

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Otago
Regional Policy Statement (non-freshwater parts)

BY **FEDERATED FARMERS OF NEW ZEALAND INC,
FEDERATED FARMERS OF NEW ZEALAND (Otago Region)
INC**

(“FEDERATED FARMERS”)

Submitter with ID: 00239

To **Otago Regional Council**

**SUBMISSIONS ON BEHALF OF FEDERATED FARMERS ON
ECOSYSTEMS AND INDIGENOUS BIODIVERSITY**

18 April 2023

Introduction

1. Federated Farmers made a comprehensive submission on the proposed Otago Regional Policy Statement.
2. Federated Farmers is presenting on the Ecosystems and Indigenous Biodiversity chapters with reference to its comprehensive written submission and higher order documents and Court decisions that have been released since the submission was made.
3. Federated Farmers has a joint case with the Otago Water Resource Users Group and Dairy NZ. The Ecosystems and Indigenous Biodiversity chapter is not within the joint case, but remains important to farmers.
4. We are grateful for the opportunity to present to the panel in person.

Background

5. For generations, farmers in Otago have practiced kaitiakitanga (the ethic of stewardship) of the significant indigenous biodiversity located on their farms. For many farmers, biodiversity is synonymous with farming. They recall experiences in the high country with sheep lightly grazing snow tussocks while walking past totara, manuka and kanuka. The relationship between farming and biodiversity in Otago has always been and remains highly valued.
6. Otago needs a policy setting that will protect areas of significant indigenous vegetation and significant habitats of indigenous flora and addresses the threat of pests to indigenous biodiversity. Decline (in terms of spatial area of habitats) has slowed in the last three decades.¹ In recent decades, the decline in our indigenous biodiversity, is more seriously due to predators and the lack of pest and weed control.² This is a crucial factual point as it goes to the heart of the rationale of the proposed Otago Regional Policy Statement, where continuing 'serious' decline creates an imperative for all effects to be avoided - but misses the real issue of pest and weed and management deficiency as the cause for decline.
7. To implement any effective policy on indigenous biodiversity, it will require active management by many farmers through plant and animal pest control initiatives, planting programmes and soil conservation initiatives. The policy settings must allow integrated and adaptive management decisions to be made, without bottom lines or rules impeding good environmental outcomes.
8. It is considered that the proposed Otago Regional Policy Statement (pORPS) fails to recognise farmers as kaitiakitangi of significant indigenous biodiversity, has failed to recognise the importance of integrative and adaptive management, including non-regulatory methods to protect indigenous biodiversity, has failed to adequately provide for existing use rights on farm and has failed to consider where indigenous biodiversity fits within the entire ecosystem of a farm.

9. Submissions

9.1 The Otago Regional Council has a duty under sections 30 and 31 of the RMA 1991 to have objectives, policies and methods to maintain indigenous biological biodiversity. Section 6(c) of the RMA requires that all persons exercising functions and powers under the RMA

¹ DoC NZ Biodiversity Strategy 2000-2020 (2019).

² DOC NZ Biodiversity Strategy 2000 – 2020 (2019).

recognise and provide for the “protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna” as a matter of national importance. Counsel for the Otago Regional Council has identified the relevant provisions in s 6 and s 7 of the RMA. In addition to the provisions identified as relevant is also section 7(aa), the ethic of stewardship.

It is submitted that the notified version of the pORPS can achieve the s6(c) RMA objective with the following changes:

