

The High Country Accord Trust

Response to the Crown's Discussion Document:

Managing our wetlands: A discussion document on proposed changes to the wetland regulations



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This document

This document responds to the Ministry for the Environment's 2021 document: *Managing our wetlands: A discussion document on proposed changes to the wetland regulations*.

This document should be read alongside the Accord's earlier submission in 2019 on the discussion document for a national direction on essential freshwater and the Accord's more recent submission in response to the low slope map discussion document.

Background to the Accord

The High Country Accord is a trust established in 2003 for the purposes of promoting and protecting the rights of holders of pastoral leases under the Crown Pastoral Land Act 1998 ('CPLA') and the Land Act 1948 ('LA'), *'with a view to ensuring the future economic, environmental and social sustainability of the South Island High Country.'*¹

The Accord represents the interests of more than 150 pastoral lessees who are collectively responsible for the stewardship of 1.2 million hectares of land in the South Island High Country.

Summary of position

*'Cabinet did not intend [high country areas of extensive pastoral farming] to be subject to mandatory stock exclusion requirements in regulations.'*²

Notwithstanding that intention, the definitions of 'natural wetland' in the Resource Management (Stock Exclusion) Regulations ('Stock Exclusion Regulations') and the Resource Management (National Environmental Standards for Freshwater) Regulations ('NES-F') apply to High Country pastoral leases with perverse environmental and costly implications.

The scale of these properties, and the natural wetlands they include, mean that those implications are many times more significant than those faced by farmers of lowland properties.

A disproportionately high number of natural wetlands identified by local authorities in the South Island as regionally significant will be found on pastoral leases. Likewise, many other natural wetlands will have characteristics which trigger Regulations 17 and 18 of the Stock Exclusion Regulations. Few will be fenced, but many have been identified for planning purposes, or otherwise support significant biodiversity values because of, and not in spite of, sound management practices by lessees.

The proposed changes to the Stock Exclusion Regulations related only to the slope map. The recent 2021 Discussion Document relating to the stock exclusion regulations was deficient in omitting to expand its scope to also consider how the exclusion regulations applied to natural wetlands.

The current Discussion Document likewise fails to address the problems of wetlands in a High Country context.

¹ Clause 4.1 of the High Country Accord Trust Deed dated 23 November 2003

² See Page 10 Ministry for the Environment and Ministry for Primary Industries. 2021. Stock exclusion regulations: Proposed changes to the low slope map. Wellington: Ministry for the Environment.

Consequently, the natural wetland aspect of the Stock Exclusion Regulations issue has 'dropped through the cracks.'

The proposed change to the definition of 'natural wetland' in the NES-F does not address the issue and provides no practical help in sensibly applying the definition to the reality of wetlands in the High Country.

A moment of reflection on the photo of a pond within a paddock on page 6 of the Discussion Document pointedly raises the practical definitional issues. If it is a permanent pond then clearly it will not fall within the proposed definition as the pond itself will not contain pasture. If it is intermittently wet, and there is temporarily covered pasture then the issue is: what is the reference point for determining the 50%? Obscure protocols are not accessible and practical tools for every day use by High Country farmers.

The photo on page 6 does, however, serve one purpose – that is to highlight the simplicity of the Ministry's perception of the practical problems of the regulatory regime.

The minor changes to NES-F Regulation 38 for the maintenance of natural wetlands are supported but are little more than fiddling around the edges of an inherently problematic framework for the South Island High Country.

The scale of wetland weeds in the High Country are such that hand tools are normally inadequate to 'do the job'. Requiring resource consents to undertake willow clearance of the kind evidently necessary from the attached photos is one of the most effective obstacles to practical outcomes being achieved on the ground.

To the extent that pastoral lessees are still required to exclude stock from natural wetlands under the Stock Exclusion Regulations³ and at the same time are prevented from their contractual obligation to the Crown of weed control of natural wetlands by overly prescriptive conditions⁴, the Accord's position is therefore that the proposed approach to natural wetlands on pastoral leases is inherently unreasonable.⁵

The Accord (consistent with Cabinet's stated intention) submitted that pastoral leases should be generally excluded from the low slope map so that the freshwater farm plan regime would apply to all pastoral leases.

The Accord's view is that the same approach should be adopted for the management of natural wetlands on pastoral leases. There should be no blanket fencing requirement.

Pastoral leases (if not extensive farming systems generally) should be excepted from both the Stock Exclusion Regulations and the NES-F, and instead the management of natural wetlands be expressly addressed through the freshwater farm plan regime.

The intention of this approach is not to undermine the intention of effective ecological management of wetlands where merited, but rather to:

- provide a flexible framework within which this can occur recognising the scale of wetlands within the High Country and the nature of the farming system of pastoral leases

³ Stock Exclusion Regulations 16 - 18

⁴ NES-F Regulations 38 and 55

⁵ In a legally reviewable sense

- an appropriate balance between the costs of compliance and environmental benefits.

