

Feedback

Forest sector issues with the Resource Management Act and related regulations.

Feedback to:

The Ministry for the Environment

The Ministry for Primary Industries

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Introduction

The New Zealand Forest Owners Association Incorporated (FOA) and the New Zealand Farm Forestry Association (FFA) (“together The Forestry Interests”) welcome the opportunity to provide feedback on potential amendments to the Resource Management Act 1991 that would assist in managing road blocks to appropriate forestry management and operation.

The proposed reform of New Zealand’s key environmental legislation is of critical importance to the forest industry. The proposals set out below are provided as part of the Government’s proposed initial changes to the Act in advance of the more substantive changes to follow. Many of the issues arising for forestry interests stem from the implementation of the various regulations. Accordingly, the matters identified below are at a high level and are generally limited to potential changes to the Act that may assist in improving operation of the regulations, though some issues are inevitably mixed with associated regulations. For clarity we also include a table of changes to the Specific feedback on the National Environmental Standards for Commercial Forestry that was provided to the Ministry for Primary Industries in November 2023 and which remains relevant.

In the time available, some issues arising have been identified but no specific solution has been proposed.

FOA / FFA

FOA is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand’s 1.74 M ha of plantation forests and over 75% of the annual harvest.

FFA represents people who own, manage, or invest in small-scale private forests and/or are interested in the many values of trees. FFA currently has around 1,500 members, representing a good cross-section of the 15,000 entities owning private forests in New Zealand. Small forest owners are managing about 25% of the national plantation forest resource.

Forestry export revenue was \$6.2 billion in the year ending June 2022 and this is expected to increase to \$6.47 in 2023. Harvest volumes reached 36 million cubic metres in the year ended March 2022. While 2022 saw a significant decrease in log export revenue due largely to the impacts of the Covid interventions in NZ and abroad, this is forecast to recover by 2024 and then see an increase (SOPI June 2022).

The forestry sector also supports employment (40,835 FTEs), investment, and development across New Zealand throughout its supply chain in both urban and rural New Zealand.

Executive Summary

The following matters summarise the recurring challenges identified by the Forestry Interests that could be usefully addressed through immediate amendments to the RMA.

1. Regional Council controls on plantation forestry that are more stringent than the National Environmental Standard for Commercial Forestry (“NES-CF”). These could be clarified by amendments to the NES-CF or through amendments to s86B of the RMA.
2. Uncertainty as to when existing use rights apply to the suite of forestry activities: Sections 10 and 20A could usefully clarify when an activity such as plantation forestry is to be considered as a cycle of activities.
3. Whether the NES-CF can be challenged through the application of s 43A: Amend s43A to avoid allegations that forestry activities cannot be provided for as permitted activities under the NES-CF.

Other issues include:

4. Ensuring that any proposals to amend the RMA do not result in changes to the current suite of activity classifications;
5. The management of the long term cycle of forestry in the face of extreme events. Further discussion is required in relation to this issue;
6. The extent to which the NPS-IB needs to manage significant natural areas: this is set out in the FOA submissions on the draft NPS-IB;
7. Matters arising from the drafting of the NPS-FM.

Feedback provided from the Wood Processors and Manufacturers Association is also endorsed.

For ease of reference the schedule of regulatory amendments to the NES-CF provided to the Minister in November 2023 is also attached.

Overarching issues with regulation of forestry

The RMA and associated regulation tends to focus on the effects of discrete activities. For the forest sector many of the challenges faced stem from the absence of regulatory acknowledgment of forestry as a comprehensive, cyclical process encompassing various stages. These include preparation, planting, growth, maintenance, harvesting, and replanting and ancillary activities such as roading and earthworks. A tangible example is that sediment discharges spike during harvesting but over the life cycle of the forest generally revert to levels associated with native forests.

Regional Council controls on plantation forestry that are more stringent than the NESCF

Issue 1 – regulation 6 of the NES-CF

Section 43B of the RMA provides a rule that is more stringent than a national environmental standard (NES) prevails over the standard, if the standard expressly says that a rule may be more stringent than it.

