

SUBMISSION ON

Resource Management (Freshwater Farm Plans) Regulations 2023

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To: Ministry for Environment

Name of Submitter: Horticulture New Zealand

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OVERVIEW

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for the Environment (MfE) for the opportunity to submit on the exposure draft of the Resource Management (Freshwater Farm Plans) Regulations 2023.

HortNZ welcomes any opportunity to continue to work with MfE and to discuss our submission.

The details of HortNZ's submission and decisions we are seeking are set out in this submission document.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 5,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There is approximately, 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



HortNZ's Resource Management Act 1991 Involvement

On behalf of its grower members HortNZ takes a detailed involvement in resource management planning processes around New Zealand. HortNZ works to raise growers' awareness of the Resource Management Act 1991 (RMA) to ensure effective grower involvement under the Act.

Executive Summary

HortNZ supports freshwater farms plans as a regulatory tool and supports the ability to undertake freshwater farm planning in an integrated manner to support wider environmental outcomes and to integrate with regulatory and market requirements to drive sustainable and efficient outcomes.

HortNZ has fundamental concerns about these regulations and poor drafting of Part 9A of the Resource Management Amendment Act 2020. In our view, inadequate public consultation has contributed to weaknesses in the primary legislation and these draft regulations, resulting in fundamental issues that require these regulations to be drawn to the special attention of the House.

In this submission we summarise our concerns and suggest specific drafting changes that go some way to addressing our concerns.

The key concerns of HortNZ are summarised below.

Inadequate public consultation on draft regulations and Part 9A

HortNZ and some other horticultural organisations and growers have been involved in MfE's active collaborator working groups, pilots and case studies that have informed the development of the Resource Management (Freshwater Farm Plans) Regulations 2023.

However, we are disappointed that the consultation on the exposure draft of these regulations is limited to the release of confidential draft to selected individuals and organisations. The confidential nature of this consultation has limited the ability of HortNZ to consult adequately with our members.

We note that the primary legislation supporting these regulations was passed under urgency, without the benefit of public scrutiny through the select committee process, further limiting the ability of those people (growers) who will be most impacted by these regulations to provide input and feedback on them.

The unusual or unexpected use of powers

It is our view that these regulations ought to be drawn to the special attention of the House because the novel approach to certification and audit result in the unusual or unexpected use of powers.

The international Standard ISO/IEC 1700 - Conformity Assessment – Vocabulary and General Principles, defines the terms *Certification* and *Audit*.

We consider that the correct approach is to acknowledge New Zealand's obligations to legislate consistently with international obligations.

We note the Section 3 (a) of the Standards and Accreditation Act 2015, the purpose of the Act, is to "*make provision for standards and conformity assessment systems in New Zealand that—are consistent with international practice*".

In this instance we consider the obligation for consistency extends to the creation of regulations including these freshwater farm plan regulations.

We further consider that such an approach is required by statutory interpretation principles and with New Zealand accepted practice.

It is our opinion that the reasonable expectation of parliament in passing of Part 9A was that the definition of the terms *Audit* and *Certification*, which are not defined in the legislation (or the exposure draft of the regulations), would have the meanings in regulation consistent with the meanings of these terms in international practice.

Accordingly, the definitions of, and criteria for, 'auditor' and 'certifier' in any regulations made must be in line with the approach taken under the ISO framework and fulfil New Zealand's obligation for consistency with international practice.

Unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal

It is our view that these regulations ought to be drawn to the special attention of the House because the certification process unduly make the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal.

The process for certification places a high degree of discretion in the hands of qualified individuals. The regulations set out a review process, but this review is simply a second opinion by another qualified individual using their discretion, rather than a review on merits by a judicial or other independent tribunal.

1.1. No pathway for Regulatory equivalence

The ISO framework provides an international and robust framework for assurance against approved standards. The approval process for standards, can occur through a regulatory approval process under the RMA, and subject to review by judicial or another independent tribunal.

