



Submission

- to -

Ministry for the Environment
PO Box 10-326
Wellington 6143
standards@mfe.govt.nz

PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR PLANTATION FORESTRY

[New Zealand Forest Owners Association Inc](http://www.nzfoa.org.nz)
Level 4, 85 The Terrace
Wellington 6140
Tel 04 473 4769 Fax 04 499 8893

www.nzfoa.org.nz
18 October 2010

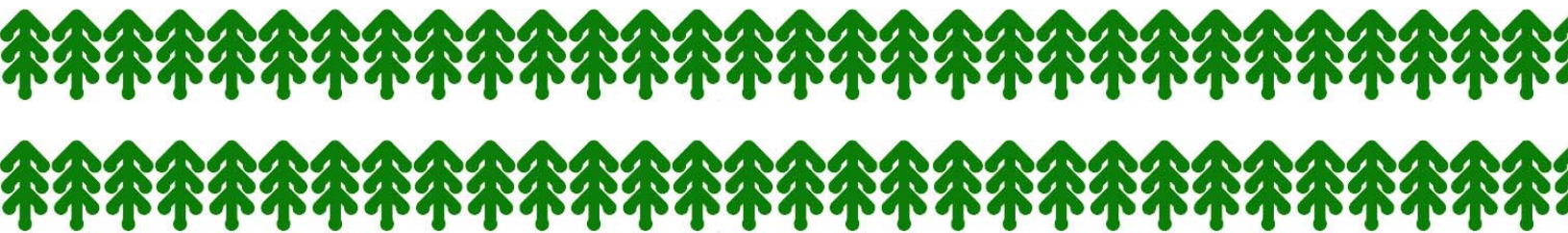


TABLE OF CONTENTS

1. Executive Summary.....	3
2. Introduction.....	4
3. The objective of the proposed NES.....	5
4. Key Issues.....	7
5. Will the NES provide an “appropriate” level of regulation?	8
6. Conditions / standards for permitted activities	9
7. Conclusion	12

1. Executive Summary

The FOA supports the government's development of an NES but considers that there are some aspects of the current version that will act against forest investment and create unwarranted restrictions. It will be important to address these concerns if this is to achieve the government's objective of streamlining the RMA process and for the NES to be supported by the forest industry

The FOA is also concerned that the NES in its current form will further exacerbate the inequitable handling by local government of forest land compared to other land uses.

The forest sector has supported the development of an NES as a potential answer to the overly regulatory and inconsistent approach to managing forestry. In that sense it is pleasing to note the analysis by MfE in the document which confirms the real and significant adverse effects that the current regulatory environment creates for plantation forestry, including:

- Re-litigation of the same issues across the country;
- Inconsistent treatment of forestry operations;
- Operational inefficiency; and
- Investment uncertainty.

The NES has the potential to treat forestry equitably with other land uses and significantly reduce the complexity faced by forest owners and councils, while ensuring suitable environmental standards are met. FOA considers the introduction of a fair NES will have a significant positive impact on economic and environmental performance within the sector.

Conversely, the existing draft remains sufficiently uncertain on some key issues that the final impact on forestry cannot be calculated with any certainty, but would result in an overall increase in regulation of plantation forestry across New Zealand. The FOA accepts that not all aspects related to plantation forestry can be captured through national prescription. Some circumstances have not been included within the NES and the FOA is supportive of some, but not all, of these elements being dealt with locally. Equally the FOA recognises and supports the ability of councils to introduce specific and additional requirements where these are necessary to cater for exceptional circumstances and ecosystems. The application of such measures though should be limited and justified. If the NES does not provide a framework that must be adhered to in most situations then, in our view, it will have failed its purpose. In our submission we have listed areas where we consider the NES can be amended in order to achieve its purpose.

2. Introduction

This submission has been prepared by the NZ Forest Owners Association (FOA), on behalf of the New Zealand plantation forest industry.