Definitions

The challenges of natural wetlands in a high country context all start with the definitions being excessively uncertain.

Resource Management Act definition

wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions

Stock Exclusion Regulations definition

natural wetland means a wetland (as defined in the Act) that is not—

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or*
- (b) a geothermal wetland; or*
- (c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling*

NES-F definition

natural wetland has the meaning given by the National Policy Statement for Freshwater Management

NPS-FM definition

natural wetland means a wetland (as defined in the Act) that is not—

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or*
- (b) a geothermal wetland; or*
- (c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling*

The primary definition from the Act is extraordinarily broad and uncertain. The subsidiary definitions therefore inevitably compound that uncertainty.

In the context of the South Island High Country pastoral lease estate there are vast areas of land which fall within these various definitions. Within any single lease it is entirely conceivable that there will be thousands of natural wetlands.

Some of these areas probably fit within the common conception of a wetland. Other areas, however, clearly do not – otherwise the regulatory framework would have recognised the issues in a different manner.

The appendix contains photos of different wetlands in the High Country to illustrate the diversity of wetland within our extensive farm systems.

They include:

- permanently wet areas adjacent to small tarns, lakes and rivers

- areas of alluvial riverbed which are intermittently wet as water tables seasonally rise and fall
- areas of previous riverbed which remain permanently or intermittently wet but are a result of a river changing course and leaving the old riverbed behind until the river reverts to its former course (leaving new wetlands behind)
- areas of steep slope land with seepage from the mountain side
- areas within unimproved tussock land which are either permanently or intermittently wet
- wetlands the primary threat to which are exotic weed invasion or feral animal damage (typically deer and pigs)

The Discussion Paper merely proposes to change paragraph(c) to read:

(c) any area of pasture that has more than 50% ground cover comprising exotic pasture species or exotic species associated with pasture

The immediate result will be a misalignment between the NES-F definition and the definition in the Stock Exclusion Regulations. Misalignment of definitions between two closely related regulatory instruments is obviously undesirable. Farmers will have two definitions to consider which will lead to inevitable confusion. Confusion and lack of clarity undermines the efficacy of law.

Aligning the regulatory definitions will not, however, provide the solution. Paragraph (c) has challenges of practical application at the scale of pastoral leases (how is this 50% going to be effectively calculated), and in any event many natural wetlands fall well outside the proposed new exclusion.

For pastoral leases the definitional change will only complicate matters.

Features of pastoral leases relevant to the issue

Pastoral leases have unique features which distinguish them from other farms:

- Pastoral leases were created as an instrument by which the Crown could continue to influence environmental outcomes in the South Island High Country
- Pastoral leases are subject to a program of regular inspection by the Commissioner of Crown Lands
- Presently proposed changes to the Crown Pastoral Land Act will materially increase the level of control exerted by the Commissioner of Crown Lands over farm activities on pastoral leases
- Pastoral leases invariably include stock limitation clauses which define the overall classes and number of stock which can be carried on the property, with many leases having particular limitations applying to defined areas of the property either within the lease or within the terms of exemptions granted by the Commissioner
- Those leases that remain after 20 years of tenure review are invariably 'extensive pastoral farming systems' as that term would be commonly understood

- They are located in diverse, challenging environments characterised by significant altitudinal ranges from valley floors at 200m to mountain tops at 2,000m
- Much of the land on which natural wetlands occur on pastoral leases is not accessible by 4wd, but for fencing purposes only by helicopter. This increases the costs of fencing enormously

Specific comments

Regulation 16 of the Stock Exclusion Regulations requires stock to be excluded from identified regionally significant natural wetlands. Many have been so identified on pastoral leases, but identification of such wetlands by local authorities is haphazard and has typically not involved a qualitative assessment of the inherent values of the identified wetlands, nor actual impacts of historical pastoral activities, but has been a consequence of a desk top analysis.

While there will be wetlands which may benefit from fencing, there will be many for which the costs of fencing will vastly outweigh any environmental benefits, and in many instances fencing wetlands will lead to unintended consequences of weed and feral animal pest infestation.

Regulation 17 of the Stock Exclusion Regulations requires stock to be excluded from a natural wetland which 'supports' a 'threatened species'.

There are obvious definitional challenges if this provision is to have practical meaning for those who must apply the provision to farm practices.

What does 'support' mean? What relevance does a nearby wetland have to the concept? What are 'threatened species'? Who is responsible with the task to compile an inventory and identify relevant wetlands? Who communicates with and informs landowners?

Regulation 18 of the Stock Exclusion Regulations requires stock on low slope land to be excluded from any natural wetland that is 0.05 hectares or more.

While many natural wetlands fall above the 500m altitude threshold, many occur below 500m on the properties referred to in the Accord's earlier submission to the Stock Exclusion Regulations and exceed the relatively small area threshold of 500m². The altitude threshold is a poor proxy for determining the distinction between extensive and intensive farm system.