Regulation 6 of the NES-CF provides that a rule in a plan may be more stringent than the regulations if *inter alia* the rule gives effect to any objective developed to give effect to the National Policy Statement for Freshwater Management’ (“NPS-FM”).

Throughout development of the NES-CF (formerly NES-PF), the Forestry Interests’ ongoing understanding was that Councils would only override the NES-CF if a robust science-based assessment

indicated that forestry was both a significant contributor to water quality problems and that the NES-CF rules were not sufficient to address those problems.

In practice, without undertaking the necessary analysis, some Councils have proceeded to implement rules that are more stringent than the NES-CF. Plan provisions to over-ride the NES-CF for water quality reasons are already in place or under development in Gisborne, Canterbury, Otago, Greater Wellington and Northland. This approach to controlling forestry activities thwarts the purpose of greater efficiencies / reductions in bureaucratic load anticipated by application of a nationally consistent instrument. It severely undermines the usefulness of the NES-CF.

Underscoring this concern, a group of forestry companies in Canterbury have appealed to the High Court on points of law relating to a rule in proposed Plan Change 7, with a decision pending. They allege that Canterbury Regional Council did not undertake the required scientific studies to justify greater stringency for the discharge rules within the NES-PF. In the interim, because rules for the purpose of water quality have immediate effect, forestry companies have had to apply for discharge consents from their harvesting sites at significant cost.¹

Issue 2 - Councils' response to NPS-FM

The rules proposed by the Councils identified above have been introduced in response to the proposed freshwater planning process mandated by subpart 4 of Part 5 of the RMA, introduced by the Resource Management Amendment Act 2020. Despite the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 amendments to s80A(4)(b) - which extend the date by which regional councils must publicly notify a freshwater planning instrument² - it appears that some councils are proceeding with notifying their freshwater planning instrument, and in so doing, applying rules that are more stringent than the NES-CF.

For example, Otago Regional Council is proposing to proceed with notifying its Land and Water Regional Plan by the end of June 2024. The draft provisions require most forestry activities to obtain resource consent, despite being capable of operating as a permitted activities³ pursuant to the NES-CF. Of immediate concern is that the draft proposals would require consent to replant within 50m either side of any stream/river.⁴ The planting season starts in May and finishes in October. Simple forestry consents for culverts in the Otago Region are taking at least 4 months to process. It is estimated that there will be at least 3,000 ha of replant in Otago this planting season that will be adversely affected and probably unable to obtain consent before the end of the planting season. There are flow-on effects to nurseries and contractors involved in the replanting.

Associated legal issues with issues 1 and 2

Section 86B provides that rules in proposed plans will have immediate legal effect before a plan becomes operative if the rule protects various elements, including water, soil and significant indigenous vegetation.

¹ The anecdotal evidence is that processing of the consents is about \$80,000 per application with no apparent difference in outcomes.

² from December 2024 to December 2027

³ Subject to compliance with standards

⁴ Noting that this may be reduced to 20m in the notified version in response to feedback.

Generally speaking, for many activities, when a regional plan rule replaces a permitted activity rule the activity may continue to operate as a permitted activity until the rule is operative, even if s86B applies.⁵

The issue for forestry activities is that s20A (Certain existing lawful activities allowed) may not apply to some forestry-related activities, such as a first rotation harvest. There is also some doubt whether the requirement that an activity has not been discontinued for a continuous period of more than 6 months would rule out the application of s20A to a second or third rotation harvest activity. This issue is also addressed separately under the heading “Uncertainty as to when existing use rights apply to the suite of forestry activities” below.

Potential solutions

The Forestry Interests would prefer to retain a national and robust set of rules in the NES-CF that are not undermined region by region. We consider that regulation 6(1)(a) is being misused and should be deleted, with the proviso that in light of recent weather events we accept the need for a special case in some specific locations, most notably Gisborne. The logical way to achieve this is to draft a specific provision for Gisborne mudstone geology under regulation 6(3), as is already the case for Separation Point Granites.