- a) **Making specific objectives, policies, and methods to address the issues in Otago by recognising landowners as stewards of indigenous biodiversity** The significant resource management issue (SRMR-13) for the region is that pest species pose an ongoing threat to indigenous biodiversity, economic activities and landscapes. SRMR-17 is that rich and varied biodiversity has been lost or degraded due to human activities and the presence of pests and predators. The significant issues are inadequately reflected in the objectives, policies and methods because they fail to recognise the importance of landowners and catchment groups in managing pests.
- b) **Providing for integrated management and recognition of non-regulatory methods** - Much of New Zealand’s biodiversity remains because landowners have done the right thing. It is estimated that 25% of all biodiversity is now on farm.³ The success on farm is by and large due to the pest control measures, planting programmes and soil conservation initiatives that farmers have performed at their cost for generations. Without non- regulatory support measures, and the support to partnerships, catchment group processes and landscape-scale initiatives, the success of the objectives in the pORPS process is significantly weakened. This also encourages integrated management between all issues affecting landowners.
- c) **Criteria for Significant Natural Areas (SNAs) must be set at the right level** - Getting the criteria for SNAs set at the right level is critical to the success or failure of the objectives in the pORPS. The indigenous biodiversity needs to be significant in order to meet the obligation of ‘protection’. If the criteria are set too broadly, there is a real risk that all or most indigenous biodiversity will be captured, thereby reducing the relative importance of the indigenous biodiversity that requires protection. In that scenario, repercussions will be vast – with many farming operations unable to continue operating as viable units, and with insufficient resources, capacity and capability across councils (particularly within consenting teams) there will be failures in prioritising, and fatigue with the process. If everything is deemed important, it will quickly become that nothing is treated as such.
- d) **Existing use rights are entitled to greater protection under the National Policy Statement – Highly Productive Land (NPS-HPL) and common law** - The objective of the NPS-HPL is to protect the use of land-based primary production both now and for future generations. Clause 3.11 of the NPS-HPL refers to protection of existing use

³ (2018) Norton, David and Pannell, *Desktop Assessment of native vegetation on New Zealand sheep and beef farms*, (School of Forestry, University of Canterbury, Christchurch and Institute for Applied Ecology, Auckland University of Technology, Auckland, 13 June 2018) [FINAL Norton Vegetation occurrence sheep beef farms.pdf \(beeflambnz.com\)](#).

rights, in relation to LUC 1, 2 and 3 as well as land that has the potential to be highly productive land. We also rely on the Environment Court case of *Southland District Council v Peter Donald Chartres and CP Trustees Limited* [2022] NZEnvC 215. Within a farming unit, there are strong policy reasons to protect the areas of indigenous biodiversity that a farmer has already taken steps to protect while allowing the clearance of indigenous regrowth or scrub. Without the ability to take into account the entire farming system, there is a risk of perverse outcomes for the region and for individual farmers.

10. Making specific objectives, policies, and methods to address the issues in Otago

10.1 Farming in Otago involves families that have farmed for multiple generations over 150 years, and the families are a part of the social fabric of the region.⁴ The importance of indigenous biodiversity has been discussed over multiple generations, with the 'protected natural areas programme' commencing in 1981. There remains an ethic of stewardship over indigenous biodiversity on farm.

10.2 Several positive trends in indigenous biodiversity in Otago have occurred in recent decades including natural regeneration of woody vegetation, fenced sanctuaries, managed planting, and pest control (see Wildlands, 2021b in Appendix 14). With shared objectives, landowners, catchment groups, iwi and the Council can work together to achieve better outcomes. If the policies and methods over-reach, there is the risk of detrimental outcomes to biodiversity in Otago.

10.3 Farmers, families, catchment and community groups have environmental visions, values and goals. These extend beyond the scope of regulation, but regulation should incentivise the visions. Currently in Otago there are 4 jobs for nature projects that include pest control in their descriptors, with total funding of \$6,400,000.

10.4 There are two significant resource management issues for the region that relate to biodiversity: SRMR-I3 and SRMR-I7. However, these are inadequately reflected in the objectives, policies and methods in the pORPS because pest management, natural regeneration of woody vegetation, fencing and planting is undertaken by landowners and catchment groups at present. However, landowners and catchment groups are not given appropriate recognition under the pORPS because they are already bearing a lot of the cost burden, both in terms of their own time/cost but also the rates burden that is put on in terms of the local territorial authority.

Tall Montane Tussocks

10.5 Sheep and beef farming in Otago has a range of specific features. For instance, Otago contains more than half of New Zealand's high-country stations, which is more than any other region⁵. However, the most numerous type of farm in Otago is on rolling hill country with a

⁴ (2022) Otago Regional Council *Farmers and Growers in Otago* (Otago Regional Council Industry Advisory Group, December 2022). Located at [Phase-1-Farmers-Grower-Report-ORC-Digital-30Nov.pdf \(emconsulting.co.nz\)](#).

