

SUBMISSION ON

Freshwater Farm Plan Regulations – Discussion Document

7 October 2021

To: Ministry for the Environment

Name of Submitter: Horticulture New Zealand

Supported by: NZ Kiwifruit Growers Incorporated, NZ Apples and Pears, NZ Avocado, Summerfruit NZ, NZ Tamarillos, Vegetables NZ, Onions NZ, Tomatoes NZ, New Zealand Asparagus Council, Pukekohe Vegetable Growers Association, Katikati Fruitgrowers, Northern Wairoa Vegetable Grower Association, Central Otago Fruit Growers, NZGAP.

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Our submission

Horticulture New Zealand (HortNZ) thanks the Ministry for the Environment for the opportunity to submit on the 'Freshwater farm plan regulations' discussion document and welcomes any opportunity to continue to discuss our submission.

The HortNZ submission represents an industry wide view and is supported by the affiliated groups named in this submission. Some of these groups, have also developed individual submissions to highlight issues that are more specifically relevant to them.

If there is an opportunity, HortNZ wishes to be heard in support of our submission.

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

Executive Summary

The horticulture sector in New Zealand has had farm level assurance systems - Good Agricultural Practice (GAP) - for over 20-years. We seek that the Freshwater Farm Plan (FW-FP) regulations enable a process for GAP to be approved to deliver certified FW-FP to growers.

The GAP standards can be modified to meet new environment content requirements, but the GAP assurance framework cannot be modified. The GAP assurance framework is critical in providing market access and delivering food safety. These matters are too important for our sector to contemplate compromising the well-established GAP assurance framework.

HortNZ supports Integrated Farm Planning (IFP). IFP is a good way of simplifying compliance for farmers and growers while ensuring farm level action to improve farming practices across a range of domains. Critical to the success of IFP, is a common assurance framework. GAP is a working example of an IFP framework. Growers manage food safety, environment and social practice criteria under a common assurance framework.

Amendments sought to the approach of the regulations

We support the concept of a default Government/Council FW-FP programme (as one option for delivering FW-FPs) but consider that the focus of the regulations should be first and foremost on providing policy direction and criteria for the delivery of FW-FP.

The emphasis of our submission is on the following:

- Seeking that an approval system be developed to enable Industry Assurance Programmes (IAPs) to support the delivery of certified FW-FP, and
- Enabling an alternative pathway for certification and audit via approved IAPs, including recognition of certification against a standard and the group model of certification.

Table 1 below is a summary of what we consider should be the focus of the FW-FP regulations.

Table 1: Summary of the policy/criteria we seek be established in FW-FP regulations

Element	Regulation content/ criteria for approval
National Scheme Recognition Body	A National Body, could perform two key functions: <ul style="list-style-type: none">• Quality Assurance for the default Government/Council Scheme, and• Approval Function for IAPs seeking to be recognised/approved to deliver Part 9A FW-FP, similar to how the industry assurance programmes (IAP) have been approved for He Waka Eke Noa. This would enable approval of the system of a whole, not piecemeal recognition.
Baseline content requirements	FW-FP (delivered by default Government/Council scheme or approved IAP) would be required to include regulated base information.

Recognition of Certifiers	We propose two pathways be enabled by FW-FP regulations, either: <ul style="list-style-type: none"> Individual approved certifiers, operating under the National Body's Quality Assurance Process; <u>or</u> JAS-ANZ accreditation Certifiers, operating under a IAP with Quality Assurance system approved by the National Body.
Scale of certification	Certifiers can certify farm plans as meeting Part 9A at a range of scales (individual, multi-site, group).
Certification process	We propose two pathways be enabled by FW-FP regulations, either: <ul style="list-style-type: none"> Certification is issued based on an assessment by an individual certifier (the Government proposal), <u>or</u> Certification against an approved standard – achieved via independent audit of an FWFP against an approved standard. Certification is issued by the certification body if recommended by the auditor.
Recognition of Auditors	We support two pathways be enabled by FW-FP regulations, either: <ul style="list-style-type: none"> Approved by regional councils, <u>or</u> Auditors employed by an accredited Conformity Assessment Body. (For group scheme certification, external (third party) audit is supported by internal (second party) inspectors).
Standards (national content)	National set of minimum criteria developed in the FW-FP regulations, which IAP standards are assessed against. As part of the approval of an IAP to deliver FW-FP, the IAP standard is approved by the National Body, as part of an overall system.
Standards (regional/catchment content)	The regulations should outline and limit those matters (content) that regional councils can require, in addition to an IAP standard that has been approved nationally. As part of the approval of an IAP to deliver FW-FP, regional approval of additional content and reporting to respond to catchment context.
Farm Advisors	Farm advisors advise, they do not certify farm plans. Elements of an approved IAP Standard may require sign-off by a suitably qualified advisor.
Reporting	We seek clear criteria outlining the data that is to be reported to the regulator. The purpose of audit is to ensure that data reported is accurate and to reduce onerous reporting.
Enforcement and compliance	GAP schemes provide assurance. GAP does not fulfil the enforcement or compliance function of the regional council. Growers who do not meet the standard are suspended or cancelled, if non-compliances are not resolved. GAP will report to regulators (regional councils) growers who are certified and de-certified.

There are significant benefits to be gained for implementation efficiency (and ultimately freshwater outcomes) from providing IAPs with best quality assurance frameworks – such as GAP – the ability to be recognised to delivery certified FW-FP.

If there is not a process to recognise the GAP assurance framework, GAP will not be able to deliver FW-FP for growers, and instead will only focus on delivering the environmental matters required by markets, with regulatory requirements delivered separately with growers working directly with regulators. This would be inefficient, costly, and less effective.

We also make specific comments on the Discussion Document in Appendix A of this submission, which are summarised below in Table 2.

Table 2: Summary of comments on discussion document

Topic	Overall comments
General	<p>We support the concept of FW-FPs.</p> <p>We support the concept of a default Government/Council FW-FP Programme</p> <p>We seek that alternative delivery systems can also be recognised (and provided for through approval status).</p> <p>The role of FW-FP is about achieving GMP/BMP for the respective farming activity, with actions and priorities informed by the catchment context. FW-FP are not about driving land use change.</p> <p>Engagement with tangata whenua (in terms of vision, value and outcome setting etc.) should sit at the regional council level - not at the level of individual farm plans.</p>
Content requirements of FW-FP	HortNZ supports regulated outcomes and baseline FWFP information being set out in the regulations - we see these as a being a common thread across all farm systems and all FW-FP delivery models.
Standards	While it may be desirable to have a flexible system that relies on expert judgement for some farming types, in our view for horticulture, nationally consistent standards can be developed and FWFP audited and certified on the basis of meeting these.
Certification	<p>The role of a certifier seems to have a large degree of discretion but lack a policy framework for making discretionary decisions. We accept that this system may work for some sectors.</p> <p>We propose that an alternative approach, that is more aligned with JAS-ANZ accreditation of certification bodies (i.e where accredited certifiers issue certification on the basis of an independent audit, against an approved standard). We seek accredited certification bodies are able to be recognised and approved as part of an IAP system.</p>
Audit	The audit system is generally acceptable, however within the GAP schemes we seek that the approval of auditors is undertaken at the national level as part of the overall acceptance of the scheme as equivalent (and then that decision is adopted by Regional Councils), and recognition of group certification.
Reporting	We are concerned about the lack of clarity around data requirements. Assurance negates the need for onerous reporting.
Implementation and transition to a new system	<p>We seek that the implementation date is pushed back to mid-2023, to enable time to establish the system. We agree that implementation can commence prior to the completion of NPSFM 2020 plan changes.</p> <p>We prefer implementation be rolled out on a catchment- by catchment basis.</p>



HortNZ's Role

Background to HortNZ

HortNZ represents the interests of 6000 commercial fruit and vegetable growers in New Zealand, who grow around 100 different crop types and employ over 60,000 workers.

There is approximately 120,000 hectares of horticultural land in New Zealand - approximately 80,000 ha of this is fruit and vegetables. The remaining 40,000 ha is primarily made up of wine grapes and hops, which HortNZ does not represent.

It is not just the economic benefits associated with horticultural production that are important. The rural economy supports rural communities and rural production defines much of the rural landscape. Food production values provide a platform for long term sustainability of communities, through the provision of food security.

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.

Overarching comments

HortNZ support Freshwater Farm Plans (FW-FP) as a robust and meaningful way to improve environmental outcomes associated with farming activities.

We accept the need for a 'default government/council'¹ assurance framework and standards for the delivery of FW-FP.

However, we seek that the freshwater farm plan regulations provide policy direction/criteria for delivering FW-FP, and a robust process for the approval of industry assurance programmes (IAP), such as GAP, to enable these programmes to support the delivery of FW-FP.

1. The concept of assurance, accreditation and certification

To provide the basis for the commentary in this submission, the below is an overview of HortNZ's understanding of assurance frameworks, accreditation and certification.

Assurance	<p>Assurance programmes provide a level of confidence that a product has been produced in a way that meets certain standards.</p> <p><i>For example, NZGAP is an assurance programme - NZGAP certification provides assurance for the safe and sustainable production of fruit and vegetables in New Zealand.</i></p>
Accreditation	<p>JAS-ANZ is the government-appointed accreditation body for Australia and New Zealand responsible for accrediting Conformity Assessment Bodies (CABs) to enable them to undertake GAP audits, and Certification Bodies (CBs), to enable them to issue certificates to those who comply with specified standards.</p> <p>JAS-ANZ accredit CABs and CBs to signal that they are competent and can be relied on to carry out their duties; they do not themselves certify or inspect.</p> <p><i>For example, AsureQuality is accredited by JAS-ANZ.</i></p>
Certification	<p>As described on the JAS-ANZ website "... certifications are third-party endorsements of an organisation's systems or products, while accreditation is a third-party endorsement of the certification".</p>

¹ In this submission we refer to the 'default government/council scheme' as a reference to the assurance framework that that MfE is consulting on the details of in the discussion document.