An associated legislative “fix” is amendment of s86B of the RMA. This section stipulates when rules in proposed plans have legal effect. Section 86B(5) could be amended to clarify that the term “immediate legal effect” as defined by that subsection does not extend to rules promulgated as part of the s80A freshwater planning process.

Alternatively, in the same way as section 86BA relates to the “immediate legal effect of rules in the IPI prepared using ISPP”, a new section could be introduced specifying that the legal effect of rules prepared as part of a freshwater planning process relating to forestry activities do not have immediate effect until operative. There is no lacuna as the NES-CF would continue to apply until the rules were operative, or new (secondary) legislation is introduced or amended.

The related issue regarding existing use rights is addressed separately below.

Uncertainty as to when existing use rights apply to the suite of forestry activities

The issue

The now largely repealed Natural and Built Environment Act 2023 (“NBEA”) proposed to significantly modify the concept of existing use rights governed by sections 10 and 20A of the RMA.

The Forestry Interests strongly opposes changes from the status quo that weaken the notion of existing use rights on the basis that there is limited benefit associated with protecting existing use rights.⁶ The Forestry Interests maintain that analysis underpinning the NBEA failed to consider the

⁵ A rule in a proposed plan has an immediate legal effect if the rule protects or relates to water etc under s86B but Rule20A applies notwithstanding.

⁶ Reasons for this opposition were included in The Forestry Interests’ submissions to Select Committee on the NBEA.

application and importance of existing use rights to existing plantation forestry and its nature as a continuing series of long-term primary production activities.

Whether plantation forestry activities attract existing use rights under s10 was addressed in the Mawhinney case⁷ where the Environment Court held that:

“an existing use of forestry includes the whole cycle from preparation, planting, through growing and maintenance to harvesting and removal. Ancillary activities, which are part of the use include construction of tracks, landings and roads (subject to regional plan requirements in relation to crossings of waterways and sediment control) and destruction/removal of understorey and adjacent vegetation. For a crop of Radiata pines the whole process may, as described above, take place over a period 25 to 35 years before the cycle can begin again.”

One of the consequences of the NES-CF, which was introduced after the Mawhinney decision, was the separation of the activities that make up plantation forestry into separate activities (eg land preparation, harvesting, replanting). The Forestry Interests’ concern is that the common law as expressed by the Mawhinney decision is arguably altered by the NES-CF because the NES-CF treats plantation forestry activities as separate uses, some of which may “contravene a plan rule”. The implication is that because of the time between say, harvesting and replanting, the existing use right to replant under the provisions of the district plan will be lost if the use is deemed to have been discontinued for a period of more than 12 months.⁸ Under s20A, the period for continuous use is 6 months.

Part 6 of the Legislation Design Guidelines 2021 provides that:

New legislation should only address matters already covered by the common law where it can result in improvement (such as increased clarity or a policy change). The common law is able to evolve flexibly and so is more adaptable than legislation. The cost and the potential risks of legislating should not outweigh the benefits of the new legislation.

Potential Solution

In view of the NES-CF, the Forestry Interests consider that it would be useful to codify the effect of the Mawhinney decision to add clarity to the concept of existing use rights and to provide certainty for foresters.

Whether the NES-CF can be challenged under s43A

The issue

EDS filed declaration proceedings in 2023 challenging the vires of the NES-PF (later the NES-CF). The various challenges focussed on the wording of s43A(3) and the extent to which providing for plantation forestry activities as permitted activities in the NESPF breach section 43A. The Ministers for

⁷ *Auckland Council v Mawhinney* [2018] NZEnvC 15

⁸ In relation to s10

the Environment and Forestry together with the Forestry Interests challenged the jurisdiction of the Environment Court to make the declarations. A recent decision of the Environment Court confirms its lack of jurisdiction.⁹ One declaration was not subject to the jurisdictional challenge and remains to be determined. This also relates to the operation of s43A(3).