⁵ As above n 4

higher carrying capacity and farming operations focussed on finishing and breeding livestock.⁶ There is an estimated 913,312ha of tussock grassland that is grazed in Otago.⁷

10.6 Tall Montane Tussocks are traditionally found above the tree line and below high alpine areas. Many will refer to the plant as snow tussocks or grass tussocks.

10.7 The most current information on landcover trends is from Statistics NZ which looks at changes in land use and land cover between 1996-2012, presents a national picture of change to vegetation / habitat, which is:

- *The largest decrease in area of land cover was in exotic grasslands, down 1.7 percent.*
- *Other decreases in land cover were:*
- *tussock grasslands (down 1.3 percent or 30,929 ha),*
- *exotic scrub/shrubland (down 9.3 percent or 25,978 ha),*
- *indigenous scrub/shrubland (down 1.3 percent or 24,187 ha), and*
- *indigenous forests (down 0.2 percent or 16,108 ha).*
- *Regions with the largest decreases in indigenous forest cover were the West Coast (down 0.4 percent), Taranaki (down 1.0 percent), and Marlborough (down 0.8 percent).⁸*

10.8 Dr Kelvin Lloyd has alleged that “In the last 50 years, there has been significant loss of tussock grassland extent at lower elevation, for example in Macraes Ecological District, in the area between Maungatua and the Lammermoor Range, and as a general elevational retreat up mountain slopes in inland Otago.⁹” However, this response is so vague that it has no meaning in terms of the pORPS and there is no reference to any research or evidence to underpin his opinion. Further, the provisions of the pORPS do not reflect this narrow concern, but rather seek to protect all tall montane tussock in Otago.

10.9 Consideration needs to be given to what is equitable given the regulatory framework over the past 20 years. There is a risk that those who have protected significant indigenous biodiversity may end up worse off. This is plausible in the following situations:

1. Farms that have voluntarily taken steps to maintain and enhance biodiversity on areas of their farm, but the policy settings are such that there are additional obligations on these farmers to either protect areas that have less significance or restrict the land use rights of the remaining areas on farm that have historically been cleared and there is some indigenous vegetation regrowth.
2. Farms that have been through tenure review. Tenure review identified land that had high conservation value, and in exchange, the remainder of the land became freehold. It would be perverse if the Crown had gained the land with high conservation value, and then the land that the farmer paid for has restricted use because of alleged or fresh biodiversity values.

10.10 The pORPS proposes that all costs fall on rural landowners to meet indigenous biodiversity goals, that the rural landowners are already bearing costs to maintain.

⁶ Brief of evidence of Jenny McGimpsey dated 23 November 2022

⁷ Brief of Evidence of Simon Glennie dated 23 November 2022, paragraph 22

⁸ [NZ Statistics report on Land Cover](#)

⁹ Dr Kelvin Lloyd’s response to the panel questions dated 13 April 2023

10.11 There needs to be clear recognition in the pORPS that stock grazing on tussock land has positive biodiversity impacts in the High Country and that this activity can continue within significant natural areas. This will require an amendment to ECO-P5.

11. Utilisation of non-regulatory methods

11.1 It is estimated that 25% of the remaining significant indigenous biodiversity remains on farmland.¹⁰ This is not by mistake, but rather by landowners taking steps to protect indigenous biodiversity through:

1. Pest Control
2. Weed Control
3. Planting programmes
4. Soil management
5. Grazing management (either low stock or exclusion of stock).¹¹

11.2 The approach to protect and manage indigenous biodiversity has occurred over multiple generations. The starting point for any discussion on what should be protected, needs to be asking the landowner where the significant indigenous biodiversity on their farm is. There should be recognition of past work of landowners to maintain and enhance biodiversity.

