

Interaction between the NES-F and NES-PF

This short guidance is intended to explain the relationship between the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F), and the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (NES-PF).

NES- F regulations are subject to the NES – PF

Regulation 7 of the NES-F specifies the NES-F regulations are subject to the NES-PF. Where the NES-PF and the NES-F conflict or overlap, the relevant provisions of the NES-PF will prevail over those in the NES-F.

Prevail over means the relevant performance standards, permissions, activity status, or conditions of the NES-PF apply, and those in the NES-F do not.

For completeness, stringency and leniency (concepts covered in regulation 6 of both the NES-PF and NES-F) apply to the relationship between national environmental standards and plans or consents, but do not apply to the relationship between two national environmental standards.

Examples of where NES-PF prevails over NES-F for the same activity

1. Proposed activity: Eradicating conifers from a wetland in an afforested area¹

Both the NES-PF and NES-F control the eradication of conifers in a wetland. Under the NES-F², vegetation clearance (in this case, the removal of wilding conifers) from within any natural wetland is permitted only for certain purposes, including restoration and scientific research, and must comply with conditions. Conversely under regulation 11(5) of the NES-PF, as a condition of permitted afforestation activities, wilding conifers that establish in wetland in an afforested area must be eradicated at least every five years after afforestation.

Regulation 7 of the NES-F means that the NES-PF applies in this case, and wilding conifers must be eradicated from the wetland.

2. Proposed activity: Earthworks within or adjacent to wetlands smaller than 0.25 ha in a plantation forest

¹ The NES-PF applies to areas of plantation forestry. Plantation forestry means a forest of at least 1 ha of continuous forest cover deliberately established for commercial purposes, and has or will be harvested or replanted. See the [NES-PF](#) for the full definition of a plantation forest.

² NES-F (2020): Subpart 1, Clauses 38(1), 39(1), 40(1), 43(1), 46(1), 48(1), 50(1), 51(2)

Both the NES-PF and NES-F control earthworks within or adjacent to wetlands. Under the NES-F³, earthworks or land disturbance within, or within a 10m setback of any natural wetland, regardless of size, are only a permitted activity for certain purposes, including restoration and scientific research, and must comply with conditions.

Earthworks under the NES-PF are a permitted activity if certain other conditions are met⁴. Under regulation 29(1)(b) of the NES-PF, a permitted activity condition is that earthworks must not occur within 10m of a wetland larger than 0.25 hectares. However, for wetlands smaller than 0.25ha this does not apply.

Regulation 7 of the NES-F means that the NES-PF applies in this case, and as long as other conditions are met, earthworks within 10m of a wetland smaller than 0.25ha are permitted.

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³ NES-F (2020): Subpart 1, Clauses 38(2), 39(2), 40(2), 43(2), 46(2), 50(2), 51(3)

⁴ NES-PF (2020): Regulation 24: Permitted activity: regional council. Earthworks are a permitted activity if regulations 25 to 33 are complied with and the activity is as specified in subclause 24(2).