The Association welcomes this opportunity to make submissions on the Proposed National Environmental Standard for Plantation Forestry.

The FOA is a voluntary organisation representing the interests of commercial forest growers, facilitating co-operation and co-ordination within the forest industry. FOA member companies collectively manage around 1.4 million ha of rural land, 80% of which is planted in plantation trees. The total New Zealand plantation forest area is 1.69 million hectares.

Plantation forests are widespread throughout New Zealand, having being part of the New Zealand landscape since the mid 1800's. New Zealand foresters have extensive experience with different species, regimes, harvest options and associated earthworks.

Plantations provide important economic and environmental benefits.

Total harvest for the June 2010 year was just over 22.2 million m³, with the capability to increase to around 30 million m³ pa in the near future if market conditions and the competitive domestic operating environment allow. Forecasts expect that sustainable harvest will in the next 10-15 years approach 40 million m³. Currently, approximately 6 million m³ of the harvest is processed in New Zealand for New Zealand consumption. A further 6-7 million m³ is processed then exported. The remainder of the harvest is exported in log form. These resources are supplied on an economic and sustainable basis to competitive domestic and international markets.

New Zealand's forests play a vital role in carbon sequestration to mitigate the effects of climate change and helping to meet our international obligations. To meet future carbon obligations New Zealand needs substantial additional plantation plantings. In the current government environment, these additional plantings can only be provided by the private sector which requires both economic return and certainty.

New Zealand's plantation forests also provide significant local environmental benefits including the maintenance of water quality, amelioration of peak flood flows, and control of sedimentation and soil erosion.

Many communities value the recreational activities offered by local forests. Forests such as Woodhill, Riverhead, Whakarewarewa, Hamner, Geraldine, to name a few, are highly valued as providing recreational values to the community. Nearly all of New Zealand's plantation forests are utilised to some extent for recreation by local communities.

Extensive areas of marginal land that are currently degrading and are economically unsustainable could potentially be economically and environmentally better utilised in some form of forest regime. Land use decisions need to be able to be made on an equal playing field (legislatively), with competing land uses.

The current patchwork of varying regulation imposes substantial unnecessary compliance costs on the forestry sector. In particular, plantation forestry activities are subject to a complex maze of inconsistent and excessive regulation through district and regional plans throughout New Zealand. Often one forest owner or manager is required to meet differing rules and regulations for the one forest estate. In a competitive land environment, this affects land use investment decisions. The current management framework for plantation forestry fails to encourage new and continued investment in the forestry sector. Recently, the New Zealand plantation forest estate has contracted rather than grown, reflecting investor uncertainty in the sector. Forestry is in competition with other land uses.

Forestry is a unique form of land use, differing from pastoral farming in the time frame required for an investment to mature. A forest crop typically takes thirty to forty five years to mature. Investors must have confidence that they will be able to successfully and economically harvest the mature crop or they will not invest in the sector. In addition, legislation such as the Emissions Trading Scheme puts restrictions on future use of the land which investors must feel they can meet.

The decision to develop an NES for forestry was a direct response to a request by the forest sector and consistent with the government's multi-year commitment to simplifying and streamlining the RMA. It was intended as an improvement to the way district and regional councils regulate forestry activity, which is currently developed in an ad hoc manner, causing unnecessary costs and inconsistent environmental protection.

The purpose of the Proposed National Environmental Standard for Plantation Forestry (the NES) is to encourage forestry investment due to the significant economic and environmental benefits that plantation forestry provides. This submission refers to issues within the proposed NES which FOA considers have the potential to unnecessarily negatively affect New Zealand forest owners.

3. The objective of the proposed NES

The overall objective of the NES is to create a more **consistent** and **appropriate** framework for the management of plantation forestry. These two key terms are defined as follows:

- Consistent – provides certainty about consent requirements, facilitates efficient operations and is free from unnecessary variation or contradiction
- Appropriate – promotes best forestry practice that recognises different environments and values.