	<p>The definition of certifier under Part 9A, provide for the recognition of a certification Body such as NZGAP as a certifying “person”, as well as individuals as a certifying “person”.</p> <p><i>For example, GLOBALG.A.P relies on third-party certification - certificates are issued by GLOBALG.A.P. approved certification bodies, who also act as the CAB to conduct GLOBALG.A.P. audits on farms. Growers are GAP certified when they meet the requirements of the scheme.</i></p>
<p>Audit</p>	<p>Auditors are qualified and skilled in following a structured audit process, and they audit against recognised standards for approved schemes. There are three certification/audit models in horticulture (i.e., individual, multisite, and grower group) which together deliver assurance across the range of operation types.</p> <p><u>Third party audit (independent audit)</u></p> <p>Independent auditors (from AsureQuality and SGS NZ Ltd) undertake GAP audits and use triangulation techniques to assess grower compliance including the grower interview, records/documentation checks and observation of implementation/actions and progress towards objectives.</p> <p>In the case of grower groups, the audit is primarily undertaken at the group level via review of the Quality Management System which includes review of internal audits. It also includes third party surveillance audits of a sample of growers (e.g., square root of number of members) to ensure that they meet the standards.</p> <p><u>Second party audit (internal audit)</u></p> <p>Grower groups employ internal inspectors as the primary individual who assesses all members against the GAP standards. Like third party auditors they must meet competency requirements and must not have any conflicts of interest. The internal inspections are the primary way that growers demonstrate compliance with the standard (whereas an individually certified grower does this via third party audit). All internal inspections are peer reviewed by the internal auditor. The credibility in the system is ensured via third party audit of the Quality Management System and surveillance audits of a sample of growers in the group. .</p>

HortNZ attaches as **Appendix B**, legal advice it has received on the terms ‘auditor’ and ‘certifier’ as they are used in Part 9A of the Resource Management Act.

2. The GAP assurance system

GAP certified growers operate in an assurance framework, which requires independent audits by JAS-ANZ accredited certification bodies, against GAP standards.

Many growers sell their products directly to consumers, because of the relationship growers have with the market, the horticulture sector has had farm level assurance systems, GAP, for over 20-years.

GAP schemes are independently audited assurance schemes, which provide a pathway for growers to demonstrate compliance with regulatory and market requirements, via independent audit against recognised standards.

GAP certification is generally a requirement for market access – this means that almost all horticultural growers in New Zealand are GAP certified (whether via GLOBAL GAP, Zespri GAP or NZ GAP) and growers are highly motivated to achieve and maintain certification.

2.1. GAP Schemes in New Zealand

2.1.1. GLOBALG.A.P

GLOBALG.A.P is a farm assurance programme, that sets voluntary standards for the certification of agricultural products. The programme began as EUREPGAP in 1997 (changing it's name to GLOBALG.A.P in 2007) develop an independent certification system for good agricultural practice.

The submission by the Kiwifruit Industry Water Strategy Partners provides more detail on Zespri GAP, which is a GAP group certification programme that is independently certified to the GLOBALG.A.P. standard by an accredited certification body.

New Zealand Avocado's submission explains how GLOBALG.A.P operates in the avocado sector.

2.1.2. NZGAP

NZGAP is an industry assurance scheme administered by HortNZ (however operates independently) on behalf of all growers. NZGAP certification provides growers with a credible assurance framework, which enables them to meet multiple supermarket and regulatory obligations.

The submission of NZGAP provides further detail about the assurance framework, case study examples of how the NZGAP EMS works for growers now, how the EMS will be reviewed to reflect new FWFP regulations, and what a prototype FWFP would look like if the regulations were to reflect a standards-based approach to certification based on the outcome of audit against the standards.

2.2. GAP Scheme Standards and Existing Add-ons

GAP Scheme rules set out the standards that must be met for a grower to become certified. In addition to the core 'GAP' certification standards, there are also a number of "add-on's" which have been developed to meet specific requirements and/or market requirements.

2.2.1. GLOBALG.A.P. ADD-ONS

GLOBALG.A.P has a number of add-on's that cater to different needs, sectors or market requirements (for example, Tesco NUTURE add-on, Coop Italia Add-on). Two of the most relevant to New Zealand growers include Sustainable Program for Irrigation and Groundwater Use (SPRING), which helps producers demonstrate their commitment to sustainable water management and GLOBALG.A.P. Risk Assessment on Social Practice (GRASP), which relates to demonstrating social practices on the farm.²

2.2.2. NZGAP ADD-ONS

Like GLOBALG.A.P., NZGAP also has a number of add-on's, to meet particular demands and/or regulatory requirements, for example the EMS add-on and Social practice add-ons.³

The NZGAP Environment Management System (EMS) add-on was developed primarily as a pathway for growers to meet regional council requirements for Farm Environment Plans. HortNZ has been supporting growers with developing certified farm plans, running workshops guiding growers through the EMS-add on in Levin, Gisborne, Dargaville, and Pukekohe to date. The NZGAP submission provides more detail about the EMS system.

2.3. GAP brings together market and regulatory requirements

A key principle of GAP schemes is 'one auditor through the farm gate' - GAP standards are benchmarked to market, regulatory and industry standards. This enables growers to manage the costs and complexity of regulation and the multiple certification requirements of retailers and processors in New Zealand and overseas.

Our markets already require growers to demonstrate environmental management, and we expect the demands from our markets to become stricter. GAP schemes bring together various requirements into a single assurance system. The standards required by markets and New Zealand regulation, are never likely to align directly, because of the difference in local and global environmental priorities and the influence of mātauranga Māori within NZ.

If we have a common assurance framework, the GAP schemes can leverage off market demands to achieve a large proportion of the requirements needed to meet regulatory demands. This is efficient for growers and is more motivating for growers because it is linked to providing products their customers want, which is at the heart of their businesses.

If there is not a process for the GAP assurance framework to be recognised as equivalent to the government proposed FW-FP framework, GAP will not be able to deliver FW-FP for growers, and instead will only focus on delivering environmental matters to markets, with regulatory requirements delivered separately with growers working directly with regulators. This would be inefficient, costly, and less effective.

² For the full list of add-on's: https://www.globalgap.org/uk_en/for-producers/globalg.a.p.-add-on/

³ For the full list of add-on's:

https://www.nzgap.co.nz/NZGAP_Public/Programmes/NZGAP_Public/Programmes/Programmes.aspx?hkey=eb7a8411-548c-469e-907b-896b56914dc5%3

2.4. Existing recognition of GAP in regulation

2.4.1. FOOD SAFETY

The Ministry for Primary Industries (MPI) has recognised NZGAP and GLOBALG.A.P., as equivalent schemes that meets the requirements for low-risk activities under the Food Act 2014.

NZGAP and GLOBALG.A.P. checklists have been approved by MPI as Section 40 Template Food Control Plans for National Programme 1 under the Food Act 2014.

Growers can register for the Food Act 2014 via NZGAP or GLOBALG.A.P. (as an alternative to registering with local council or MPI) and their next NZGAP audit will double as a Food Act verification (audit) thus delivering a more effective system.

2.4.2. REGIONAL PLAN FEP REQUIREMENTS

The EMS add-on has been benchmarked to formally recognised by Environment Canterbury and Gisborne District Council as meeting the farm plan requirements in their respective regional plans (as explained in more detail in the NZGAP submission).

The lessons learned from seeking recognition in these regions have informed the process we propose in Part 3 of this submission (seeking national level approval, with specific additional content approved at the regional level).

2.4.3. GREENHOUSE GAS EMISSIONS - HE WAKA EKE NOA

The greenhouse gas emissions element of GLOBALG.A.P. and the NZGAP EMS add-on, have been assessed by the He Waka Eke Noa, assessment process run through MPI's IFP team, and with minor adjustments has been approved to meet the regulatory requirements under the Climate Change Response Act 2002.

2.5. GAP standards and add-ons can adapt to meet new content requirements

GAP schemes have responded to changing regulatory needs and aligned this content, within their assurance frameworks to align with market requirements.

We accept that elements of the existing GAP standards that manage effects on freshwater will need to be strengthened. The GAP content standards can be modified to meet regulatory requirements in a manner consistent with the expectations of Part 9A of the RMA and freshwater regulations. We have been working with researchers, regulators, growers and are building relationship with iwi and Maori agribusiness to inform future standards.

2.5.1. FRESHWATER - PART 9A FW-FP

The NPSFM sets out a process for setting a Te Mana o Te Wai vision and setting limits to achieve freshwater outcomes over time, this process requires partnership with tangata whenua. The resulting freshwater vision, values, outcomes and limits will be regionally/catchment specific. FW-FP are on method of managing farming activities within agreed environmental limits.

An example of how the content of the EMS-add on could be updated to reflect Part 9A requirements (including reflecting Te Mana o Te Wai visions and catchment context) is provided in the NZGAP submission.

2.5.2. BIODIVERSITY

The draft National Policy Statement for Indigenous Biodiversity (November 2019) and the IFP has signalled that biodiversity may be matter managed through regulatory farm plans in future. The NZGAP EMS add-on includes a section on mahinga kai and biodiversity and could likely be adapted (or a new add-on created) to meet a future regulatory biodiversity farm planning requirement.

2.5.3. MATAURANGA GAP ADD-ON

Te Awanui Huka Pak are a grower group affiliated to HortNZ, they are a Maori owned operated business with 19 shareholders. Their shareholders have in excess of \$200m with interests in kiwifruit, avocados, commercial property, pastoral farming, elder care and other investments. Most of their shareholders provide social and cultural distributions and benefits to their kaumatua, shareholders and whanau.

Te Awanui have developed a pilot Mātauranga Farm Planning framework, that they are considering developing as an add-on to GAP.

The Mātauranga Farm Planning pilot provides a Te Ao Maori framework for achieving integrated farm planning, and includes management of effects on freshwater.

If the Te Awanui framework is developed as an add-on to GAP and the freshwater aspects are approved as meeting Part 9A, it would provide Maori growers, growers leasing Maori land, and any other grower the opportunity to deliver a certified and audited FW-FP, within a Mātauranga Framework.

2.6. The GAP internationally recognised assurance framework cannot be amended

The GAP assurance system is stricter and more robust than that proposed by the government in the FW-FP discussion document. While the GAP content standards can be modified to meet FW-FP regulatory requirements, the assurance framework cannot.

The certification and auditing approach proposed in the discussion document does not align with the GAP frameworks. Because the GAP programmes provide assurance on food safety and are critical for market access, they will not compromise on their robustness to align with the Government's proposed FW-FP assurance framework.

Instead, we seek an approval process where GAPs existing assurance framework is assessed independently and ultimately deemed acceptable to deliver approved fresh water farm planning standards for our sector, as discussed in detail in Part 3 of this submission.

Key concepts we seek be provided for

HortNZ's primary submission point is that Part 9A should be supported by regulations that outline the system, the policy framework and criteria against which systems and standards to deliver FW-FP are measured against and approved.

This is essential to provide confidence to growers, farmers and the community that the FW-FP are robust and transparent, and will assist with ensuring that the outcome sought are practical and enduring.

A farm operator is required to prepare an FW-FP in accordance with Part 9A and regulations, and then:

- submit the plan to a certifier for certification
- ensure that the farm operates in compliance with certified freshwater farm plan
- arrange for the farm to be audited in accordance with Part 9A and regulations

We recognise the need for a default Government/Council FW-FP programme, but are seeking that IAPs, such as GLOBALG.A.P and NZGAP, are able to be approved as an alternative means of delivering FW-FPs under Part 9A.