11.3 The utilisation of non-regulatory methods with regards to indigenous biodiversity will help achieve better outcomes, particularly given that the main threat to indigenous biodiversity are pests (plants and animals). The section 32 report sets the scene to the chapter:

The most well-known threats to ecosystems and indigenous biodiversity in Otago are pest plants and animals and human activities (see Wildlands, 2021b in Appendix 14). There are also threats posed by climate change (particularly a predicted decrease in precipitation), fires and natural hazard events such as erosion and flooding (Department of Conservation, 2016). Freshwater and dryland habitats and wetlands are particularly vulnerable to the impacts of changes in or intensification of land uses. Loss and modification of habitat has a profound effect on the distribution and abundance of indigenous fauna (see Wildlands, 2021b in Appendix 14). In Otago, as is the case nationally, there is growing concern about biodiversity loss. During consultation with the community, concern about pest animals and plants and their effects on Otago's natural environment and biodiversity was a common theme (paragraph 427).

11.4 The work that landowners have done with regards to managing pests (weed and animals) needs to be recognised and encouraged. Those who are managing pests should receive encouragement to continue doing so, instead of restrictions on their land use.

11.5 The changes that we are seeking are:

1. Greater recognition and involvement of landowners as stewards of biodiversity.
2. Recognition that the baseline on many farms includes active management of indigenous biodiversity
3. The allowance of adaptive and integrated management of biodiversity on farm

¹⁰ Above, n 3

¹¹ Brief of evidence of Emma Crutchley dated 23 November 2022

4. Adoption of M-8, non-regulatory methods.

12. Criteria for SNAs

12.1 The current notified version of the pORPS identifies the criteria for significance in APP2. The criteria are not consistent with the draft National Policy Statement on Indigenous Biodiversity. There are going to be further changes to the draft NPS-IB prior to it being formalised, but the intent is clear: there should be a consistent method to assess significance and that the threshold for significance needs to be set at the right level to achieve the desired objectives.

12.2 The pORPS goes further than the NPS-IB by including any species that Kai Tahu considers to be taoka on the same footing as the criteria in APP2. The species that Kai Tahu considers to be taoka are set out in schedule 97 of Ngai Tahu Claims Settlement Act, a copy is appended to these submissions. However, the pORPS also states that there may be other species that are taoka. Regardless, the species that may be taoka are significantly wider than what would be significant under APP2.

12.3 There is already significant uncertainty and concerns around biodiversity (SNA) assessments and the proposal to seek another additional biodiversity assessment regime was opposed in our submission as an entirely different and anomalous approach to significant biodiversity. A secondary process will only add complexity and confusion. It is more appropriate for taoka indigenous species and ecosystems to be identified as part of the SNA framework.

12.4 We submit that placing species that are taoka misinterprets section 6 of the RMA, which is required to:

- a. protect areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance; and
- b. recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, Wahi tapu, and other taonga (including indigenous species and ecosystems).

12.5 There is a positive obligation to protect significant indigenous vegetation and significant habitats of indigenous fauna. There is no obligation to protect species that are taoka, but the proposed drafting of the RPS infers that taoka species are 'significant' as of right. There is an obligation to recognise and provide for the relationship of Maori with taoka, including indigenous species, not protect all species that are taoka, regardless of their significance.

12.6 This is a significant difference as species that are taoka are prevalent on farmland, including bracken, ring fern, tauhinu, mingimingi, manuka, kanuka or are part of the farming 'infrastructure' (such as shelter belts). These species are often shrubs and need to be cleared to maintain productive pastures. The right to clear the shrubs are recognised as existing use rights and the local authorities must provide for existing activities on highly productive land.

12.7 We are concerned that the Otago Regional Council has failed to meet its obligations under s 32 of the RMA to identify and assess the benefit and costs of the environmental,

economic, social and cultural effects that are anticipated from the implementation of the provisions, particularly where there is no mandate under the RMA to do so. There is almost 1,000,000ha of tussock grassland in Otago, and the consequences of the ECO chapter may breach the requirement of s 5 of the RMA.