FOA supports this broad objective of the NES. If this objective can be achieved, the NES will create a meaningful incentive for investment in plantation forestry.

There are three fundamental areas of concern with the proposed NES that must be addressed. These are:

- uncertainty of outcomes for the forestry sector;
- the potential overall increase in regulation the NES creates for the sector; and
- the extent of matters in respect of which local authorities can be more stringent.

Uncertainty of outcomes

It is impossible to judge accurately the impact of the proposed NES rules due to uncertainty regarding the form and content of related work streams that are either incomplete or unavailable. These include:

- the proposed erosion susceptibility system;
- identification of nationally important water bodies;
- the relationship between riparian setback requirements and deforestation liabilities under the Emissions Trading Scheme;
- the relationship between the proposed system of mapping databases called FENZ (Freshwater Ecosystems of New Zealand)¹; and
- the potential for “bundling” of activities governed by the NES.
- the level of discretion still remaining with the local authority

It is critical that greater clarity regarding the detail and outcome of these work streams is available to the forestry sector so that the sector can reach an informed judgement regarding overall costs and benefits of the NES.

Overall increase in regulation

The NES does not reach a midpoint or overall balance position regarding regulation of plantation forestry. Instead, the NES as drafted will impose an overall increase in regulation of the sector across New Zealand because the NES:

- will automatically replace any rules in district or regional plans that are more lenient than the NES, thus causing in many parts of New Zealand a marked increase in regulation of plantation forestry; and
- provides for more stringent rules to remain in force and, in addition, other more stringent rules to be developed by local authorities. This gives enormous scope for further regulation through “local rules”.

¹ FENZ is referred to at page 124, Appendix 5, of the discussion document.

Consequently, the NES offers limited benefits and potential substantially increased costs and risks.

The effect of the above is that if the detail of the NES is not carefully reconsidered and substantially amended, it will result in a significant increase in the level of regulation that will discourage further investment in plantation forestry.

4. Key Issues

FOA considers that the NES can be modified to achieve its objectives and we outline the nature and detail of the changes that are required.

Consistent Regulation

It is accepted that it is not possible to achieve all necessary control through an NES due to the need to take into account local environmental conditions and values that are unique. There is a need for local flexibility to cater for exceptional local circumstances. However, every effort should be made to achieve the objective of consistency as far as reasonably possible.

FOA's position is that the ability to cater to very atypical local issues must not be allowed to be used as a basis for local authorities to apply additional rules and conditions in an unrestrained way without first establishing a compelling case, especially if similar issues are being dealt with in a less regulatory way elsewhere.

Matters where a local authority may be more stringent than the NES must be kept to an absolute minimum and require the establishment of a compelling case.

Activities covered by the NES

In its current form, too many activities are excluded from the NES and there are too many areas where the local authority may be more stringent through development of 'local' rules. This allows too much scope for variability of regulation across different local authorities and compromises the achievement of consistency and certainty for the forestry sector – a key industry driver for an NES.

The scope of activities covered by the NES is currently limited to only eight activities. FOA considers the following related activities should also be included as they are an integral part of plantation forestry:

Indigenous vegetation clearance:

The NES provides that local authorities may establish 'local' rules regarding indigenous vegetation clearance resulting from afforestation. The explanation at section 4.2.1 of the NES states simply that in some cases there will be valuable indigenous vegetation that has not been specifically classified as 'significant' in plans. This provides no guidance or clarity regarding the nature or extent of 'local' rules regarding indigenous vegetation clearance that the forestry sector will need to comply with. Instead the NES vests enormous discretion in local authorities to develop these rules.

It is exactly this potential for inconsistency that the forest industry is trying to avoid through adoption of an NES. These rules impose significant uncertainty as to process and outcomes, which causes excessive consenting and operational costs to the forest sector.

Nationally significant water bodies:

There is no justification for allowing 'local' setback rules regarding nationally significant water bodies to be established by local authorities. Instead these setbacks should be established through a national instrument such as the NES.