To enable this, we seek that FW-FP regulations set out the baseline requirements and expectations which need to be reflected across delivery models to enable them to fit into a coherent system - but provide for an alternative approach to certification (based on the well-established GAP model) via an approval process for IAPs.

This proposed structure is summarised below in Figure 1.

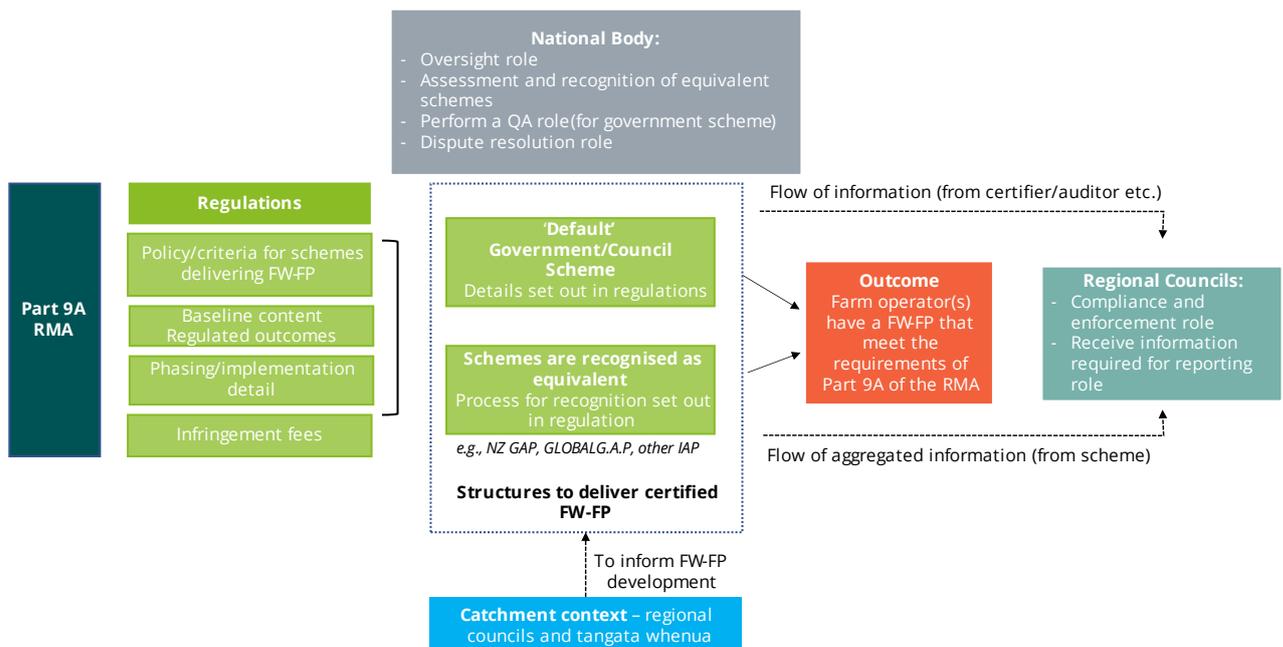


Figure 1: Proposed structure of FW-FP system

3. Recognition of IAPs as a system (not piecemeal recognition)

We seek the ability to grant recognition of a IAP systems (such as GLOBALG.A.P or NZGAP) as equivalent in their entirety- not piecemeal recognition of parts of these systems.

Piecemeal recognition would negate the benefit of GAP schemes (which fundamentally are about being able to demonstrate compliance with a range of different regulatory requirements into a streamlined/efficient assurance framework) investing in the implementation of FW-FP under Part 9A.

Recognition of a system - by the National Body - would mean approval of the system as a whole to deliver FW-FP, including:

- The quality assurance framework
- The approach to certification and auditors (including at the individual, multi-site and group level, as discussed below).
- The standards that form the basis for certification

3.1. Benefits of providing an approval pathway for IAPs

IAPs could have an important role to play in the delivery of certified FW-FPs. There are substantial benefits associated with providing for IAPs that can meet defined criteria:

- Provides the opportunity in the horticulture sector to leverage existing coverage of GAP schemes (e.g. existing GAP assurance framework reaches over 90% of growers in New Zealand).
- GAP is a requirement for market access, this provides a substantial market incentive to maintain certification.
- GAP leverages market requirements and enables growers to meet multiple requirements in an efficient way - as market requirements (both environmental and otherwise) will still need to be met in addition to FWFP regulations.
- Builds on existing established frameworks and momentum (i.e farmers/growers who already have developed farm environment plans through industry programmes) and consequently reduce costs, complexity and uncertainty for farmers/growers.
- Utilises the substantial experience and capability within existing industry programmes. In the 20 years since the introduction of these (GAP) programmes, the New Zealand Horticulture Industry has built a high degree of capability among its growers and auditors. This should be recognised in context of lack of capacity of farm planners and auditors.
- We consider that an IAPs are better suited to adapt to catchment priorities and science, compared to regulatory intervention.

Introducing an entirely new and separate system will create additional cost and complexity. We believe that there are risks (in terms of capacity and expertise) in terms of being able to deliver FW-FP at scale across New Zealand, that could be mitigated through providing for IAP that can demonstrate robustness through an approval process.

4. Well-defined limits on discretion to include region specific content

In our view the majority of the content of a freshwater standard can be nationally consistent, including,

- The requirement for a risk assessment that accounts for the catchment specific freshwater context,
- Activity/farm system specific good and best management practices.

There is a need to limit the scope of what regional councils may require in addition to content requirements only - it is critical that the recognition of the framework, processes, audits, certification and reporting is assessed nationally, otherwise the current disparity between regional will be perpetuated.

Further, in regard to regional content requirements, this must be (for the same reason) limited to very clearly defined matters. This is necessary to manage that risk that additional regional specific criteria (and reporting) leads to an unwieldy and inconsistent system.

5. Certification via audit against an approved standard

HortNZ seeks that the Government provide the option for IAPs (that have been through an assessment and approval process) to certify FW-FP against an approved standard.

GAP schemes certify growers, when they can demonstrate (through audit) that they meet an approved standard. It is not an approach where discretion is left to an individual to determine as to whether an outcome (e.g. food safety) is met. We refer to this below as a 'conventional assurance process'.

Audit is undertaken by auditors employed by accredited conformity assessment bodies. The auditors assess against GAP standards (Figure 2).

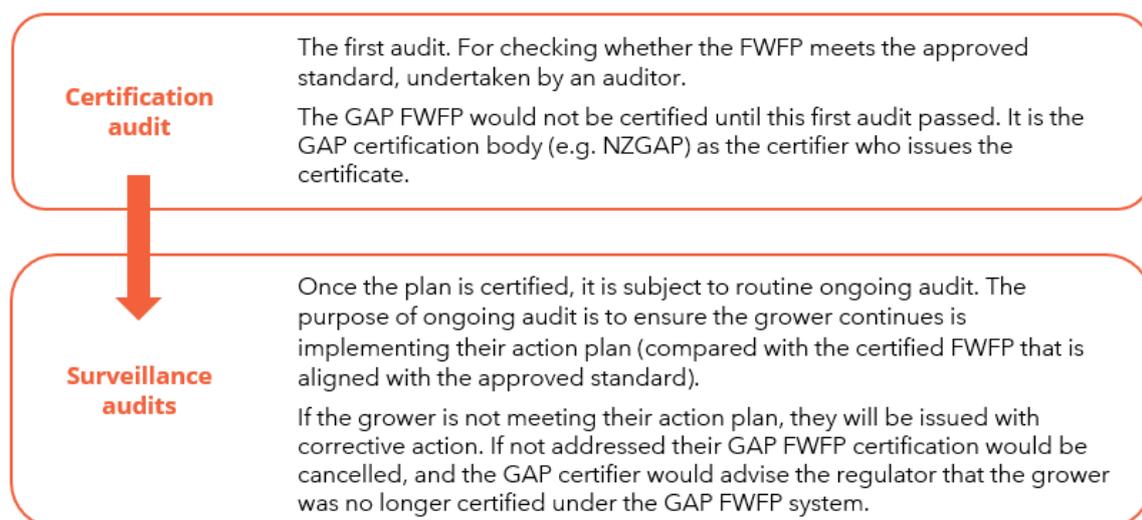


Figure 2: Certification and surveillance audits

Because the approved standard is specific to the GMP/BMP appropriate for that farming system, there is no judgement required by an individual certifier. Once the standard is

developed, the relevant skill set is that of an independent auditor to ensure that the FWFP meets the standard.

GAP Standards are robust and detailed for the specific farming system

The GAP standards are backed by research, and include GMP and BMP that are specific to horticulture and detailed in every aspect of that specific farming system – therefore judgement is not required by an individual certifier, as the research and experience is invested in the development of the standard.

In addition, the approved standard may require some aspects of a FW-FP to be developed, or require sign-off, by a suitably qualified person.⁴

Level of prescription

We consider this to be a ‘middle ground’ between a prescriptive, rigid and inflexible standard approach (such as plan rules) and a fully flexible discretionary approach (individual certifier).

The standard (e.g. EMS add-on) outlines GMPs and BMPs – which the grower has to demonstrate they implement, or include in their action plan – unless they can demonstrate that the practice is not applicable for their context.

Conceptually aligns to risk-based approach, akin to a Controlled Activity

The certification against an approved standard approach is akin to a Controlled Activity, to use an RMA analogy. This is because there is a level of certainty that if the standard is applied (which is confirmed by audit) a certain outcome will be achieved, in this case that a grower is operating to GMP/BMP for their farm system, in the context of their catchment. This is a more risk-based and efficient approach.

Whereas, the individual certifier approach is more akin to a Discretionary Activity. However, we recognise that for some sectors (and some complex farming businesses) an independent ‘certifier’ approach, reliant on discretion, may be appropriate/warranted.

Consistency in approach means freshwater outcomes be quantified

The use of an approved standard enables estimates to be made about the expected freshwater improvements that are predicted to result from uptake of GMP/BMP. Whereas, it is difficult to correlate an individual practice at a farm level with freshwater outcomes.

For example, the horticulture sector has developed specific and strict GMPs for managing sediment on vegetable growing land. The erosion and sediment control guidelines referenced in the GAP EMS⁵, are comprehensive and are estimated to reduce sediment by between 34-55% compared to unmitigated sediment loss rate, and up to 74% in an ‘enhanced’ practice situation.⁶

It also enables consistency in expectations across a sector, helping to negate the risk of punishing early adopters. Whereas, where there is discretion to an individual – this establishes in effect, a farm specific standard (that is then audited against).

⁴ Refer to the submission of NZGAP for more detail on this in respect of the EMS add-on.