12.8 The obligation on ORC includes an assessment of opportunities for economic growth that are anticipated to be provided or reduced and opportunities for employment that are anticipated to be provided or reduced. The provisions as drafted will reduce productivity on farm, which has flow on negative impacts on economic growth and employment in Otago. There is also a requirement to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

13. Benefit and cost analysis

13.1 There has been a lack of analysis by the section 32 writer. The failures with the section 32 report include, but are not limited to:

1. The complete failure to identify the area of land that will be included as an SNA;
2. The complete failure to identify the area of land that would not be captured as an SNA but may be captured by indigenous biodiversity that is taoka;
3. The failure to identify and quantify the economic, social and cultural costs associated with designating the area of land or ecosystem as either SNA or taoka in 1 and/or 2, and in particular the lost production, reduced stock units, whether this will precipitate a change in land use that is undesirable, whether landowners will no longer be able to meet the costs associated with pest management, which will hasten biodiversity decline.
4. The failure to identify the baseline costs that rural landowners already bear in terms of pest management, and the impact of the pORPS on the ability to maintain that investment.
5. The failure to analyse whether the additional costs that will be imposed on landowners give effect to s 5 of the RMA concerning sustainable management of resources.

13.2 The large proportion of costs associated with the ECO chapter will fall on landowners. There are farms in Otago where greater than 25% of their entire farm may be captured as a SNA if the assessment of significance or the inclusion of taoka is included. There may be farms where more than 25% of the land area is captured as an SNA. We know of farms on the West Coast where 100% of the farm is designation a SNA. The economic cost for some landowners may be dire. This cost has not been identified by the s 32 author. It is also important to understand that the Otago region will be disproportionately impacted given that a high proportion of farms in Otago have previously maintained and enhanced indigenous biodiversity.

14 Risks of acting or not acting

14.1 The section 32 report does not accurately identify the risks associated with not taking action. Decline (in terms of spatial area of habitats) has slowed in the last three decades (DoC NZ Biodiversity strategy 2000-2020 (2019)). In recent decades, the decline in our indigenous biodiversity, is more seriously due to predators and the lack of pest and weed control (DoC NZ Biodiversity strategy 2000-2020 (2019)). This is a crucial factual point as it

goes to the heart of the rationale of the pORPS where continuing 'serious' decline creates an imperative for all effects to be avoided - but misses the real issue of pest and weed and management deficiency as the cause for decline.

14.2 Ultimately, the section 32 report writer has exaggerated the role landowners have played and may play in reducing indigenous biodiversity if action is not taken or what the author refers to as the 'gold rush' effect. The reality is, is that landowners are the ones that are controlling pests and maintaining indigenous biodiversity at present. There has been little decline in indigenous biodiversity over the last 15 years.¹²

14.3 An issue with indigenous biodiversity is that the risks of not doing anything are primarily related to proliferation of pests. In other words, the risks are that landowners will stop managing pests on their land. If the settings are not accurate in the pORPS, landowners will no longer be incentivised or able to afford to manage pests. Any settings that adversely impact primary production may have adverse environmental outcomes.

14.4 Accordingly, we seek the following amendments in the pORPS as set out below that:

- a) deletes reference to species that are taoka and provides recognition of landowners as stewards of indigenous biodiversity
- b) deletes the precautionary approach as this creates uncertainty.

15. Existing use rights require greater certainty and protection

15.1 Each territorial authority has an existing use rights regime. The clearance of indigenous vegetation under existing use rights has traditionally fallen squarely within the jurisdiction of district councils. However, the section 32 report writer states that:

“Method ECO–M1 contains the statement of responsibilities for managing indigenous biodiversity as required by section 62(1)(i)(iii) of the RMA 1991. This method establishes a fairly traditional division of responsibilities in accordance with regional council and territorial authority functions, however does provide the opportunity for ORC to take on some of the territorial authority responsibilities after reaching an agreement with the relevant territorial authority and any relevant transfer of functions. This is because there are ongoing discussions about ORC’s role in biodiversity management in the region and specifically about the degree of management of biodiversity that will occur through the new LWRP.”