The challenges posed by EDS raise questions regarding the clarity of drafting in ss43A. Despite this matter being *sub judice*, the Legislation Design Guidelines 2021 do not rule out amending legislation where litigation is on foot.¹⁰

Potential solutions

The Forestry Interests considers that amendments could be made to improve the drafting of s43A in relation to national environmental standards, for example, as follows:

S43(3) If an activity has significant adverse effects on the environment, a national environmental standard must not, ~~under subsections (1)(b) and (4),~~—

(a) allow the activity, unless it states that a resource consent is required for the activity; or

(b) state that the activity is a permitted activity unless requiring compliance with terms and conditions dealing with any significant adverse effects on the environment.

Section 43A could also usefully clarify that the Minister does not have a continuing obligation in respect of the regulations.

Retaining the suite of activity classifications

The issue

The NES-CF sets the activity status for the management of the various activities associated with plantation forestry (unless a plan is more stringent) and was developed with an activity cascade of permitted, controlled, restricted discretionary and discretionary activities.

The Forestry Interests are aware that some interests propose reducing the various classes of activities, but we sound a warning of the potential for unintended consequences, with specific reference to the NES-CF.

Our experience with the NES-CF is that the activity cascade is working well. Controlled activities, which cannot be declined, are a useful component of the suite of activities. The controlled activity status has been used where the existing permitted activity thresholds cannot be met. These ensure the consideration of associated matters of discretion provide for the ability to impose conditions while retaining certainty that the activity can be approved.

⁹ *Environmental Defence Society Inc v Minister for the Environment and Minister of Forestry* [2024] NZEnvC 24

¹⁰ Refer to section 12.2. This is noted as being subject to several considerations which Crown Law would need to advise on.

When drafting the NES-PF, thresholds for permitted activities and associated standards were carefully considered to ensure that the statutory tests for permitted activities were met.¹¹ The controlled activities were again carefully assessed and, where considered to be inappropriate, were not included as controlled activities. Examples are mechanical land preparation, slash traps and indigenous vegetation clearance. In such cases, the activity cascade goes from permitted activities directly to restricted discretionary activities.

As noted above, where there is some uncertainty as to the effects of a proposal, the restricted discretionary activity status has been utilised. This provides a council with the ability to decline a consent but more importantly, it provides the forum for a council to decide that a particular location is not appropriate for a proposed activity (eg the location of proposed earthworks). A survey of member companies indicates that the controlled activity status is providing a useful planning tool that is especially important for river crossings.

Potential solutions

Should there be any suggestion that activity classifications be modified as per proposals under the NBEA, the Forestry Interests wish to record their position that the existing RMA activity classifications are working well and are integral to the operation of the NESCF.

Other issues

As noted above, the long-term nature of forestry, beginning with decisions made decades prior to harvest of where and what to plant, can be a causal factor in environmental outcomes during the life cycle of a forest.

These factors are not well recognised within the legislation and of late, have been exposed by extreme weather events. As concerns escalate over the risks associated with forestry management, we would welcome discussion regarding the extent to which duties of care and defences are appropriately codified.

Aspects of the National Policy Statements on Indigenous Biodiversity and Freshwater Management (NPS-IB and NPS-FM) remain of concern to the industry. That said, care is required to ensure that any amendments to these regulations are not backfilled by piecemeal (and more restrictive) approaches under regional and district plans.

Concerning the NPS-IB, a key issue relates to the mapping of planted production forests as significant natural areas and the associated impracticalities of managing highly mobile fauna. The Minister is referred to the FOA's detailed submission on the proposed NPS-IB.

With respect to the NPS-FM, the Forestry Interests look forward to the opportunity to provide a more detailed submission in response to proposed changes. In the interim, it is noted that areas of concern include:

- Bottom lines for sediment (particularly if not assessed over the lifecycle of a forest).
- Use of the effects management hierarchy to apply a no-net effects / additionality approach (and which is already developing as a separate area of expertise).

¹¹ Section 43A (3)

- Application of the hierarchy of objectives.

While there are many ways to address the core issues impeding forestry interests, it is observed that many issues could be efficiently addressed through amendments that constrain councils from providing for forestry activities in a certain way.