⁵ Erosion and Sediment Control Guidelines for Vegetable Production (2014). Available here: <https://www.hortnz.co.nz/assets/Compliance/Erosion-and-Sediment-Control-Guidelines-for-vegetable-production-v1.1.pdf>

⁶ Evidence of Andrew Barber for Horizons Plan Change 2, dated 25 September 2020.

5.1.1. FWFP STANDARDS FOR FRUIT GROWING

Orchards have low discharges of contaminants for sediment and pathogens and are generally comparable to dry stock farming for nutrient losses.⁷ Orchards are recognised in some regional plans as low impact.⁸

Given the static nature of trees and vines, it is straight forward to manage impacts on freshwater and the options for management are very limited. The nature of fruit growing means it is well suited to a 'conventional assurance process' where a farm is assessed against an approved standard, and certification is issued on the basis of meeting the standard.

In our view, the process proposed in the discussion document - where every FW-FP requires discretion from a highly experienced farm advisor - is a high-cost model that is unnecessary for fruit growing.

We are confident a nationally consistent content standard could be developed for managing effects from fruit growing, while providing for regional approval of additional content and reporting to respond to catchment specific risks and community priorities.

5.1.2. FWFP STANDARD FOR VEGETABLE GROWING

Vegetable growing has a different risk profile to fruit growing. Vegetable growing occurs in crop rotations, on a mixture of owned and leased land. While discharges of pathogens are low, sediment loss from cultivated land and nitrate leaching can be elevated, but this risk can be effectively mitigated by GMPs.

GMP for managing nitrate leaching from vegetables are crop specific and requires soil testing and careful matching of crop demand with soil available N, and fertiliser.

Most vegetable growers are specialists. They may lease land off farmers, but for the most part the vegetable growing operation is specialist. Because of need for highly productive land for growing vegetables, most growers have limited land outside of the land they grow on, and therefore limited options to diversify or retire non-productive blocks, and therefore their options for managing impacts for freshwater are limited to optimising their vegetable production system.

For most growers a conventional assurance process where a farm is assessed against an approved standard, and certification is issued on the basis of meeting the standard is most appropriate. In our view managing the risks to freshwater associated with vegetable growing, would be best addressed through the development of National Environmental Standard delivered through a robust assurance programme, rather than through the use of individual certifiers.

National Environmental Standard for Vegetable Growing

Most vegetables in NZ are grown for domestic food supply. Growers support nationally consistent standards for vegetable growing to ensure a level playing field in what is a competitive domestic market.

The vegetable sector sees the benefit of national standards to provide greater certainty and consistency for growers, consumers and the community.

⁷ Evidence of Stuart Ford regarding appeals on the Proposed Natural Resources Plan in the Environment Court, dated 28 June 2021.

⁸ For example, Waikato PC1 provides a permitted activity rule for low-intensity horticulture.

Potentially, an NES for Vegetable Growing could have scope wider than the focus on FWFP which is on managing effects on freshwater, but managing effects on freshwater and enabling vegetable production is a priority.

In our view the GAP assurance process would be a suitable way to deliver an audited and certified FW-FP that demonstrated compliance with an NES for vegetable growing.

Vegetables are grown predominately for domestic supply. Different rules in regional plans, impact on the competitiveness of the sector, and risk moving effects from one location to another, while also undermining the resilience and reliability and affordability of vegetables for New Zealanders. Vegetable consumption is an essential human health need.

The overall area footprint of vegetable growing is very small, and its effects are localised. We support all vegetable growers operating at audited Good Management Practice (GMP) or Best Management Practice (BMP) based on risk.

We are seeking a nationally consistent planning framework for vegetable growing that would take precedence over all the freshwater quality policy and rules regulating vegetable growing in NZ.

A national planning approach is justified because:

- National food system
- Vegetable consumption is essential for New Zealanders health
- Failure of Regional Councils to provide for vegetable growing threatens the sector
- A nationally consistent approach to regulation for vegetable growing will improve investment decisions

The broad principles would be:

- Recognition that export and domestic vegetable growing is integrated across NZ's regions and consistent regulation is required
- Crop rotation supported within Highly Productive Land
- Support existing vegetable growing with the ability for expansion within natural environmental limits
- FWFP content standards which are nationally consistent, use a risk-based approach
- FWFP process standard approved by National Body as meeting Part 9A
- FWFP are certified to operator(s) not landowners
- FWFP certification is linked to Highly Productive Land within an FMU
- Distributed across New Zealand to provide for resilience and seasonal food provision

In our view the NZGAP EMS provides a good basis for the standards for an NES for Vegetable Growing, but these standards would be refined and improved for example an NES for Vegetable Growing could include standards to reflect matauranga. We anticipate the standard developed would occur as part of the NES development process and include public consultation.

5.1.3. MIXED FARMING SYSTEMS

Farmers/growers with mixed farming systems may choose to use the default Government/Council scheme, alternatively they may choose to use multiple industry assurance schemes (particularly where these systems are not integrated practically, e.g. dairy and fruit growing).

There is the potential that IAPs content standards could be integrated across farming systems in the future.

6. Recognition of group certification model

In recognition of different scales of operation and ownership/market structures, GAP certification - through GLOBALG.A.P or NZGAP - is available in different structures, as summarised below in Table 3.

Table 3: GAP Management Categories

Category	Description
Individual - Single Site	A single legal entity with centrally managed production practices. The individual is the certificate holder once certified. Audited by certification body (including site inspection). If requirements met, certification is gained (or maintained).
Individual - Multi-site	A single legal entity with centrally managed production practices of multiple business units or other legal entities. Requirement for an internal audit of production area and Quality Management System. Audit by certification body of the system (and a sample of sites). <i>For example, a grower with multiple blocks operating across multiple catchments but these are managed under the same systems.</i>
Group	A single legal entity with centrally managed assurance systems of multiple legal entities (e.g. multiple growers of the same crop type) which operate under a central Quality Management System. The group, as a legal entity, is the GAP certificate holder once certified. Group certification includes systems and protocols that ensure the certification/audit remains robust, including the requirement for an internal inspection (second party auditor) of production area and Quality Management System. Audit by independent third party auditor employed by an accredited conformity assessment body of the system (and a sample of growers).

These certification models, which provide options for different types of farming collectives and enterprises should be able to be used in delivery of FW-FP under Part 9A, where they are a part of a recognised IAP.

Within the fruit sector currently, there are a number of grower collectives, including Zespri and Avoco (as explained further in the submission by the Kiwifruit Industry Water Strategy Partners, NZ Avocados and NZGAP).

In our view, the freshwater risks associated with fruit growing are such that it is well suited to being managed through the group certification/audit process that currently exists, and we advocate that the ability for collective or group assurance is provided for in the regulations.

The GAP system is robust and credible, and uses the grower group model with internal inspections as an effective way to deliver on compliance outcomes via a more cost-effective pathway.

Meeting current GAP standards would not be possible without grower groups due to the shortage of skilled auditors. Without recognition of the group model, meeting FWFP requirements will simply be impossible.

7. Recognition of auditors

As part of approving an IAP - as discussed in Section 8.1.1 below - we seek that (as part of an entire quality assurance framework), auditors employed by an accredited

Conformity Assessment Body are recognised as independent third-party auditors, and that this fulfil the requirements of Part 9A in regard to appointing auditors.

As above, we seek recognition of the grower group model, which includes the recognition of internal inspectors for the farm level assessments. Either internal inspectors will need to be recognised as Part 9A auditors, or compliance at the group level will need to be recognised as meeting the requirements. In the former scenario, an option for recognition of internal inspectors is via recognition of a class of persons who operate under a Quality Management System which includes oversight from a Key Technical Person (i.e. approved auditor employed by third party Conformity Assessment Body).

FWFP regulations

We consider that the FW-FP regulations should:

- Establish a role for a national body, in assessing and granting recognition to equivalent schemes.
- Set out policy/criteria applicable across all delivery schemes - against which IAPs seeking approval status would be assessed, including requirements for baseline content and regulated outcomes applicable across all delivery schemes.
- Set-out limits on the additional criteria/content that regional councils can include.
- Set-out the detail for phasing in of FW-FP/implementation approach.
- Detail data standards and reporting requirements.
- Provide detail to support enforcement - such as infringement fees.

8. Role for a national body in assessing and granting recognition to IAPs

We propose that a National Body (that is referred to in the Discussion Document) would have two key functions:

- Quality Assurance for the default Government/Council Scheme
- Approval Function, for IAPs seeking to be /approved to deliver Part 9A FW-FP

8.1.1. APPROVAL FUNCTION

We propose that the regulations set out, that the National Body would assess and approve (where appropriate) IAPs that apply to be recognised as schemes that can deliver certified FW-FP under Part 9A.

The National Body would assess the full system including the overall quality assurance framework (including certification, audit, reporting processes) and also the standards (national-level content) that set the standard for certification against the policy direction and criteria that would be set out within the FW-FP regulation.

The IAP would have to demonstrate that their scheme meets the criteria set out in the regulations (which we discuss below) in order to achieve freshwater outcomes and integrate into the system in respect of reporting etc.

Following assessment, the National Body would either:

- Approve the system as meeting the criteria for delivering FW-FP under Part 9A, or
- If the criteria in regulation are not met, recommend corrective action and re-submission considered.

Approval of standards

The IAP standards would need to be evaluated and approved. We anticipate that this would be a two-stage approval:

1. National approval of the nationally applicable elements of the standard aligned are suitably to Part 9A, and other nationally regulated outcomes such as NES.
2. Regional approval (limited to standards only, with scope defined within the regulations) of region-specific content in the standards.

Scope of the approval

The approval from the National Body could be limited to a defined class of farm operator/farm system.

For example, NZGAP could apply to be approved to deliver certified FW-FP for horticultural growers, or Zespri GAP could apply to deliver certified FW-FP to kiwifruit growers.

Timeframe of the approval

We anticipate the recognition (of approval) would be for a finite period, for example 10-years. Within the 10-year period, a 5 year review clause could be included to review the standard and check that it was still appropriate. After 10 years, the full system including certification and audit would be reassessed and approval sought.

The benefit of providing for a 10-year period is that this allows for meaningful monitoring and review through environmental monitoring (which can then provide a sound basis for review) and it provides certainty for farmers/growers to invest in mitigation set out in their action plans.

9. Policy direction/criteria sought in FW-FP regulation

The focus of the regulations should be providing the policy direction and criteria for the delivery of FW-FP to both:

1. Provide the basis for the default Government/Council system, and
2. Provide a framework for IAP seeking to deliver certified FW-FP to be assessed against to be approved to deliver FW-FP.

We accept that the detail of a 'default government/council' scheme will need to be established in regulation, however this should be separate to/sit underneath the above and not be the criteria for recognition of IAP.