In Europe and United States, examples of environmental policy design based on a co-regulatory approach exist, where top-down (government-imposed) and bottom-up (voluntary private sector) measures are used in combination can be more favourable (i.e., receive more citizen support) if they are based on inclusive decision-making, use strong transparency and monitoring mechanisms, and include a trigger for government intervention in cases of ineffectiveness.

The US EPA has looked at regulatory and non-regulatory approaches to pollution control, including market-based approaches because they tend to be least costly, place lower information burden on the regulator, and they provide incentives for technological advances¹.

¹ [Guidelines for Preparing Economic Analyses: Regulatory and Non-Regulatory Approaches to Pollution Control \(Chapter 4\)](#)

The concept of co-regulation, and the recognition of private certification schemes for public regulation, is explained through lessons learned from the renewable energy sector in Germany², where co-regulation can take different forms with varying levels of intensity. Governments may support private schemes without adopting them or making them law, for example by creating appropriate legal and regulatory frameworks (e.g. national accreditation), directly supporting implementation by private parties (e.g. by providing funding/loans), or by supporting in the development of private schemes.

The Legislation Act 2019, Part 2 Section 64, “is sufficient authority for secondary legislation to incorporate one or more of (a) a standard, framework, code of practice, recommended practice, or requirement of an international organisation or national origination.” This would give agencies like Ministry for the Environment sufficient authority to reference a framework for industry assurance programmes and private standards to be recognised in the regulations.

A recent example of flexible and workable regulatory equivalence in New Zealand is in Hawkes Bay, and the latest decision from Hawkes Bay Regional Council on proposed PPC9 TANK. Schedule 30 allows for individual Freshwater Farm Plans, Catchment Collectives and Industry Programmes to achieve implementation of various policies and rules of PPC9, and to encourage collaboration between water users and farm operators.

In our submission we have proposed a process for approval of industry assurance schemes that can demonstrate equivalent outcomes, though the use of approved standards and assurances processes accredited to internationally recognised ISO standards.

Content Standard

The standard is an approved document that defines the content for freshwater farms plans. The standard will be approved to demonstrate that it meets the requirements of content requirements of Part 9A and the Regulations and will be approved by regional council. The approval process for the standard will be subject to review.

We propose that the JAS-ANZ endorsed standard process is used as a robust and independent method for standards endorsement, that can be used by regional Councils to support their decision making for the approval of standards.

The Regional Council will approve an equivalent standard, by assessing the standard against the farm plan content criteria in the Act and Regulations. To support and efficient assessment we propose that the assessment criteria for the approval process have discretion limited to these matters:

- A standard endorsed by JAS-ANZ as meeting the farm plan content criteria in the Act and Regulations,
- Or
- A standard assessed by Regional Council as meeting the farm plan content criteria in the Act and Regulations.

Decision on the approval of standard is subject to Environment Court appeal.

² [3-Recognition-of-private-certification-schemes-for-public-regulation_R...pdf \(bioresproject.eu\)](#)

Process Standard for Assurance

The Regional Council approval of an equivalent assurance process. To support and efficient assessment we propose that the assessment criteria for the approval process have discretion limited to these matters:

- Certifiers - are accredited certification bodies.
- Auditors - are employed by accredited conformity assessment bodies.
- The accreditation and subsequent certification process for certifiers and auditors is compliant with ISO standards.

Submission on Resource Management (Freshwater Farm Plans) Regulations 2023

Without limiting the generality of the above, HortNZ seeks the following decisions on the draft regulations as set out below, or alternative amendments to address the substance of the concerns raised in this submission and any consequential amendments required to address those concerns.

Additions are indicated by bolded underline, and deletions by strikethrough text.