CONCLUSION

The Forestry Interests invite further direct discussion and any associated clarification on this feedback.

Elizabeth Heeg

A handwritten signature in grey ink, appearing to read 'Elizabeth Heeg', with a stylized flourish at the end.

CEO, Forest Owners Association

NES-CF – Issues and Suggestions

4 November 2023

#	Regulation	Guidance sought	Change to the regulation
Definitions			
1.	<p>Cutover: Appears in harvesting regulations 69(5), 69(6), 69(7), 70(f), 71(f) and in the definitions.</p> <p><i>cutover means the land area that has been harvested, and any adjacent land between the harvested area and any land that would be covered by water during a 5% AEP event, but does not include water bodies or land that would be covered by water during a 5% AEP event</i></p> <ul style="list-style-type: none"> • Cutover is a standard forestry term (to describe the area of land that has been harvested) and this document has changed it to be something different – to be both the “harvested area” and “adjacent land”, this causes confusion. • If any rules added in future relating to actual ‘cutover’ this could cause problems. • if the adjacent areas is a SNA then this potentially constrains extraction of slash. 	<ul style="list-style-type: none"> • Make it clear in the guidance that the definition of cutover has been varied from the usual forestry definition of ‘cutover’. • Insert a picture into the guidance to explain the NES-CF definition of cutover. • Explain that the cutover regulations are only in relation to harvesting. 	
2.	<p>Exotic continuous cover forestry or exotic continuous cover forest: The definition of continuous cover forestry in the NES-CF differs to what industry would typically describe as</p>	<ul style="list-style-type: none"> • Explain that the term exotic continuous cover forestry or exotic continuous cover forest 	

	continuous cover forestry, which is a term used to describe various forestry regimes such as transitional forestry or mixed species regimes.	is a term specific to the NES-CF.	
3.	indigenous Vegetation and indigenous forest It is confusing having the two definitions in the NES-CF	It would be useful for the different uses of indigenous forest and indigenous vegetation to be explained in the guidance	
4.	Slash in relation to regulation 69(2) with its location being described as "is at" <i>"Slash from harvesting that is at or on a landing must be managed to avoid the collapse of..."</i>		"At" is a term for determining location. "At" means the same as "on". In the NES-PF 69 (2) used the term "on the edge of". The NES-PF wording is preferable to "is at".
Afforestation and replanting			
5.	Afforestation Reg 9 refers to rule 14A which does not exist.		Remove reference to 14A in regulation 9.
Management Plans			
6.	Afforestation and replanting: Schedule 3 Management Plan Many of the activities and issues listed in Schedule 3 are irrelevant to the activity of afforestation or replanting, e.g. landings, endhaul disposal sites, slash storage areas, slash mobilization, heavy rainfall contingency measures. Presumably it is requiring the forester to assess the possible future impacts of other NES-CF activities at the time of afforestation.		Rewrite Schedule 3 accordingly

	<p>If that is the case, it would be much clearer to separate the management plan into two sections:</p> <ol style="list-style-type: none"> 1. the requirements that relate to the actual activity being managed (afforestation) 2. the requirements that relate to consideration of the effects of future NES-CF activities, <p>The second part needs to be worded in a realistic fashion.</p>		
7.	<p>Afforestation and replanting: Schedule 3 (2) Management Plan</p> <p>Clause 2(f) requires the map to show "...and vegetation clearance areas". This is beyond the cope of the NES-CF, which commences with afforestation. All previous activities to prepare the land for afforestation are controlled through regional and district plans</p> <p>No-one can provide the level of detail required by (2)(i) for an activity that is going to take place 25-30 years in the future (e.g. slash storage areas, controls to be applied to earthworks and harvesting etc). This is also particularly redundant with respect to replanting as infrastructure is already constructed. All that can be expected is a demonstration at a high level plan of potential roads and landings.</p>		Rewrite Schedule 3 accordingly
8.	<p>Afforestation and replanting: Schedule 3 (4)(1)(a) Management Plan</p> <p>Clause (4)(1)(a) asks for a description as to how SNA will be avoided when undertaking a commercial forestry activity.</p>		<p>Rewrite Schedule 3 accordingly</p> <p>Note this concern applies to all Scheduled management plans</p>