9.1. Criteria for content

Element	Criteria Approval
Baseline content requirements	<p>FW-FP (delivered by default Government/Council scheme or approved IAP) would be required to include regulated base information.</p> <p>And, deliver either through a certifier's discretion and personal judgment, or through a standard, FW-FP that:</p> <ul style="list-style-type: none"> • Deliver on regulated outcomes • Include risk/impact assessment that reflects catchment context • Identify actions to avoid, remedy, mitigate risks/impacts

9.2. Criteria for certification and audit

We seek that the regulation include criteria that provide for the following:

Element	Criteria Approval
Recognition of Certifiers	We propose two pathways be enabled by FW-FP regulations, either:

	<ul style="list-style-type: none"> Individual approved certifiers, operating under the National Body's Quality Assurance Process, <u>or</u> JAS-ANZ accreditation Certifiers, operating under a IAP with Quality Assurance system approved by the National Body
Scale of certification	<p>We seek that the regulations enable the grower group model of certification (via approved IAPs), in addition to individual business (including multi-site) models.</p> <p>A risk-based approach to assessing the suitability of the activities within the collective could be a criterion to determine whether a collective quality management system approach is acceptable.</p> <p><i>For example: Zespri GAP is a group certification system.</i></p>
Certification process	<p>We propose two pathways be enabled by FW-FP regulations, either:</p> <ul style="list-style-type: none"> Certification is issued based on an assessment by an individual certifier (the Government proposal), <u>or</u> Certification against an approved standard - independent audit of an FWFP against an approved standard. Certification is issued by the certification body if recommended by the auditor.
Recognition of Auditors	<p>We propose two pathways be enabled by FW-FP regulations, either:</p> <ul style="list-style-type: none"> Approved by regional councils, or Auditors employed by an accredited Conformity Assessment Body (recognised as part of approval of IAP). <p>For group scheme certification, external (third party) audit is supported by internal (second party) inspectors.</p>

9.3. Criteria for standards

We seek that the regulation include criteria that provide for the following:

Element	Criteria Approval
Standards (national content)	<p>Regulation would include a national set of minimum criteria, and IAP standards assessed against these standards.</p> <ul style="list-style-type: none"> As part of the approval of an IAP, a standard may be approved by the National Body (for nationally consistent content).
Standards (regional/catchment content)	<p>Regulations should outline and limit those matters (content) that regional councils can require, in addition to an IAP standard that has been approved nationally.</p> <ul style="list-style-type: none"> As part of the approval of an IAP to deliver FW-FP, regional approval of additional content and reporting to respond to catchment context.

9.3.1. ROLE OF FARM ADVISORS

Farm advisors have a role in providing advice, they do not certify farm plans, or provide audit.

Some elements of the FWFP standard may require sign off of a suitably qualified person (for example, the Erosion and Sediment Control Plan in the EMS) and the nutrient management plan.

The definitions of "suitably qualified", could include a certification process for farm advisors. In this case, the "standard" for farm advisors would relate to qualifications and experience and their ability to provide robust advice, rather than "certification".

9.4. Criteria for reporting

Element	Criteria Approval
Reporting	<p>Clear criteria outlining the data that is to be reported to the regulator.</p> <p>The purpose of audit of the FWFP is to ensure that data reported is accurate and to reduce the need for onerous reporting, because the assurance framework provides confidence the agreed standard has been met.</p>
Enforcement and compliance	<p>GAP schemes provide assurance. GAP does not have an enforcement or compliance function. This function would continue to sit with regional councils or a national body.</p> <p>GAP would have a role in reporting to regional councils:</p> <ul style="list-style-type: none"> • Farm operators (within the scheme) who are certified; who is being managed by the scheme, and those that are not. • Farm operators who are not compliant with FW-FP requirements (and are de-certified).

10. Summary of the GAP approach compared with the Govt proposed approach

The following provides a summary of the GAP approach (which we seek be enabled through a robust approval process) and how it is consistent with Part 9A.

Table 4: Comparison of GAP approach compared to proposed Government approach

	Summary of Part 9A	Govt Approach	Approved IAP (GAP approach)
System Approval		Not required - detail set out in specific regulation.	Assessed by National Body against criteria in regulation.
FW-FP content	<p><i>Section 217F</i></p> <p>A freshwater farm plan must:</p> <ul style="list-style-type: none"> • identify adverse effects on freshwater and freshwater ecosystem • specify requirements avoid, remedy, or mitigate adverse effects and are clear and measurable • demonstrate how any outcomes/requirement prescribed in regulations are to be achieved 	<p>FW-FPs include content as required by Part 9A and regulation.</p> <p>(For example: Appendix A' base information, risk assessment reflecting catchment, actions to avoid, remedy or mitigate risks)</p>	<p>FW-FPs include content as required by Part 9A and regulation.</p> <p>(For example: Appendix A' base information, risk assessment reflecting catchment, actions to avoid, remedy or mitigate risks)</p> <p>Includes the development of specific standards (e.g. EMS), that submitted for approval by the National Body, and then for regional council to approve regional specific criteria.</p>
Certifiers and auditors	<p><i>Section 217K</i></p> <p>A regional council must–</p> <p>(a) appoint 1 or more certifiers; and</p>	An individual certifier with the required accreditation.	<p>Certification is provided by a JAS-ANZ accredited certification body (e.g. GAP).</p> <p>Certification bodies are JAS-ANZ accredited and approved by the National</p>

	<p>(b) appoint 1 or more auditors.</p> <p>A regional council may make an appointment under this section only if satisfied that criteria prescribed in regulations have been met.</p>	<p>Option 1 –auditors who are already accredited by existing accreditation body</p> <p>Option 2 –specific national accreditation scheme for FW-FP auditors</p>	<p>Body as part of an integrated system.</p> <p>Auditors employed by accredited Conformity Assessment Body</p> <p>Conformity Assessment Bodies are JAS-ANZ accredited.</p>
Certification	<p><i>Section 217G</i></p> <p>Farm operator must submit a freshwater farm plan to a certifier.</p> <p>Certifier must certify a freshwater farm plan if the certifier is satisfied that the plan complies with content requirements.</p>	<p>An individual certifier certifies that a FW-FP is of sufficient quality/robustness.</p> <p>Certification is at the discretion of a certifier’s professional judgement.</p>	<p>Certification is granted on the basis of an independent audit against an approved standard.</p> <p>The approved standard provides assurance of quality and robustness of FW-FPs.</p>
Audit	<p><i>Section 217H</i></p> <p>Audit must be completed in the manner prescribed in regulations.</p> <p>Assesses whether the farm achieves compliance with the certified freshwater farm plan</p>	<p>Audit undertaken by person independent of certifier – assesses compliance with the certified FWFP.</p>	<p>Audit undertaken by person independent of certifier – assesses compliance with the certified FWFP.</p> <p>The first audit (certification audit) to assess the FWFP against an approved standard.</p> <p>Thereafter, ongoing surveillance audits assess compliance.</p>
Farm Advisors		<p>Options in discussion document include certifier being able to both advise on development of FW-FP and certify FW-FP.</p>	<p>Farm advisors provide advice, not certification.</p> <p>Some elements of the approved standard may require sign-off of a suitable qualified farm advisor.</p>
Reporting	<p><i>Section 217G</i> – certifier must notify the relevant regional council that FWFP has been certified.</p> <p><i>Section 217H</i> – Auditor has requirements to notify the relevant regional council.</p> <p><i>Section 217J</i> – Regional councils must have a record of whether a farm operator has a certified FW-FP.</p>	<p>Certifier reports when a farm is certified.</p> <p>Auditor reports significant non-compliance with FW-FP regulations to regional council.</p>	<p>GAP reports to regional councils, farm operators with FW-FP certified under GAP scheme, significant non-compliance etc.</p> <p>And aggregated data for environmental reporting to meet regulations.</p>
Enforcement and compliance	<p><i>Section 217I</i></p> <p>Requirement for regional councils to monitor compliance by farm operators with their duties under Part 9A .</p>	<p>Regional councils have enforcement role.</p> <p>(Certifiers/auditors report information to enable regional council to fulfil this role)</p>	<p>Regional councils have enforcement role.</p> <p>(GAP reports information to enable regional council to fulfil this role))</p>

Appendix A

Comments on the Discussion Document

The following commentary on the discussion document, should not be read in isolation of the rest of this submission.

The discussion document delves into the detail of designing an assurance framework in a piece-meal manner. The comments we provide are to assist the Government's thinking, however we seek a more fundamental re-think of the purpose of the Freshwater Farm Plan regulations. We recognise the need for a default Government/Council FW-FP programme (as one option for delivering FW-FPs) but consider that the focus of the regulations should be first and foremost on providing a process for assessing schemes against the proposed criteria. The Government's approach should be assessed against these same criteria.

Overview (Section 2)

How the freshwater farm plan system fits with regional council planning processes

Questions - regional council planning processes

1. What other information should we consider about the freshwater farm plan system fits with regional council planning processes, and why?

HortNZ supports an approach where:

- FW-FP are a tool that promotes efficiency - by enabling a move away from very specific one-size-fits-all rules and reliance on consents.
- Aggregated reporting from FW-FP assists in better understanding progress in respect of water quality mitigations.
- FW-FP are a mechanism for reflecting catchment values at a farm scale.

We emphasise that the role of FW-FP is about ensuring that a farm operator is operating at good or best management practice, by determining the most appropriate measures for the specific activity in the context of its location - i.e that the effects of a given activity are no greater than they need to be. It should be made very clear that FW-FP are not a tool for land use change at a catchment-scale; this needs to come through a regional plan process.

While catchment limits set through plan processes that give effect to the NPSFM2020 will form part of the catchment context - it is not the role of the FW-FP to be the only tool of delivering against these outcomes.

Role of tangata whenua in the freshwater farm plan system

Questions

2. What information should we consider regarding the role of tangata whenua in the freshwater farm plan system?

Engagement with tangata whenua in setting outcomes and catchment context

The discussion document outlines an expectation that the responsibility to engage with tangata whenua sits with regional councils (not individual farm operators about their individual farm plan). We agree that requiring engagement on an individual level would place an unreasonable burden on both tangata whenua and farmers/growers.

Engagement and partnership at the vision, value, outcome-setting level also better provides for the role of tangata whenua as kaitaki and mana whakahaere in our view.

This approach could also align with the delivery of FW-FP through IAPs (e.g. GAP schemes) that meet defined criteria - by providing an efficient way in which to reflect and act on catchment context and priorities.

Tangata whenua, as part of the national approval body, would have a role in assessing IAPs that seek approval of national standards. Tangata whenua alongside regional councils would have a role in approving the additional regional specific elements that can be added to national standards to reflect catchment specific risks and aspirations could also be explored further.