15.2 This analysis occurred prior to the NPS-HPL being notified. Clause 3.11 of the NPS-HPL states that (1) Territorial authorities must include objectives, policies, and rules in their district plans to: (a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land; and (b) ensure that any loss of highly productive land from those activities is minimised. (2) In this clause, existing activity means an activity that, at the commencement date: (a) is a consented activity, designated activity, or an activity covered by a notice of requirement; or (b) has an existing use of land or activity protected or allowed by section 10 or section 20A of the Act.

15.3 Clause 3.11 of the NPS-HPL will be frustrated if there are not changes throughout the ECO chapter of the pORPS to provide greater balance with existing use rights on highly productive land.

¹² Section 32 report

15.4 The current drafting of the pORPS does not reflect clause 3.11 of the NPS-HPL. This should be rectified by:

1. Accurately identifying that District Councils have the primary responsibility for land use including clearance of indigenous biodiversity; and
2. Providing for existing use rights on highly productive land within the pORPS.

15.5 The Environment Court in *Southland District Council v Peter Donald Chartres and CP Trustees Limited* [2022] NZEnvC 215 upheld existing use rights to clear indigenous vegetation on Te Anau Downs Station. The Court held that 'use' at Te Anau Downs meant clearance, modification, or destruction of indigenous vegetation, any, or all of which may be undertaken by several different methods.

15.6 The Judge expressly said that there is no obligation on a landowner to allow indigenous regrowth to grow into indigenous forest.

15.7 The Court upheld the Chartres' right to clear indigenous vegetation regrowth. Existing 'use' can be rotational or cyclical use over the entirety of one's farm. The fact that clearance on a particular area has not occurred for over 20 years does not mean that existing use rights do not exist. The clearance must be on the same scale, intensity and character.

16. Integrated management

16.1 Indigenous biodiversity and ecosystems is one of a plethora of issues affecting farmers. There needs to be recognition of the complexity and diversity of issues affecting farmers, and provision in the RPS to provide for adaptive management.

16.2 A common example on farm will be the protection and maintenance of indigenous biodiversity on farm through managed stock grazing. This can only be achieved if the remaining farm is productive. To remain productive, clearance of indigenous vegetation will be required.

16.3 In the coming years, landowners will be provided a choice with regards to land use to plant exotic trees for carbon sequestration purposes or provide for indigenous vegetation, with the wider benefits that it provides. Again, the ability to provide for indigenous vegetation will be condition on production targets being met on remaining areas on farm.

16.4 There is a consensus amongst experts that indigenous biodiversity, freshwater and carbon all need to be managed in an integrated manner. This obligates the need to step away from 'limits' and 'bottom lines' in the RPS and towards a principled based approach.

Conclusion

17. For the reasons outlined above, we consider the following changes are required to meet s 6(c) of the RMA, address the significant resource management issues for the region and to provide for integrated and adaptive management.

Proposed changes to the current notified version

Provisions	Relief sought	Reasons for relief sought
ECO-02	Delete the objective	The reference to enhancing is misplaced. The requirement under the RMA is to maintain indigenous biodiversity and protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.
ECO-03	<p>Amend ECO-03 as follows (or similar):</p> <p><i>Mana whenua are recognised as kaitiaki of Otago’s indigenous biodiversity, and Otago’s communities are recognised as stewards, who are responsible for:</i></p> <p><i>(1) te hauora o te koiora (the health of indigenous biodiversity), te hauora o te taoka (the health of species and ecosystems that are taoka), and te hauora o te taiao (the health of the wider environment), while</i></p> <p><i>(2) providing for te hauora o te takata (the health of the people)</i></p> <p><u><i>To recognise the role of landowners, communities and mana whenua as stewards and kaitiaki of indigenous biodiversity, in contributing towards:</i></u></p> <p><u><i>(1) te hauora o te koiora (the health of indigenous biodiversity), te hauora o te taoka (the health of species and ecosystems that are taoka),</i></u></p>	Stewardship is a mandatory consideration under s 7(aa) of the Resource Management Act 1991. The objective in the pORPS should reflect the importance of the role that landowners and communities have particularly in Otago where the greatest threat to biodiversity is pests, and pests cannot be managed without landowners and communities.

