</sup> Federated Farmers of New Zealand Farm Confidence Survey, January 2024 report: <https://fedfarm.org.nz/FFPublic/FFPublic/Policy2/Farm-Confidence-Survey-Jan-24.aspx>

<sup>6</sup> Statistics NZ Productivity Statistics 1978-2023, April 2024: <https://stats.govt.nz/information-releases/productivity-statistics-1978-2023/>

<sup>7</sup> Statistics NZ Gross Domestic Product: <https://www.stats.govt.nz/indicators/gross-domestic-product-gdp/>

<sup>8</sup> New Zealand’s Productivity Puzzle, NZ Initiative, April 2024: <https://www.nzinitiative.org.nz/reports-and-media/opinion/new-zealands-productivity-puzzle/>

- 2.8 RMA reform would make a strong contribution to improving productivity and growth. Such reform should focus on reducing the time and cost of getting infrastructure projects approved and built. It should also make it easier for businesses, including in the primary sector, to produce efficiently, generate income, boost profitability, and stimulate investment.
- 2.9 By moving in this direction, the Bill meets an important need. It is, however, only part of the second phase of a three-phase programme of RMA reform. The Government's third phase for reform is to replace the RMA with new resource management legislation to "be based on the enjoyment of property rights while ensuring good environmental outcomes".<sup>9</sup> We discuss this further in section 4 of this submission.

### 3. SPECIFIC COMMENT

3.1 The Initiative has general, high-level comments on the Bill's key provisions. These follow below.

3.2 Exclusion of NPSFM 2020's hierarchy of obligations:

This refers to the concept of Te Mana o te Wai, which imposes the following strict hierarchy:

1. The health and wellbeing of water bodies and freshwater ecosystems.
2. The health needs of people, including the provision of drinking water.
3. The ability of people and communities to provide for their social, economic and cultural wellbeing, now and in the future.

This hierarchy of obligations ignores the issue of New Zealanders' wellbeing. Water quality is important, but it does not move in lockstep with wellbeing. People have competing priorities and trade-offs must be assessed. The current hierarchy puts the wellbeing of water bodies ahead of other wellbeing objectives. It is unbalanced and does not allow trade-offs to be made.

The Bill rightly provides for the hierarchy of obligations to be excluded from resource consent application and decision-making processes until the NPSFM 2020 is replaced. We support this change as an interim necessary step towards restoring balance to the regime.

We note that regional councils will continue (until the NPSFM 2020 is replaced) to give effect to the hierarchy of obligations through their policy statements and plans.

3.3 Alignment of the consenting pathway for coal mining with other mineral extraction

This means that coal mines will have to meet the same tests and requirements to manage their environmental effects as similar mineral extraction activities. We support this change. From a resource management perspective, there is no reason for the effects of coal mining to be treated any differently than those of, say, gold mining or iron sand mining.

If the concern is about greenhouse gas emissions from the use of coal in New Zealand, this is addressed by the Emissions Trading Scheme, which should be the primary

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<sup>9</sup> Hon Chris Bishop, Minister for RMA Reform, May 2024: <https://www.beehive.govt.nz/release/first-rma-amendment-bill-introduced-parliament>

mechanism for reducing net emissions. The intent of the ETS is to confront coal mining with the social cost of carbon. If it is doing that job, it has internalised the cost of GHG emissions. This is the case of an economic instrument that dictates a quantity outcome for net emissions but allows flexibility in how that outcome is to be achieved.

#### 3.4 Identification and inclusion of new SNAs.

SNAs identified on private property limit new activities and developments that can take place on those properties. Councils including them in district plans amounts to confiscation of property rights and risks undermining conservation efforts by casting biodiversity and conservation efforts as liabilities. We support a three-year delay in this process while the RMA is reformed.

An unintended consequence of SNAs is a risk of pre-emptive habitat destruction if landowners whose properties provide substantial natural amenities fear regulations being imposed on their properties. We note the parallel to habitat preservation rules under the American Endangered Species Act, which resulted in the pre-emptive destruction of potential habitat to avoid substantial regulatory imposition.<sup>10</sup>

The risk of this outcome is attributable to a regulatory regime that imposes uncompensated takings. A less perverse regime would give landowners positive incentives to provide and protect habitat.

We note that the change in this Bill will only apply to new SNAs, not those that already exist in planning documents. Broader change, including the potential use of economic instruments to encourage habitat protection, should also consider existing SNAs.

#### 3.5 Stock exclusion for sloped land

The ‘slow slope map’ and associated requirements have a long and torturous history with numerous attempts to find the right approach. None have been workable. It is better to allow regional councils to manage the issue using approaches that fit the conditions in their areas. We, therefore, support the repeal of these highly contentious regulations.

Cap-and-trade approaches covering the relevant set of discharges from land could be considered in larger catchments where sedimentation or nutrient run-off are issues.

#### 3.6 Intensive winter grazing.

Nationally imposed regulations for intensive winter grazing have also failed to find a workable approach. Again, it would be better to allow regional councils to manage this issue using approaches fit for the conditions in their areas, with farmers subject to animal welfare regulations and codes of practice. We, therefore, support the repeal of the intensive winter grazing regulations.