IAP outcomes for Māori-owned land and farming operations

In regard to specific considerations relating to developing FW-FP for Māori-owned land, we note that certification models (such as multi-site or group certification as explained above in section 7) may provide a practical management approach for Māori agricultural enterprises. As outlined in the Kiwifruit Industry Water Strategy Partners submission, Māori Kiwifruit Growers Incorporated support the use of Zespri GAP.

The Mātauranga framework being developed by Te Awanui Huka Pak could provide an equivalent system for delivering certified and audited FWFP.

Tangata whenua as service providers across the system

We acknowledge, and support, the role that tangata whenua could play in the system for example, as certifiers, farm advisors and auditors.

We note however that there needs to be careful management to ensure that perceived or real conflicts of interest are managed, by preventing 'overlap' in this of this role undertaken in an individual's professional capacity and the higher-level outcome setting and approval role of kaitaki and mana whakahaere as discussed above.

A role for industry assurance programmes and other farm plan initiatives in delivering freshwater farm plans

Questions - industry assurance programmes and other farm plan initiatives

3. What other information should we consider regarding the proposed role for industry assurance programmes and other farm plan initiatives in the freshwater farm plan system?

4. What are the likely impacts and cost implications of the proposed approach?

The discussion document touches on industry programmes, and the role that IAP might play in delivering freshwater farm plans- however it is not clear how or what IAP would be assessed against in order to be 'recognised as being appropriate to deliver a freshwater farm plan that meets the requirements of the RMA'. Nor is it clear whether these programmes will be recognised as having approval to the system the Government develops. We do not accept the proposition (as stated in the discussion document) that more work will be undertaken to determine the details of programme integration, after the regulations are developed.

HortNZ's fundamental and primary submission point is that Part 9A of the RMA should be supported by regulations that outline the system and the policy framework against which assurance and standards to deliver FW-FP are measured against and approved, as discussed in the body of the submission.

How freshwater farm plans fit with Integrated Farm Planning

HortNZ supports the concept of Integrated Farm Planning (IFP). IFP is a good way of simplifying compliance for farmers and growers while ensuring farm level action to improve farming practices across a range of domains. Critical to the success of IFP, is a common assurance framework. GAP is a working example of an IFP framework. Growers manage food safety, environment and social practice criteria under a common assurance framework.

Transition to a fully implemented freshwater farm plan system

Questions - transition to the new system

5. Do you agree with our proposed approach for transitioning to a fully implemented system? If not why not?

The discussion document states that FW-FP would start to be introduced in the first half of 2022 (following final decisions in early 2022). We note that this provides a limited time period for establishment of new delivery systems (i.e the 'default government/council system') or for the assessment and recognition of IAPs. We seek that this is amended to mid-2023.

It is important the system is clearly defined and well set up before it is rolled out, otherwise this will create additional uncertainty - a potential option could be to do a pilot on a priority catchment before rolling out requirements more broadly.

In respect to the 'dilemma' regarding the timeframe of NPSFM requirements (and that the FW-FP system will only be able to be 'fully implemented' once these processes are complete) - we agree with the approach to proceed on the basis of known catchment information, as these can be updated over time if required - otherwise there could be significant delay.

Key elements of freshwater farm plans (Section 3)

Regulated outcomes

HortNZ supports regulated outcomes being set out in the regulations - we see these as a common thread across all farm systems and all FW-FP delivery models.

HortNZ generally supports the proposed regulated outcomes:

- Outcome A: Reflecting catchment values and context
- Outcome B: Ecosystem health
- Outcome C: Farm practices that respond to environmental needs

Questions - regulated outcomes

6. Do you agree with the preferred option for how regulated outcomes could be described in regulations? If not, what is your preference?

7. What are the likely impacts and cost implications of the preferred approach?

In terms of how regulated outcomes are described in regulations, HortNZ prefers **Option 1**, because it provides more flexibility. The GAP scheme would be more similar to Option 2 but seek that the regulations provide a process for approval a system that delivers regulated outcomes through standards.

Farm planning

REGULATED 'BASE INFORMATION'

HortNZ supports a baseline level of information that must be included in a FW-FP being specified in regulations - this provides a clear expectation that schemes which support the delivery of FW-FP (be that the 'default government/council scheme', or an approved IAP) must meet, and will achieve consistency to support reporting of key metrics.

RISK/IMPACT ASSESSMENT

We support an outcomes-based approach, where either the risk assessment can be undertaken based on the assessment of the individual certifier in the Government scheme, or an alternative approved IAP (e.g a GAP scheme), follow a method and being included within the content standard, for which approval is sought as part of the approval process.

IDENTIFYING ACTIONS TO AVOID, REMEDY, MITIGATE RISKS/IMPACTS

As discussed previously (Section 5 and 9.2) we propose both approaches:

- Option 1 - Certifier's discretion and personal judgment
- Option 2 - Detailed approach through prescribed practice standards

We accept the certifier discretion approach may be suited and preferred by some, but we also seek (via an approval pathway for IAP), the ability to use an approach based on prescribed standards, supported by research and in conjunction with an accredited certified and audited process.

'Avoid, remedy, mitigate' in context of FW-FP

It is important that the terms 'avoid, remedy, mitigate' are interpreted and applied in the context of the role of FW-FP - to be operating at GMP/BMP for your activity and location.

They should not be interpreted to mean that land use change, or total avoidance of effects is required through the FW-FP process.

Similarly, we seek to ensure that mitigations that are implemented as part of a FW-FP are not then subject to additional, limiting regulation (e.g. riparian planting, then being regulated by being captured by wetland regulation).

DETERMINING TIMEFRAMES TO IMPLEMENT ACTIONS IDENTIFIED IN THE FRESHWATER FARM PLAN

This is a difficult variable to specify, it will depend on a number of factors, including:

- Financially the ability to implement the actions, and at what time scale
- The progress that has already been made – some farmers/growers will be ahead of the curve at already operating at above GMP (need to ensure that new requirements do not unduly punish early adopters)

As outlined in the NZGAP submission, the EMS currently works to a 5-year action plan. The work that has been done over the past year, has looked at also including a long-term vision and a 10-year goal within the plan, alongside the 5-year action plan.

This long-term planning horizon enables growers to integrate environmental risk into their long-term business planning. In addition to this longer-term planning, in our view it is necessary to have a clear 5-year action plan, so tangible progress is made in the short-term.

Certification

As discussed above, HortNZ do not support the proposed approach to certification in respect of IAPs, such as GAP. However, we provide the commentary below in the context of the 'default Government/Council' scheme.

PROCESS FOR ACCREDITING AND APPOINTING CERTIFIERS IN THE FRESHWATER FARM PLAN SYSTEM

For a default government/council scheme, HortNZ prefers **Option 1**, because we believe national accreditation would promote greater consistency across the system and support in the implementation of IFP.

A regional accreditation approach is likely to perpetuate the current differences that exists between different regional council FEP requirements.

MORE DETAIL AROUND THE ROLE OF THE CERTIFIER

The role of certifiers as expressed in the discussion document seems to have a large degree of discretion, without a policy framework to guide discretionary decisions. This lack of accountability in the role certifiers could undermine the credibility of the system.

However in saying this, we do recognise the value in this for some situations and therefore support this being an *option* that is provided – for example, through the default government/council' scheme.

For a default government/council scheme, HortNZ prefers **Option 2**. We think for the integrity if the role of advisors, certifier and auditors should be clearly defined and separate.

ENGAGING AND PAYING FOR A CERTIFIER

MfE propose that the farm operator directly engages and pays for the services of certifiers (from a list of certifiers appointed to operate in their area).

HortNZ's view is that quality assurance processes and professional standards negate the risk of grower capture. However, for this reason it is very important that the roles of certifiers, auditors and farm advisers and the regulator are well defined and including for tangata whenua.

(By way of comparison, in the GAP system, a grower registers with GAP and pays a fee to GAP - the GAP scheme arranges the audit and the grower pays the auditor directly.)

REGULAR REVIEW AND RE-CERTIFICATION

For a default government/council scheme, HortNZ prefers **Option 2**, because growers need a degree of certainty to invest and implement their action plan.

A three-year plan does not provide sufficient certainty. Whereas, five-year re-certification aligns with the action plan timeframe. This allows a grower each year to reflect on their ten-year goals, research, investment and action and five-year action plan, and update on a logical rolling cycle.

WHEN A FARM WOULD NEED A NEW FRESHWATER FARM PLAN, AN ADDENDUM OR AN AMENDMENT

The discussion documents discusses 'triggers' for requiring a new FW-FP, adding an addendum, and amending details in a FW-FP; we discuss these together below as we consider it helpful to consider these 'triggers' relative to each other.

Crop rotation is important for vegetable growing, for sustainable soil management. This means that a significant proportion of vegetable growing occurs on leased land. It is important the FW-FP do not become a 'commodity' that in practice impact on the ability to rotate across land.

New FW-FP;

HortNZ agrees that there should be clear /and consistent expectations of the circumstances which would trigger the need for a new FW-FP; we consider this to be something that would need to be applied consistently across delivery mechanisms.

A new FWFP would be required to be certified/audited (as with any other new FW-FP).

Triggers for requiring a new FW-FP

<i>Major change in farming system</i>	Agree - but what constitutes a 'major change' needs to be more fully defined and explained.
<i>Change in land use</i>	This needs to be clearly defined - how does this compare to/differ from 'major change in farming system'? For vegetable growing it is particularly important the location of the growing operation can change due to crop rotation requirements without triggering land use change provisions.
<i>Change in ownership or farm operator where the new owner or</i>	Agree

<i>operator does not take over the FW-FP from the existing owner</i>	
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An addendum to an FW-FP;

We consider an addendum to an FWFP would require certification. In the case of the GAP system that would include an audit.

Triggers for requiring an addendum

<i>Additions to the farm area, such as leasing additional land</i>	For horticulture is important that the new leased land can be taken, without it triggering land use change if changes in total area are minor. However, we anticipate that growers would need to identify the locations and manage risks across all blocks within their FWFP.
<i>New activities (such as adding an area of horticulture production) within an otherwise largely unchanged farming system</i>	For leased land it is important to have clarity where the point of responsibility lies. If the land was leased to a grower, the grower would include it in their FWFP and the landowner's FWFP may remain unchanged, however when the operator changes or adds an activity then an addendum would be required.

Amending details in an FW-FP;

We agree with the discussion document that this should not need 're-certifying'.

Triggers to amending details in an FW-FP

<i>Change in farm operator (e.g. sale of farm) where the new operator intends to carry on a farm system that is substantially the same and the freshwater farm plan has been picked up the by new operator</i>	Agree. We note that FW-FP should not become a tradeable commodity, this does not align with the intent (around freshwater outcomes) in our view.
<i>Change in owner or lessee of land if a FW-FP is also transferred</i>	Agree

DISPUTE RESOLUTION

HortNZ agrees that there should be a dispute resolution process established in freshwater farm plan regulations.