Provisions	Relief sought	Reasons for relief sought
	<p><u>and te hauora o te taiao (the health of the wider environment), alongside</u> <u>(2) provision for te hauora o te takata (the health of the people)</u></p>	
ECO-O4	ECO – O4 – Social, economic and cultural wellbeing Protect and manage indigenous biodiversity in such a way that provides for the social, economic and cultural wellbeing of people and communities now and in the future.	We support the evidence provided by Clare Hunter on behalf of Oceana Gold Limited that recognises the importance of sustainable management of indigenous biodiversity in Otago. This recommendation is further strengthened by the joint witness statement on resource use in Otago.
ECO-P1	<p>Delete ECO-P1(3) and amend to include landowners and communities as stewards of Otago’s indigenous biodiversity</p> <p>Recognise the role of <u>Enable</u>⁹⁵⁷ Kāi Tahu to <u>exercise their role</u>⁹⁵⁸ as kaitiaki and <u>landowners and communities as stewards</u> of Otago’s indigenous <i>biodiversity</i> by:</p> <p>(1) involving Kāi Tahu, <u>landowners, and communities</u> in the management of indigenous <i>biodiversity</i>, and</p> <p>(1A) <u>working with Kāi Tahu, landowners, and communities in</u>⁹⁵⁹ the identification of indigenous species and ecosystems that are significant <i>whānau</i>,</p> <p>(2) incorporating the use of mātauraka Māori in the management and monitoring of indigenous <i>biodiversity</i>, and</p>	ECO-P1(3) is provided for elsewhere within the RPS The SRMR issues relate to active management of indigenous biodiversity which obligates the involvement of landowners and communities.

Provisions	Relief sought	Reasons for relief sought
	<p>(3) — providing for facilitating⁹⁶⁰ access to and use of indigenous biodiversity by Kāi Tahu, including <i>mahika kai</i>⁹⁶¹ according to tikaka.</p>	
ECO-P2	Delete P2(2)	<p>M3 is the method below that relates to mapping species that are taoka. M3 does not identify a specific action, programme or requirement, and appears to provide mana whenua with full discretion. This fails to meet the standard required in a RPS. Either p(2) should be deleted or M(3) amended to provide further clarity. Otherwise, there is a risk that landowners will be managed indefinitely by the precautionary approach which cannot be justified in terms of s 5 of the RMA or the dNPS-IB.</p>
ECO-P3	Remove reference to the precautionary principle	<p>Experience shows that the precautionary principle becomes the default position in all cases for Councils. While it can be difficult to predict with absolute certainty an indirect effect, after 30 years of RMA-based assessments, most effects are at least recognised and understood to a basic level, and ecologists now have robust guidance to support their assessments and mitigation design. If an effect is unknown, uncertain, or little understood, any assessment of the magnitude of effects will reflect the probability and include a “back-up plan” under the management regime of resource consent conditions. While the precautionary approach may be necessary in some circumstances, we question whether it should be the default when the pORPS is already highly precautionary</p>
ECO-P4	<p>Delete in full or in the alternative:</p> <p>Recognise that indigenous biodiversity provides for the social, economic and cultural wellbeing of all in</p>	<p>Section 5 of the RMA does not differentiate between the social, economic and cultural wellbeing of Māori verse non- Māori.</p> <p>We support Clare Hunter’s inclusion of ECO-O4 but ECO-P4</p>