This would be consistent with the approach in the NES regarding regionally significant water bodies and the Coastal Marine Area (20m and 30m setbacks respectively). These water bodies are also important and the same approach can readily be adopted in respect of nationally important water bodies.

The key objective of consistency will be better achieved by removing reference to nationally significant water bodies from the matters where local authorities are able to be more stringent and instead, providing for setbacks in respect of such water bodies as a regional condition for permitted activities.

Outstanding natural features and landscapes;

Noting that this is a matter where local authorities can be more stringent only in relation to afforestation (i.e. does not apply to replanting), FOA strongly believes that in the interests of treating all land uses consistently this option should be included in the NES, removing the options for local authorities to be more stringent.

Water yield:

FOA objects to the inclusion of water yield as a more stringent matter and seeks that the issue of water yield be addressed by a regional condition for afforestation as a permitted activity.

Nuisance:

FOA considers the objective of the NES will be better served by deletion of nuisance issues as a matter where local authorities can be more stringent, on the basis that such issues must be treated equitably with other land uses such as farming. ie: As other land users are not constrained by "nuisance" effects neither should forestry.

5. Will the NES provide an "appropriate" level of regulation?

The second key objective of the NES is to achieve an "appropriate" level of regulation. When determining what is appropriate, an important requirement identified in the Discussion Document is that the NES should not significantly tighten or loosen the overall regulation of plantation forestry in New Zealand.

FOA considers that the conditions currently proposed will significantly raise the bar for the management of plantation forestry in New Zealand and lead to a higher overall level of regulation. In addition, these conditions may be interpreted and applied in a manner that is inconsistent with the purpose of the NES and impose onerous consent requirements with no resulting environmental benefit.

The specific conditions of concern to FOA and suggestions for how they should be modified are discussed below.

6. Conditions / standards for permitted activities

Afforestation/re-planting-setback:

Any distance greater than 5 metres raises the possibility of an ETS liability. This must be clarified and any liability must not lie with the landowner if they are responding to an NES requirement.

Earthworks:

FOA considers that the plantation forest sector may not always be able to comply with the 100 gm/m³ maximum increase in sediment during single events.

It is appropriate that the NES does not permit direct discharges of sediment to water (which is illegal under RMA Section 15). With regard to non point source sediment discharges in relation to earthworks, the proposed standards (no more than 20% in Class A waters or no more than 40% in other waters) represent a significant step up in many regions, but are appropriate for earthworks undertaken above sensitive receiving environments (as may yet be defined in NIWA's REC or DoC's FENZ spatial databases).

We do have significant concerns that the following may be unachievable under major storms for headwater (first order) streams:

"during single events (including flood events), by more than 100 grams per cubic metre, unless the background level (i.e., upstream of the activity or in a suitable reference stream) is close to or above 100 grams per cubic metre, in which case the increase in suspended solids after reasonable mixing shall not be greater than 40% above the background level".

Suggest this rule only applies :

- To flood flows up to a 10yr return period storm
- Applies to second order streams and larger

Erosion susceptibility system - uncertainty of location and extent of green / orange / red zones – the lack of maps defining these zones currently makes calculating the effect of the proposed NES almost impossible.

River crossing:

There is no logical justification for regulation of river crossings based on catchment size. If there was, equity would demand that the rule apply to all productive rural landowners rather than just forestry.

Definitions:

Many of the definitions provided in the NES are inadequate or uncertain. For example, "80% ground cover" is impossible to define on the ground and seems irrelevant as a general prescription.

The NES is unclear regarding whether setbacks from water bodies are measured from the centreline of the water body or the edge of the water body. A new definition needs to be inserted clarifying measurement of setbacks.

Interpretation and application of controls:

In addition to the wording of the conditions themselves, another important consideration is how these conditions will be applied when assessing a particular plantation forestry proposal.