	<ul style="list-style-type: none"> • This widens the scope of the NES-CF as there is not a requirement to avoid SNA's (refer to regulation 93). • The clause asks for assessment against all commercial forestry activities – this should only be in relation to afforestation and replanting. 		
9.	<p>Afforestation and replanting: Schedule 3 (4)(2)(a) Management Plan – Woody Debris</p> <p>There is no regulation in the NES-CF that governs the management of woody debris. Woody debris arises as waste from any forestry activity and would include thinning to waste, and pruning. However, neither of these forestry activities requires managing that wood waste nor requires a harvest plan. Regulation 69 only deals with slash from harvesting.</p> <p>If the drafters were trying to include the management of wood waste arising from windthrow then that is extending the underlying concepts of the NES, the scope being to manage the effects of specified forestry activities.</p>		<p>Remove the reference to woody debris from the schedules as the management plans are how effect is given to the regulation. Slash is defined and does not include woody debris.</p> <p>Note this concern applies to all Scheduled management plans</p>
10.	<p>Afforestation and replanting: Schedule 3 (4)(2)(b) Management Plan</p> <p>It is unclear what the expectation is for remediation from storm damage in planted areas.</p>	Guidance would be beneficial	Rewrite Schedule 3 accordingly
11.	<p>Afforestation and replanting: Schedule 3 (4)(3)(a) Management Plan</p> <p>It is unclear how the management plans fit together. Clause 4(3)(a) erosion and sedimentation, indicates that the plan only relates to the period from the planting activity</p>		<p>Rewrite Schedule 3 accordingly</p> <p>Note this concern applies to all Scheduled management plans</p>

	<p>through to when 'a subsequent forest planning requirement is triggered'.</p> <p>The definition of forest planning requirements in the NES-CF is: <i>mean the requirements set out in Schedules 3, 4, 5, and 6</i></p> <p>This suggests that it only applies from planting through until the next activity that requires a management plan – presumably earthworks or quarrying. But other requirements relate to earthworks and harvesting. This is confusing and effectively will result in overlapping plans.</p>		
12.	<p>Replanting: Schedule 3 Management Plan</p> <p>We question the value of requiring a detailed replanting management plan and risk assessment. Many of the requirements are unwarranted, particularly:</p> <ul style="list-style-type: none"> • In low risk geologies • in second, third and fourth rotation forests (e.g. Kinleith, Kaigaroa, Woodhill • where replanting areas are small (NES-CF applies to forests 1 ha and greater in area) • where replanting is desired by the local community • when replanting is compulsory. <p>Replanting is no longer optional under the ETS (for pre-1990 forests) and in many regions under regional plan rules replanting is compulsory.</p>	Guidance needed as to why some of the matters may not be applicable (reg 77A(3)).	Rewrite Schedule 3 accordingly

	<p>It seems an unwarranted administrative burden to require detailed justification for a compulsory activity.</p> <p>The costs for this administration will not be insignificant for small forest growers or larger corporate forestry companies. There is a real risk that small forest growers will not comply with this requirement and most will not be in a position to provide GIS compatible formatted information.</p> <p>Does reg 77A(3) enable a forester to only provide information to parts of the Replanting Management Plan? <i>A replanting management plan must include all forest planning requirements that are applicable to the replanting activity.</i></p>		
13.	<p>Schedule 4 (4)(6) and schedule 6 (4)(7) Earthworks and Harvesting Management Plans - reference to other indigenous species of fauna</p> <p>There is no regulation that governs the management of other indigenous species outside of regulation 102.- this should be deleted. The clauses are not ambiguous and therefore could be interpreted in plain words. This is an out-of-scope extension of 102. Management plans are how effect is given to the regulation. It cannot be trying to align with NPS IB as that includes flora not just fauna.</p>		Delete these provisions.
14.	<p>Schedule 4 (6)(b) and (c) and schedule 6 (6)(b) and (c)</p> <p>Earthworks and Harvesting Management Plans – heavy rainfall, post event monitoring and post harvest monitoring. It is not clear what would be appropriate or considered necessary. Presumably for earthworks this would last until the earthworks are stable and for harvesting? It is also not clear why post-harvest monitoring is required for earthworks.</p>	<p>Provide guidance for different scenarios. Recognise that not all harvested areas may be replanted.</p> <p>Guidance on what heavy rainfall would be useful – 100mm in 24</p>	