Provisions	Relief sought	Reasons for relief sought
	<p>Otago, not only in relation to Māori land.</p> <p>Provide for existing use rights pursuant to section 10 of the RMA</p> <p>Identify other resource users, not only mineral extraction resource use</p>	<p>would likewise need to be amended.</p> <p>There needs to be recognition of primary production as a resource user in Otago, to allow integrated decisions to be made concerning indigenous biodiversity.</p>
ECO-P5	<p>Amend ECO-P5 to remove the reference to ‘lawfully established’ and species that are taoka</p> <p>Amend ECO-P5 as follows:</p> <p><i>Provide for existing activities within significant natural areas and that may adversely affect indigenous species and ecosystems that are taoka, if:</i></p> <p><i>(1) the continuation of an existing activity will not lead to the loss (including through cumulative loss) of extent or degradation of the ecological integrity of any significant natural area or indigenous species or ecosystems that are taoka, and</i></p> <p><i>(2) the adverse effects of an existing activity are no greater in character, spatial extent, intensity or scale than they were before <u>the applicable plan rule became this RPS became operative.</u></i></p>	<p>The RMA does not operate on the basis that an activity must be permitted for it to be lawful. The reference to lawfully established is misplaced as it suggests activities must have a legal foundation to be lawful, but lawful activities are much wider than those identified as permitted activities.</p> <p>Clause 3.11 of the NPS-HPL states that (1) Territorial authorities must include objectives, policies, and rules in their district plans to: (a) enable the maintenance, operation, or upgrade of any existing activities on highly productive land; and (b) ensure that any loss of highly productive land from those activities is minimised. (2) In this clause, existing activity means an activity that, at the commencement date: (a) is a consented activity, designated activity, or an activity covered by a notice of requirement; or (b) has an existing use of land or activity protected or allowed by section 10 or section 20A of the Act.</p> <p>This also directly conflicts with the precedent set in the Environment Court in <i>Southland District Council v Peter Donald Chartres and CP Trustees Limited</i> [2022] NZEnvC 215. The reference to spatial extent is misplaced, as the relevant test is set out in section 10 of the Act, and only relates to character, intensity and scale.</p>

Provisions	Relief sought	Reasons for relief sought
ECO-P6	Delete ECO P6 in its entirety.	This policy as written conflicts with the effects management hierarchy within the NPS-FM and may also conflict with any similar measures in the draft NPSIB. Federated Farmers requests the removal of the policy until clarity between the existing effects management hierarchy in the NPS-FM (which applies to natural wetlands), and the proposed new policy statement are clear. This policy has a direct impact on consents, especially significant consents, right now, and would inadvertently put significant industry at risk of uncertainty until the nationwide framework for handling these matters is known.
ECO-P10	Change to 'integrated approach'	This aligns with higher order documents and will provide for better environmental outcomes
ECO-M3	Delete ECO-M3	We oppose the approach within ECO-M3 requiring an entirely different and anomalous approach to significant biodiversity. This is inconsistent with higher order documents and in particular that within the draft NPSIB 2019. There is already significant uncertainty and concerns around biodiversity (SNA) assessments and Council's proposal to seek another additional biodiversity assessment regime is opposed. It is more appropriate for taoka indigenous species and ecosystems to be identified as part of the SNA framework.
ECO-M4 and ECO-M5	Remove the reference to managing clearance of indigenous vegetation by the regional council Add in the reference to allowing existing activities within SNAs and where there it is of the same scale, intensity and character	The management of indigenous vegetation clearance falls within a territorial council's responsibilities. These changes will align with the Environment Court's guidance as to what rights landowners have to clear indigenous vegetation.
ECO-M8	Adopt	We encourage the use of non-regulatory methods to achieve ECO-

Provisions	Relief sought	Reasons for relief sought
ECO-E1- Explanation	<p>Amend ECO-E1 as follows:</p> <p><i>ECO-E1 – Explanation</i></p> <p><i>The first policy in this chapter outlines how the kaitiaki <u>and stewardship</u> role of Kāi Tahu, <u>landowners and communities</u> will be recognised in Otago. The policies which follow then set out a management regime for identifying significant natural areas and indigenous species and ecosystems that are taoka and protecting them by avoiding particular adverse effects on them.</i></p>	O1. There needs to be greater recognition of the importance of stewardship and the role of landowners and communities, particularly in Otago where much of the biodiversity is on privately owned land.
ECO-AER3	Kāi Tahu, <u>landowners and communities</u> are involved in the management of indigenous biodiversity and able to effectively exercise their kaitiakitaka.	There needs to be greater recognition of the importance of the role of landowners and communities, particularly in Otago where much of the biodiversity is on privately owned land.