In a mobile riverbed, a shifting river typically leaves natural wetlands (as defined) behind, only to be reclaimed by the river on its next movement. In other cases, wetlands arise from springs sourced from surrounding subterranean flows which also fluctuate considerably over the course of a year. Others are fed by overland channels. Whatever their source they are typically numerous in a high country context. Fencing them all is impractical.

The uncertainties and impracticalities of regulations 16 – 18 strongly support the farm plan approach as the better mechanism for identification of those which require fencing in the High Country context.

A significant practical point is that 'wetlands' are defined to include 'intermittently' wet areas. Much of the High Country is located along the Main Divide within areas of high rainfall or otherwise within areas which experience extreme weather events such that the application of the word 'intermittently' means there are a multitude of possible areas which would require fencing and further areas which will provide significant scope for dispute.

For all these reasons (and recognising that Cabinet did not intend to capture extensive farming systems), the better approach for pastoral leases is to address these circumstances through the farm plan mechanism – with the farm plan then specifying a fencing plan for those wetlands and rivers within a lease which are part of the developed land, or some other appropriate mitigation measure which is sensible and practical in the circumstances.

The preferred approach from the Accord's perspective would therefore be for the Regulations to provide that all pastoral leases be excluded from the scope of wetland regulation which has clearly been drafted in a manner more suited to lowland farm systems.

Water bodies on pastoral leases (both rivers and wetlands) would therefore then be subject to the two protective measures of:

- The farm plan regime; and/or
- Oversight from the Commissioner of Crown Lands in his management of the pastoral lease farm activities

The Accord would be happy to discuss this issue further with officials and to host officials to explain this submission by reference to actual examples.

Releasing submissions

You may publish this submission with the Accord's name on it.

Please remove personal details from responses to Official Information Act requests other than name, emails, and submitter type information at the beginning of this submission.

Appendix 1 – impact of the Stock Exclusion regulations in a high country natural wetland context

- Most lessees, whilst carrying a predominance of sheep will still be caught by the Stock Exclusion Regulations because they also run cattle across much of the same land as the sheep, and it is impractical to adopt another management system.
- The general restrictions are impractical because of the numerous wetlands present on most pastoral leases.
- Virtual fencing in the High Country is simply impractical with current technology and lack of electricity network infrastructure.
- Much of the pastoral lease estate is inaccessible to 4wd vehicles, requiring foot, horse or helicopter access
- The consequence of the proposed regulations will be that potentially significant areas of pastoral lease land will require physical permanent fencing of extensive wetlands.
- There is, however, no generally applicable evidence that current stock carrying practices on pastoral leases in the South Island High Country are resulting in measurably adverse biodiversity and water quality outcomes for wetlands which would be mitigated by fencing.
- On the other hand, the adverse consequences of regulated stock crossings and fencing rivers and natural wetlands in this environment are many:
 - A material, and in some cases unaffordable, fencing cost estimated to be not less than \$15,000 per kilometer (typically more where helicopter access is required);
 - The cost will be exacerbated by the High Country often being the subject of adverse weather events which result in fence losses on a regular basis;
 - Material areas of productive land will be removed from production for little measurable environmental gain;
 - Once fenced these areas will not be managed and the weed control from light grazing will cease. The cost of weed management will quickly become prohibitive;
 - The creation of large areas of land within the riparian exclusion zones will allow a proliferation of pest plants such as pines, willows, gorse, broom, buddleia and blackberry and more vigorous non-pest species (such as some exotic grasses).
 - These overgrown riparian exclusion zones also tend to provide excellent habitat for rodents due to seeding by uncontrolled species. In turn this supports mustelid populations which at various times will turn their attention to indigenous species. In the South Island High Country various stream bed birds will be particularly at risk;
 - Once fenced and the riparian zone has been overgrown, there will be a consequential exclusion of considerable areas of land from any effective recreational use (freshwater anglers in particular);

- Unresearched and unintended consequences for the fauna and flora of many aquatic stream and wetland environments are likely. While shade may be perceived by some as desirable, in many environments this may not have been the natural state of the riparian zone and the aquatic environment;
- Fence lines in the High Country already impact the visual values of the landscape. Requiring more fence lines will exacerbate this visual impact;
- In and around High Country wetlands the effect of fences will be the creation of visually dissonant green ribbons of exotic weed species in environments typified by wide open spaces dominated by indigenous species;
- Over time there is a high likelihood that the application of these rules will come to be regretted in much the same way that well-meant public plantings of conifers in areas of the McKenzie Country are now recognised to have been seriously misconceived.

Wetland mountainous seepage impractical and undesirable to fence



Wetland with invasive pasture and willows which would benefit from relaxed weed control provisions, but machinery required



Extensive pastoral farming system with numerous wetlands interspersing the landscape – impractical and undesirable to fence



Riverbed with associated wetland – impossible to fence



High country extensive farming system with braided riverbed, moraine, and tussock hill country with numerous technical wetlands impractical and undesirable to fence



Riparian Exclusion Zone showing infestation by willow and other exotic species arising from fencing