		hours is NIWA's guidance, 50mm in 24 hours. Recognise that it does depend on topography and geology and antecedent soil moisture. Note difficulties arise depending on where rainfall is measured and that on-site. It may be better to use return period rather than rainfall quantity. Eg 1 in 10 year event in 6 hour or 12 hour event. Note that the forester must be able to apply their own rationale.	
Replanting			
15.	<p>Replanting Notice reg 78A</p> <p>We question the value of providing notice for replanting. Many of the requirements are unwarranted, particularly:</p> <ul style="list-style-type: none"> • In low risk geologies • in second, third and fourth rotation forests (e.g. Kinleith, Kaigaroa, Woodhill, Golden Downs... • where replanting areas are small (NES-CF applies to forests 1 ha and greater in area) • where replanting is desired by the local community • when replanting is compulsory. 		Reconsider the application of replanting notice.
Harvesting			
16.	<p>Harvesting: 69(5)</p> <ul style="list-style-type: none"> • The spec that has been chosen for residual slash is similar to that universally used for standard industry 	Measures of assessment would be useful for both council compliance staff and foresters.	

	<p>merchantable log waste assessments, but slightly different.</p> <ul style="list-style-type: none"> • Who arbitrates is slash removal is unsafe? Councils do not have staff qualified to make this assessment which will potentially leave forestry companies stuck between the requirements of Councils and the requirements of WorkSafe. • Application to all orange zone is a blunt tool, requiring slash removal in some sand dune and pumice country where slash movement risk is negligible. 	<p>Guidance as to what is required to determine slash not being removed for safety reasons will be very important. Suggest that it could be:</p> <p>Written record of communication from contractor to forest owner/manager of the reason/s.</p> <p>or</p> <p>Written record of communication from the forest owner/manager to the council of the reason/s</p>	<p>Reconsider the regulation to exclude low risk slash mobilisation geologies in orange ESC</p>
17.	<p>Harvesting: 69(7) residual slash</p> <p>How is this going to be measured – every single hectare has to be assessed or is it average over the area of harvest? As trees are extracted, slash can be sweep into depressions/gullies, therefore giving a false indication of m³ if the rule is applied to individual hectares.</p> <p>There could be perverse outcomes – decisions made not to drop trees that cannot be extracted which would then more susceptible to windthrow, If windthrown, they would equally not be able to be recovered.</p>	<p>Provide guidance that the measurement is an average / ha across the harvested area.</p> <p>Guidance should also be tailored to different forest holdings.</p>	

	A small forest owner will not be able to afford to bring in a helicopter for slash removal – they would end up deeply in debt.		
18.	Exotic continuous cover forests 71A (b) <i>“any relevant forest planning requirement is not complied with.”</i> The word “not” in the regulation does not make sense		The word “not” in 71A(b) should not be there.
Removable in-stream structures			
19.	Removable in-stream structures regulation 46(8)(b) These are widely used but in catchments much greater than 500 ha. Successfully used in catchments of up to 2,500 ha. The permitted activity standards address risk appropriately for use in large catchments		Amend 46(8)(b) to apply to 2,500 ha.
Guidance material			
20.		Could a series of workshops supporting implementation of the NES-CF for the Farm Forestry Association and small growers (in particular) be rolled out similar to what was carried out for the NES-PF?	
21.		FOA would appreciate the opportunity to be involved in the development of guidance.	