We see this largely sitting separate to any recognised equivalent IAP schemes.

The discussion proposed a three-stage dispute resolution process to be managed by the national certification body. We support this being provided by an independent national body - but suggest amendments above (underlined) to reflect how we envisage this operating in the context of equivalent recognised schemes delivering FW-FP, as our submission seeks:

- A discussion between farm operator and certifier (or approved IAP scheme) to resolve a dispute

- Mediation between farm operator and certifier (or approved IAP scheme)
- A formal arbitration process

COMPLAINTS PROCESS

HortNZ supports the proposal that a national body would be responsible for establishing a process to resolve complaints.

As above, we see this sitting separate to any recognised equivalent IAP schemes (although these schemes would likely have an internal process for complaint response before it is elevated to this level).

REMOVAL OF CERTIFIER'S ACCREDITATION

In IAP scheme approval situation - the 'equivalent' to the is removal of recognition of a scheme as being equivalent.

Audit

The audit system is generally acceptable, however HortNZ seeks that auditing in respect of IAPs such as GAP auditors employed by an accredited Conformity Assessment Body are recognised as auditors as part of approval of IAP system, and the ability for group certification.

PROCESS FOR ACCREDITATION AND APPOINTMENT OF AUDITORS

For a default government/council scheme, HortNZ prefers **Option 1**, as this will assist in the roll-out and help to build on existing resource.

We note that auditing FW-FP has some specific knowledge areas, but this could be provided on top of this as additional support, rather than creating a whole new accreditation system.

DETERMINING AUDIT FREQUENCY

The discussion document proposes a risk-based approach to setting audit frequency - we support this in principle.

We provide specific comments on the approach proposed below - noting that we seek that the regulation provide for IAP programmes to be approved as equivalent - and that these would be assessed in terms on audit frequency, against the criteria of being 'risk-based'.

Proposed approach:	HortNZ comment on Govt Scheme	GAP
<i>All farms considered high-risk until they have passed their first audit</i>	All farms in high-risk catchments until they have passed the first audit	Uncertified until the first audit

<i>All farms be audited within 18 months of the freshwater farm plan being certified</i>	Agree	As they are audited with the certification, they don't require another audit following 18 months. 3 years is a suitable minimum
<i>A change in farm operator would trigger the need for an audit within 18 months</i>	Agree	Agree
<i>Farms that pass an audit with no or only minor non-compliance would have the audit period extended to a period of not more than three years</i>	Agree	Agree
<i>Farms with significant but not serious non-conformances would need to be re-audited within 12 months</i>	Agree	Agree
<i>Farms that fail audit with serious non-compliance would need to be re-audited within 6 months</i>	Agree	In the GAP system these farms would have their FW-FP certification cancelled. (This would be reported to the relevant regional council.)

Note: what constitutes a 'significant but not 'serious' non-compliance would need to be well-defined so it can be applied consistently. As for the Food Act, the regulations could establish critical issues which need to be escalated to the regulator.

Auditing grades

Auditing grades are used in Canterbury and the GAP auditors assess farms against these grades - GAP only approves farms that meet A or B grade, those that would achieve C or D grade are not acceptable to GAP and are non-compliances to be resolved.

ENGAGING AND PAYING FOR AN AUDITOR

The discussion document proposes that farmers/growers directly engage and pay for the services of auditors (from a list).

The discussion document makes a linkage here to IAPs (and being able to choose an auditor who may have audit functions on their farm, for example part of an IAP or for food safety) - we already reinforce our submission seeking recognition of IAPs (that meet criteria to deliver on Part 9A) are recognised as a whole alternate system to the 'default government/council scheme' rather than piecemeal recognition. In this system, GAP organises the audit and the grower pays.

However, for those – for example – who do not fulfil their Food Act requirements through GAP and similarly don't wish to do their FW-FP through GAP, being able to choose your auditor could assist in synergies (and cost savings).

Quality assurance of freshwater farm plans

The body who performs this role;

The discussion document proposes a quality assurance role is undertaken by a national public entity – in partnership with regional councils and tangata whenua representatives. HortNZ agrees that a quality assurance role should be undertaken (or led) by a national body, with regional input as required.

Purpose of this function;

The discussion document states “Its purpose would be to ensure that that certified freshwater farm plans are of an acceptable standard to achieve the intended freshwater outcomes”.

We consider this could be re-framed slightly to put emphasis on ensuring that the system established through regulations (for example, the default government/council scheme and recognised IAPs) is delivering on FW-FP that are of a standard that achieves freshwater outcomes.

While this system oversight role may have ‘checks’ at the individual FW-FP scale – primarily, the national body should ensure that the schemes that deliver FW-FP have quality assurance steps built in.

GAP schemes operate under the JAS-ANZ Quality Assurance Framework, and it would be duplication for the national body to perform a Quality Assurance function for an IAP that was approved as operating under the JAS-ANZ framework.

In our submission, we also anticipate that a national body would have the function of recognising IAPs as ‘approved schemes’.

Funding;

The discussion document suggests that this role would be funded jointly by certifiers (via national accreditation body), regional councils and Government.

We consider this is regulatory function and should be funded by regional and central government. It would be reasonable for a fee to be charged for the assessment of a scheme seeking to be assessed as equivalent.

Enforcement mechanisms

Role of auditors/certification bodies - we envisage that any scheme (i.e default government/council, or recognised IAP) would need to have information reporting protocols that enable regional councils to fulfil their enforcement function. This could be reflected in criteria for schemes delivering FW-FP.

Role of regional councils - for clarity, as stated elsewhere, we are not proposing that recognised IAPs fulfil this enforcement role (beyond reporting non-compliances which require enforcement action).

Proposed offences - there may be reasons outside of the farmer or growers’ control why deadlines are not meet, and so care needs to be taken in defining offences.

The fines should act as a deterrent.

Implementation option

Phasing and staging

HortNZ prefers **Option 1**. This approach would assist in resourcing roll-out. It makes sense from the perspective that FW-FP are required to reflect the catchment context and will assist in embedding a catchment focus.

We also consider that a catchment approach would be favourable from a social support perspective. Greater efficiencies would also likely reduce costs.

We support open dialogue on how catchments would be prioritised.

We acknowledge the merits of Option 1 from 'risks to freshwater' perspective, but consider the practical benefits of catchment-by-catchment prioritisation outweigh the potential benefit of this approach. Option 1 can also respond to freshwater risks by prioritising high risk or degraded catchments.

45. Should we consider any other ways to support farmers, growers and certifiers to understand and incorporate catchment values and context?

There are commercial growers under the 5ha threshold. With the GAP scheme they will be able to join and be assessed in exactly the same way as those that are required by regulation to have a FWFP. We suggest they may opt into reporting to regulator.

Understanding catchment values and context

Questions - understanding catchment values and context

47. Should we consider any other ways to support farmers, growers and certifiers to understand and incorporate catchment values and context?

We support the overall approach proposed within the discussion document.

As noted, it is important that this information is presented in a manner which is clearly expressed and able to be understood by farmers/growers.

Reporting and review

Collection of data from freshwater farm plans

We agree that data collection (via FW-FP) could assist in reporting and having more fulsome information to inform approaches to water quality. However, it needs to be at a sensible level, that is efficient.

Assurance frameworks negate the need for onerous fine-scale reporting, it is not clear in the discussion document if this principle is accepted.

We have observed a number of regional council level processes requiring excessive information reporting requirements through freshwater plans - at a level that does not provide any additional benefit in terms of better understanding water quality.

Questions - data collection

48. What are your thoughts on the proposed indicator areas for evaluating the difference the freshwater farm planning system is making to water quality and ecosystem health?

49. What other information should we consider, and why?

50. What are the likely impacts and cost implications of this approach?

The discussion document discusses three broad areas of data:

<i>Numbers and coverage of certified FW-FP</i>	We agree that this is a metric that there should be aggregated data on.
<i>Numbers of certified freshwater farm planners, certifiers and auditors</i>	Data would also be required on the number (and scope, in terms of area and/or industry) of recognised IAPs/approval schemes - as this submission seeks.
<i>Implementation and evaluation of on-farm actions</i>	<p>This is where we assume that reporting of indicators fits in. With regard to reporting on indicators, we support the principle of reporting on priority areas - however consider that the indicators need to be given more consideration.</p> <p>For example, 'length of waterways with stock excluded' is not an applicable indicator for horticultural systems (with no animals). This could skew reporting.</p> <p>Consideration would need to be given to how metrics are reported when the indicator is 'not applicable' (as opposed to not met).</p> <p>We think the greatest effort should be spent on monitoring receiving environments and implementing actions.</p> <p>The advantage of the GAP approach is the standards are supported by research and this research provides an indication of the percentage reduction in contaminant loads that can be achieved from practices. Therefore, the adoption of the standard by a large proportion of horticultural land uses, will result in predictable improvements in water quality. In the NZGAP submission, the Levin EMS reporting provides an example of this.</p>

What regional councils report publicly

Questions - reporting publicly

51. Do you agree with our preferred approach? If not, what is your preference and why?

52. Is there any information in a freshwater farm plan that you would not want to be shared publicly? For what reason?

HortNZ supports transparent reporting by regional councils to demonstrate the progress of the freshwater farm plan system.

We agree that protection of the privacy (and data) of farm operators is important and IAPs with an approval recognition would have a role in providing the data necessary for regional councils.

The regulations could include metrics which regional councils are required to report on (to achieve consistency across New Zealand) for example:

- FW-FPs certified and audited as meeting Part 9A requirements
- Area of certified FWFP for each farming activity.

Appendix B

Legal advice on the meaning of certifier and auditor

MEMORANDUM

TO: Horticulture New Zealand

FROM: Helen Atkins; Nicole Buxeda

DATE: 7 October 2021

SUBJECT: STATUTORY INTERPRETATIONS AND PRESCRIBING OF CRITERIA

INTRODUCTION AND CONTEXT

1. We have been asked to provide an opinion regarding the correct and necessary approach to the creation of criteria applying to the terms of 'auditor' and 'certifier' as used in Part 9A of the Resource Management Act 1991 (**Act**).
2. Part 9A of the Act deals with freshwater farm plans and requires that such plans are submitted to a certifier and are audited.¹
3. We consider that the correct approach is to acknowledge New Zealand's obligations to legislate consistently with international obligations.
4. In this instance we consider the obligation for consistency extends to the creation of regulations.
5. Accordingly the definitions of, and criteria for, 'auditor' and 'certifier' in any regulations made must be in line with internationally recognised International Organisation for Standardisation (**ISO**) standards.
6. We understand that ISO standards are adopted by Conformity Assessment Bodies and Certification Bodies and are accredited as meeting ISO standard requirements via accreditation from bodies like the Joint Accreditation System of Australia and New Zealand (**JAS-ANZ**).
7. We further consider that such an approach is required by statutory interpretation principles and with New Zealand accepted practice.
8. We consider the outcome necessary is that the Minister for the Environment recommends that the Governor-General make an Order in Council recognising the JAS-ANZ approach and criteria as applying to the appointment of auditors and certifiers for freshwater farm plans required under Part 9A of the Act.