Bundling

The Discussion Documents states that where the activity status for different activities under one proposal differ, the entire proposal may be assessed against the most stringent activity status, a process known as "bundling". This process is claimed to apply to an NES as it does to local authority plans².

The principle of bundling was established by case law under the RMA. However it is not of universal application and should be applied with care.

One of the leading cases on this issue is Southpark Corporation Limited v Auckland City Council³. The first key point to note from this decision is that bundling does **not** apply to **permitted activities**. If the relevant permitted activity conditions are satisfied, the consent authority's ability to consider that activity is "eliminated altogether"⁴.

Applying this to the NES, if one activity within a proposed forestry operation (e.g. afforestation) meets all the relevant conditions, it is not affected by the fact that another activity within the same broad proposal (e.g. harvesting) requires consent. The only parts of the proposal that the consent authority can consider are the parts that actually requires consent.

² Pg 41 of the Discussion Document

³ A111/2000

⁴ Ibid para 21

To 'bundle' permitted activities with other activities that do require consent is to impose a consent requirement where none is intended to exist. This defeats the purpose of the NES and is inconsistent with the established case law on bundling.

The second key principle confirmed by the Southpark decision is that even where two or more activities in the same proposal do require consent, it will not always be appropriate to assess them by the most restrictive activity status. In particular, bundling will not be appropriate where⁵:

One of the consents sought is classified as a controlled activity or a restricted discretionary activity; and

The scope of the consent authority's discretionary judgment in respect of one of the consents required is relatively restricted or confined, rather than covering a broad range of factors; and

The effect of exercising those consents would not overlap or have consequential or flow on effects on matters to be considered on the other applications, but are distinct.

It is important to recognise that these limitations of the bundling principle apply equally to activities covered by the NES as they do to other consent applications under the RMA.

The issue of bundling is of critical importance and will have a significant impact on how the NES is applied. The NES should contain clear guidance on how the principle is to be applied to avoid unnecessary and onerous consent requirements being imposed with no environmental benefit.

Requirement for replanting following harvest

FOA opposes any requirement for replanting following harvest. No other land use faces a regulatory requirement that it be continued in perpetuity in apparent disregard for commercial or personal investment in continuation of that activity. The RMA limits resource consents to a maximum of 35 years in recognition that resource use preferences and social, economic, and environmental context may change over time.

The Emissions Trading Scheme already places a substantial financial burden on forest land owners wishing to change land use.

Second round of submissions on NES

With the exception of further submissions on the erosion susceptibility system as discussed above, FOA opposes any second round of submissions on the NES and considers that there is no jurisdiction for a second round provided by sections 43 and 44 of the RMA.

⁵ Ibid, para 15

Opposition to visual amenity landscapes

FOA is firmly opposed to any amendment to include visual amenity landscapes as a matter where local authorities can be more stringent. Visual amenity landscapes are not a matter of national importance under section 6 RMA and inclusion of this matter would effectively preclude forestry from areas subject to such 'local' rules.

7. Conclusion

While FOA strongly supports the broad objectives of consistency of regulation leading to appropriate forest practices we strongly oppose the current form of the NES because we believe it will not achieve the stated objectives and will result in higher standards for permitted activities and freedom for councils to maintain their remaining regulatory framework for forestry.

There are three fundamental areas of concern with the proposed NES that must be addressed. These are:

- uncertainty of outcomes for the forestry sector;
- the potential overall increase in regulation the NES creates for the sector; and
- the extent of matters in respect of which local authorities can be more stringent.

These issues need to be addressed if the NES is to be successful.

FOA believes the NES is the right method to promote appropriate land management in forest plantations and that by adopting the submissions made herein the current NES can be improved to achieve the stated NES objectives.

FOA requests the opportunity to be heard in support of our submission.



David Rhodes
Chief Executive

For further information please contact:
Glen Mackie, Senior Policy Analyst
Telephone: 04 473 4769
Mobile: 0274 450 116
Glen.mackie@nzfoa.org.nz