Part	Clause	Position	Reason	Amendments sought
Schedule 6	New Clause	Amend	Set out a new Schedule that provides a pathway for approval of farm plan content standards and assurance process that achieve the intended outcomes of the regulations and consistent with international assurance process and standards.	<p>Farm Plan Content Standard Equivalence</p> <p>The assessment criteria for Regional Council approval process is limited to these matters of discretion:</p> <ul style="list-style-type: none"> • A standard endorsed by JAS-ANZ as meeting the farm plan content criteria in the Act and Regulations <p>Or</p> <ul style="list-style-type: none"> • A standard assessed by Regional Council as meeting the farm plan content criteria in the Act and Regulations <p>Assurance Equivalence</p> <p>The assessment criteria for Regional Council the approval process have discretion limited to these matters:</p> <ul style="list-style-type: none"> • Certifiers - are accredited certification bodies. • Auditors - are employed by accredited conformity assessment bodies.

Part	Clause	Position	Reason	Amendments sought
				<ul style="list-style-type: none"> The accreditation process for certifiers and auditors is compliant with ISO process.
Part 4	Competencies of certifier	Amend		<p>Adopt equivalence pathway as suggested in proposed schedule 6 proposed above.</p> <p>Or</p> <p>Change to align with ISO definition.</p>
Part 6	Competencies of auditor	Amend		<p>Adopt equivalence pathway as suggested in proposed schedule 6 as proposed above.</p> <p>Or</p> <p>Change to align with ISO definition.</p>
Part 3	22-25	Delete	The regulations require a right of appeal process as it exists under s357 of the Resource Management Amendment Act 1991,	<p>Amendment sought:</p> <p>The right of appeal of the farm operator is through the objections to decisions process and appeals against objection decisions process under s357 and s358 of the Resource Management Amendment Act 1991.</p>
Part 7	60-61	Delete	The requirement for a farm operator, certifier, and auditor, and Regional Council to obtain and retain a full copy of the Freshwater Farm Plan.	Limit the number of persons that are required to keep a record or copies of the Freshwater Farm Plan to the farm operator and Regional Council.

Part	Clause	Position	Reason	Amendments sought
			The Freshwater Farm Plan and associated records should remain in the possession of the farm operator to inform decision-making and allocation of resources.	Limit the level of reporting to Regional Council to key information related to the audit and certification
Part 1	3 Interpretation	Amend	<p>The regulations need to include definitions, and associated definitions, of key terms of audit and certification, to give appropriate meaning to these key components of the regulatory design.</p> <p>These terms and definitions already exist and in use in international standards of practice, specifically ISO/IEC 17000:2020(E) Conformity Assessment - vocabulary and general principles.</p>	Include definitions of audit and certification from ISO/IEC 17000:2020(E) Conformity Assessment - vocabulary and general principles.
Part 1	3 Interpretation	Amend	Include definition of person as defined in the Resource Management Act 1991,	<p>Include the following definition:</p> <p>Person includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate.</p>
Part 3	27 Recertification	Amend	Trigger for recertification is too broad and uncertain and	Amendment sought:

Part	Clause	Position	Reason	Amendments sought
			<p>could include anything from a Regional Plan change or rotating crops onto a new parcel of land. The practice of leased land has not been adequately addressed in this regulation, and there is a significant risk that if commercial vegetable production rotating onto an additional parcel of land may trigger recertification, regardless of whether there has been a change in level of risk to freshwater.</p> <p>We seek that Ministry for the Environment undertake further consultation with HortNZ and the horticulture sector to address this concern so that rotational practices common in vegetable production are not unfairly disadvantaged through this regulation.</p>	<p>27 Recertification</p> <p>(1) A farm operator must submit their freshwater farm plan for recertification not more than 5 years after it was last certified.</p> <p>(2) However, a farm operator must amend and submit their freshwater farm plan for recertification within 12 months of any of the following situations:</p> <p>(a) the farm adds additional land that has inherent risks that are not identified in the current action plan:</p> <p>(b) the farm adds additional land that is in another catchment and the catchment context, challenges, and values are not considered in the current action plan:</p> <p>(c) the farm operator undertakes farming or growing activities that result in additional risks to freshwater and freshwater ecosystems that are not identified in the current action plan:</p> <p>(d) the farm changes farm operator and the existing certified freshwater farm plan is not adopted by the new operator.</p>