#### 3.7 Speeding up processes for national direction under the RMA.

Quoting officials, processes for preparing and amending national direction are “disproportionate (sometimes making them unnecessarily slow and onerous), duplicative and inconsistent, resulting in unnecessary cost to central government and the resource management system. Inefficiencies in evaluation report and national

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<sup>10</sup> Lueck, Dean and Jeffrey Michael. 2003. “Preemptive habitat destruction under the Endangered Species Act”. *The Journal of Law and Economics* 46:1 (April).  
<https://www.journals.uchicago.edu/doi/abs/10.1086/344670>

direction assessment processes contribute to delays in preparing policy for national resource management issues.”<sup>11</sup>

The proposals in the Bill are expected to reduce delays and costs, remove duplication, and be more consistent and proportionate. As a package, they seem sensible. The Board of Inquiry process for a National Policy Statement or National Environmental Standard (NES) has not been used since 2008-10. It has been considered too costly, onerous and prescriptive. Removing it from the Act eliminates a redundant provision. It also makes sense to not require minor amendments to an NES to go through the full RMA process.

Officials have identified a potential reduction in opportunities for public participation, but they expect this cost to be ‘relatively low’. That is because the changes to processes are about removing duplication and making them more consistent and proportionate rather than about matters of substance.

#### **4. RMA REFORM AND ECONOMIC INSTRUMENTS AS AN ALTERNATIVE**

- 4.1 Landowners subject to multiple regulatory requirements can be placed in difficult circumstances and face significant restrictions and cost impositions. Meanwhile, regulatory approaches have often failed to address the problems they were intended to address. This has created a ‘tragedy of the anti-commons’ where resources cannot be put to their most-valued use because objectors are not confronted with the cost to the community of getting what they want.<sup>12</sup>
- 4.2 Regulatory approaches do not easily facilitate trade-offs between competing objectives, whereas well-designed price-based instruments can enable such trade-offs. An SNA imposition cannot weigh the opportunity costs on a property. If landowners are paid for the provision of habitat with substantial biodiversity benefits, they can weigh the provision of that service against other potential uses of that land. Similarly, sedimentation and nutrient losses under a cap-and-trade regime enable the discovery of efficient solutions, whereas blanket proscription of grazing on slopes does not.
- 4.3 The Government’s third phase of RMA Reform will be to replace the RMA with new resource management legislation to “be based on the enjoyment of property rights, while ensuring good environmental outcomes”.
- 4.4 Ultimately, the goal should be a resource management system that makes it much easier for beneficial projects to proceed. It should allow businesses and individuals to go about their day-to-day activities efficiently. It should provide much greater respect for property rights while protecting important environmental values, including where willingness to pay demonstrates the quantum of those values.
- 4.5 A new resource management system should confront those who have a preferred land use with the cost to the community of the forgone land use. Incentive alignment

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<sup>11</sup> Ministry for the Environment Supplementary Analysis Report: Streamlining National Direction Process: <https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/supplementary-analysis-report-streamlining-national-direction-processes/>

<sup>12</sup> Buchanan, J.M. and Y.J. Yoon. 2000. “Symmetric tragedies: Commons and Anticommons.” *Journal of Law & Economics*. 43:1. <https://www.jstor.org/stable/10.1086/467445>

requires that the cost of funding land use that benefits the wider community be funded by the wider community. This is also the basis of the Public Works Act.

- 4.6 Where there are externalities that cannot be satisfactorily internalised by adjustments to private property rights, policy should consider the use of economic (price-based) instruments in addition to 'command-and-control' regulation. The latter lends itself to imposing outcomes, often regardless of cost, whereas the former is more content to accept the outcomes that emerge once costs are better internalised. This is worth considering as an alternative to relying on regulations based on a rigid hierarchy.
- 4.7 We encourage continued work on resource management reform, emphasising the importance of property rights and the use of price-based instruments where practicable, especially when land is likely to be subject to multiple control regimes. A 2021 report by the Initiative explores the potential for cap-and-trade approaches to freshwater management.<sup>13</sup>
- 4.8 The Initiative strongly supports such an approach for RMA reform. We look forward to it progressing as a high priority.

## **5. CONCLUSION**

- 5.1 The RMA and associated regulations are a serious handbrake on economic growth and development while also failing to satisfy many on environmental grounds.
- 5.2 The Resource Management (Freshwater and Other Matters) Amendment Bill is a necessary interim step to restore balance and streamline processes. It should proceed.
- 5.3 The ultimate goal should be an RMA that makes it much easier for beneficial projects to proceed. It should allow businesses and individuals to efficiently go about their day-to-day activities. It should balance these objectives with respect for property rights while permitting the community to fund the protection of important environmental values.
- 5.4 A new resource management system should include greater use of economic instruments, where practicable.
- 5.5 We appreciate the opportunity to submit on this Bill. We hope the Primary Production Committee finds our submission constructive.

**ENDS.**

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<sup>13</sup> Crampton, Eric. 2021. "Fording the Rapids: Charting a course to fresher water." *The New Zealand Initiative*. <https://www.nzinitiative.org.nz/reports-and-media/reports/fording-the-rapids/>