¹ Resource Management Act 1991 s217G and 217H.

Resource Management Act 1991

9. The Resource Management Amendment Act 2020 inserted new Part 9A on 1 July 2020. New Part 9A deals with freshwater farm plans.

10. Section 217B provides interpretation for Part 9A as follows:

auditor means a person who—

- (a) is appointed under section 217K; and
- (b) meets the criteria prescribed in regulations made under section 217M(1)(h)

...

certifier means a person who—

- (a) is appointed under section 217K; and
- (b) meets the criteria prescribed in regulations made under section 217M(1)(h)

...

regulations means regulations made under section 217M

11. Sections 217K and 217M(1)(h) provide:

217K Regional council must appoint certifiers and auditors

- (1) A regional council must—
 - (a) appoint 1 or more certifiers; and
 - (b) appoint 1 or more auditors.

- (2) A regional council may make an appointment under this section only if satisfied that criteria prescribed in regulations have been met.

...

217M Regulations relating to freshwater farm plans

- (1) **The Governor-General may, by Order in Council made on the recommendation of the Minister after consulting the Minister of Agriculture, make regulations that—**

...

- (h) **prescribe criteria that apply to the appointment of a person as an auditor or certifier and their continuation in that role...**

[emphasis added]

INTERNATIONAL STANDARDS AND ORGANISATIONS

12. New Zealand subscribes, or is a party, to several international organisations which set commercial standards for various areas, including for agriculture.

International Standardisation Organisation

13. The ISO is an international body for standards.

14. New Zealand is a member body to the ISO² and is represented by the New Zealand Standards Organisation which is made up of the New Zealand Standards Approval Board and the New Zealand Standards Executive.

² See ISO Membership: New Zealand (<https://www.iso.org/member/1998.html>)

15. ISO sets out a glossary of definitions, which include the following:³

Audit: a routine inspection performed by either internal employees or an external third-party auditor.

Certification: Assurance given by an independent certification body (ISO does not perform certification) that a product, service or system meets the requirements of a standard.

Conformity Assessment: Process of determining whether someone or something meets the requirements of a standard. It can be done in one of three ways:

- first party (assessment by manufacturer/supplier themselves);
- second party (assessment of manufacturer/supplier by user or purchaser);
- third party (assessment of manufacturer/supplier by someone independent).

Joint Accreditation System of Australia and New Zealand

16. The 'Agreement between Australia and New Zealand concerning the Establishment of the Council of the Joint Accreditation System of Australia and New Zealand' is the treaty which established JAS-ANZ in 1991. While this treaty was terminated in 1998⁴, it was replaced with the treaty 'Agreement between New Zealand and Australia concerning the Establishment of the Governing Board, Technical Advisory Council and Accreditation Review Board of the Joint Accreditation System of Australia and New Zealand' which is still in force.⁵

17. The JAS-ANZ is an example of an accreditation authority and framework which provides accreditation services for Conformity Assessment Bodies and Certification Bodies who in turn employ certifiers, inspectors, and undertake assessment and certification regimes.

18. JAS-ANZ accreditation is recognised by Ministry for Business, Innovation, and Trade (**MBIE**) as a key agency in the standards and conformance system.⁶ This is important as MBIE is the agency with oversight, policy and regulatory stewardship responsibilities for the standards and conformance system.⁷

³ See the ISO glossary available here: <https://www.iso.org/glossary.html> and Terms for ISO 9001 available here: <https://www.iso-9001-checklist.co.uk/3-ISO-9001-terms-definitions.htm>

⁴ Agreement between New Zealand and Australia concerning the Establishment of the Council of the Joint Accreditation System of New Zealand and Australia (JAS-ANZ) available here: <https://www.treaties.mfat.govt.nz/search/details/t/2594/>

⁵ Agreement between New Zealand and Australia concerning the Establishment of the Governing Board, Technical Advisory Council and Accreditation Review Board of the Joint Accreditation System of Australia and New Zealand available here: <https://www.treaties.mfat.govt.nz/search/details/t/1319/>

⁶ MBIE description of the standards and conformance regulatory system available here: <https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems/standards-and-conformance-regulatory-system/>

⁷ Ibid.

STATUTORY INTERPRETATION PRINCIPLES AND DIRECTIVES

19. The common law statutory interpretation principle directs that so far as its wording allows, legislation should be read in a way which is consistent with New Zealand's international obligations.⁸
20. That presumption may apply whether or not the legislation was enacted with the purpose of implementing the relevant text.⁹
21. New Zealand is a member of ISO and a party to the JAS-ANZ treaty. We consider that there is an obligation to give effect to the JAS-ANZ treaty requirements in legislation drafting. We consider this extends to regulations made under legislation which inform legislation application.

LEGISLATIVE DIRECTION FOR CONSISTENCY

22. It is well established that while the making of a treaty is an executive act, the performance of its obligations requires legislative action.¹⁰ The Standards and Accreditation Act 2015 establishes the Standards Approval Board and the New Zealand Standards Executive which is responsible for New Zealand's membership of ISO. The purpose set out in the Standards and Accreditation Act 2015 is as follows:

The purpose of this Act is to—

(a) make provision for standards and conformity assessment systems in New Zealand that—

(i) **are consistent with international practice**; and

(ii) facilitate trade; and

(iii) protect the health, safety, and well-being of individuals:

[emphasis added]

23. The Standards and Accreditation Act is administered by MBIE.
24. The creation of guiding regulations establishing auditor and certifier standards for the purposes of Part 9A of the Act must therefore be consistent with those in JAS-ANZ. Should alternative standards be created through regulation, this would result in an outcome which is directly contrary to the directives of the Standards and Accreditation Act 2015.

⁸ *New Zealand Airline Pilots Association v Attorney-General* [1997] 3 NZLR 269 at page 30; *Rajan v Minister of Immigration* [1996] 3 NZLR 543, 551.

⁹ *New Zealand Airline Pilots Association v Attorney-General* [1997] 3 NZLR 269 at page 30.

¹⁰ *New Zealand Airline Pilots Association v Attorney-General* [1997] 3 NZLR 269 at page 16.

25. This legislative direction is strengthened by the Legislation Act 2019 which has the following purpose:
- (1) The purpose of this Act is to promote high-quality legislation for New Zealand that is easy to find, use, and understand.
 - (2) To that end, this Act—
 - (a) states principles and rules about the interpretation of legislation;
 - (b) allows legislation to be simpler, shorter, and **more consistent**:
[emphasis added]
26. There is clearly a legislative imperative on achieving consistency which must be recognised in regulations made under the Act.

DO STATUTORY INTERPRETATION PRINCIPLES APPLY TO REGULATION CREATION?

27. Section 217M of Part 9A holds that the Governor-General may, by Order in Council made on the recommendation of the Minister for the Environment after consulting the Minister of Agriculture, make regulations that prescribe criteria applying to the appointment of an auditor or certifier.
28. Section 21 of the Legislation Act 2019 is as follows:
- 21 Anything done under secondary legislation or other instrument is also done under this Act
- A reference to anything being done under an Act includes anything done under secondary legislation, or another instrument, that is made under that Act.
29. Further, section 29 of the Interpretation Act 1999 stipulates that 'enactment means the whole or a portion of an Act or regulations'.
30. We consider that such regulations must be made in accordance with international standardisation obligations to which New Zealand is a member.
31. This is because, while they are regulations, the empowerment for their creation resides in the Act.
32. Should regulations deriving from legislation be able to be inconsistent with international obligations, this would appear to run contrary to the intention of consistency with international obligations.

RECOGNITION OF JAS-ANZ ACCREDITATION FOR AUDITORS AND CERTIFIERS

33. Accreditation ensures that appropriate systems and processes are in place to meet relevant ISO standards and meet the expectations of the scheme's standards and rules.
34. JAS-ANZ provides accreditation to Conformity Assessment Bodies (e.g. AsureQuality and SGS¹¹) and Certification Bodies under ISO standards (e.g. ISO

¹¹ Both certification companies with offices in New Zealand.

17065 - conformity assessment for product certification) to undertake inspections and issue certificates to operators who comply with accredited standards of scheme owners (e.g. GLOBALG.A.P., NZGAP GLOBALG.A.P. Equivalent).¹² We understand that not all standards are required to be fully accredited by markets/regulators, however schemes can require that the Conformity Assessment Body is accredited to relevant ISO standards (e.g. ISO 17020 – conformity assessment).

35. AsureQuality is accredited by JAS-ANZ to audit and certify growers the in GLOBLAG.A.P. and the New Zealand Good Agricultural Practice (**NZGAP**) GLOBALG.A.P. Equivalent Schemes.¹³ SGS is accredited for the same schemes via the National Accreditation Board for Certification Bodies.¹⁴
36. The NZGAP and GLOBALG.A.P. systems are established and recognised provision for standards in New Zealand that are consistent with international practice. In addition, GAP standards in New Zealand horticulture are benchmarked to internationally recognised standards including GLOBALG.A.P. Integrated Farm Assurance.

PROCESS FOR REGULATING AUDITOR AND CERTIFIER ROLES

37. We consider that the Governor-General should, by Order in Council on the recommendation of the Minister for the Environment after consulting the Minister of Agriculture, make regulations that apply the ISO definitions of auditor and certifier and apply the accreditation process (e.g. JAS-ANZ) to the appointment of a person as an auditor and as a person as a certifier and their continuation in that role.
38. We consider that the regulations should identify that a person or company can be appointed as an auditor or certifier and that the word 'person' is to be read as per the definition in the Act, for the avoidance of confusion.¹⁵

¹² See information contained as JAS-ANZ regarding schemes available here: <https://www.jas-anz.org/our-schemes>

¹³ See information at JAS-ANZ regarding accredited bodies available here: <https://www.jas-anz.org/accredited-bodies/organisation/db2e4c9d-c9b3-e411-be4f-005056b24e56>

¹⁴ See information at SGS regarding certification of agriculture and food available here: <https://www.sgs.co.nz/en/agriculture-food/seed-and-crop/audits-and-certification/certification>

¹⁵ Resource Management Act 1991 definition of 'person': **person** includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate.