

NES-PF Workshops 2018 - Scenario 1 – NES-PF Overview

Overview

You are a forestry consultant asked by the landowner, Kotahi farms, for independent advice. The date is 12 June 2018 so the NES-PF is in force. Kotahi wants to log and replant 15 ha. You've got one of your staff to run MPI's ESC and fish spawning tools, so you have on hand the relevant ESC and fish spawning maps (see page 3 and 4). For this scenario the land is in the yellow zone. Your staff also got a competent person to complete the wilding risk calculator and have confirmed there will be no problem to comply with the permitted activity conditions on wilding risk.

You will need to review the information and answer Kotahi's questions.

Background

From an initial chat with Kotahi you have identified the following points:

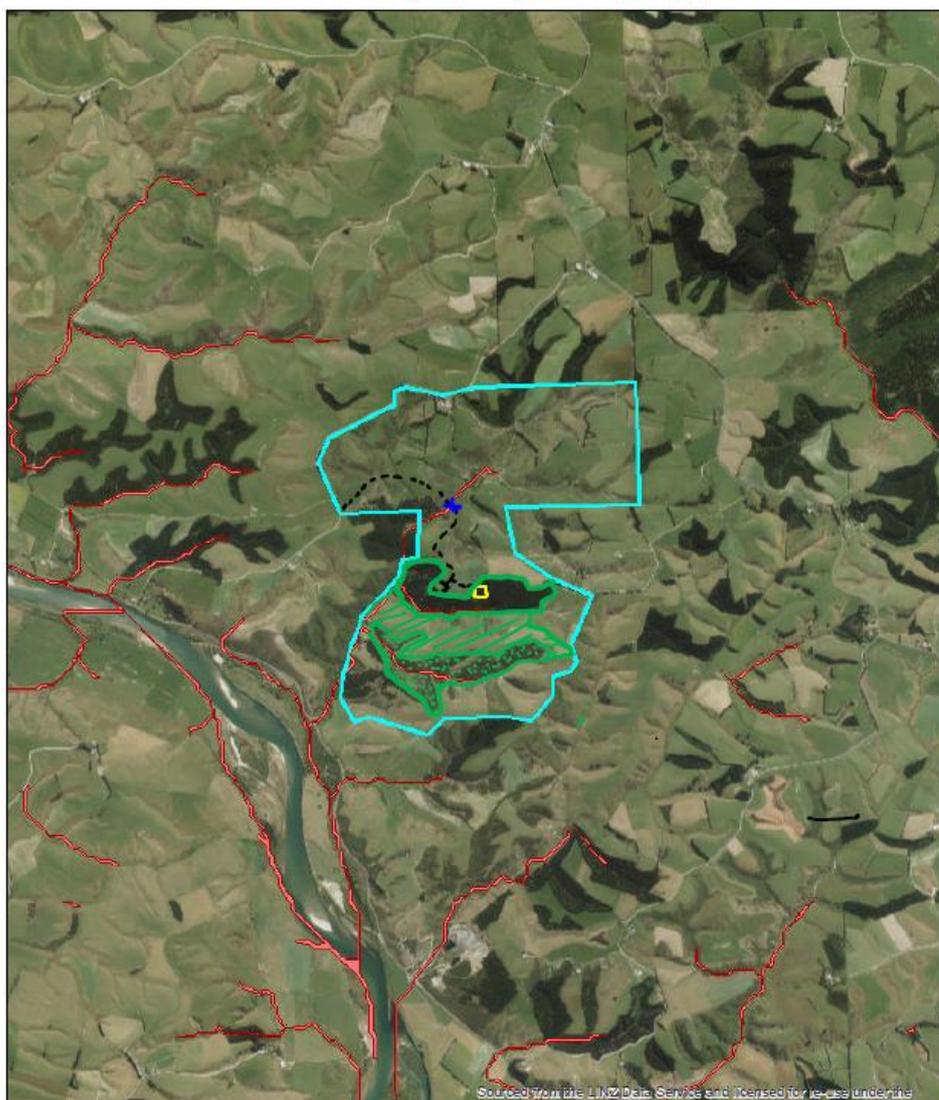
1. Kotahi farms want to harvest their 15 ha radiata block.
2. They want to bring in a harvesting contractor to do the work and want clarity around who is responsible if the contractor does a job that does not comply with NES-PF regulations. They think it rests solely with the contractor.
3. *Logging 'R' Us* are the leading contender to harvest. Kotahi has concerns around contracting this operator especially since the NES-PF has just become operational and they are not sure that the harvesting company knows the legislation as well as they say they do. They are keen on a council second opinion on whether this company is likely to comply with the regulations and do a good job.
4. The contractor says it is their responsibility to contact the council and do any necessary paperwork as they are doing the work, but the owners think it should be them.
5. Kotahi farms is insistent that the work is done before the end of the June fiscal year for tax reasons and the contractor is saying that doesn't leave enough time to do the paperwork and give the council notice of the forestry activities.
6. Kotahi have been told by *Logging 'R' Us* that only operations within the forest boundary, and not the farm boundary, are covered by the NES-PF and that plan rules apply elsewhere. This would mean that roads and stream crossing would be under the regional plan rules (which in this scenario are more lenient). There are no forestry tracks to the forest area.
7. As part of the harvesting, earthworks will be required to construct the forest access roads and to construct two landings.
8. A neighbour lives close to the forest, just off the map to the SW of the block.
9. A couple of Kotahi neighbours are watching to see if *Logging 'R' Us* will do a good job and are keen to get their small woodlots harvested soon after and while the harvesting gear is still around. Kotahi has been talking with them and they have come up with a cost sharing arrangement if it the harvesting works out. The contractor only vaguely knows about this.
10. Kotahi are currently planting about 15 ha of radiata pine on the less productive ridge to the south of the main forestry block. The new planting will be bounded by a QEII reserve which is also a Significant Natural Area (SNA). Does the existing regional and district plan planting (afforestation) or does the NES-PF apply?

Questions

1. Who is liable if the harvesting job does not comply with the NES-PF? Is it solely the contractor?
2. Can the council provide an opinion on how reliable the operator *Logging 'R' Us* is? If not, how could the council still provide information on their past environmental performance for similar harvesting jobs in the area?
3. Who is responsible for the contract; the contractor, the owner, or both?
4. Is there enough time to provide the relevant council with notice of the harvesting before the end of June fiscal cut off? If not, what are the requirements around giving notice? (Ignore the time to prepare a management plan etc.)
5. At first glance, is the harvesting likely to require a consent:
 - a. What are the implications of the ESC layer?
 - b. What about the fish spawning?
6. Does the forestry infrastructure (forestry roads and river crossing) located outside the forest boundary come under the NES-PF or the current regional or district plan?
 - a. If yes, why?
 - b. Are there any situations where the answer would be different?
7. At first glance:
 - a. Are the earthworks likely to require a consent (assume that a management plan will be prepared based on good management practices)? What about the road and skids?
 - b. Is the river crossing likely to require consent?
8. Does the NES-PF easily allow neighbours to tack on to Kotahi's harvesting job?
 - a. If no, what are the requirements?
 - b. Are there practical ways this could be worked around?
9. Are the noise provisions likely to be a problem given there is a neighbour close to the boundary?
10. Is afforestation likely to be permitted?

The information in each scenario has been developed solely for the purpose of the NES-PF workshops. To provide realistic scenarios for participants to work with, every effort has been made to ensure this information is accurate. However, Te Uru Rākau does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present in the contents of these scenarios.

NES-PF Fish Spawning Habitats Report



08/11/2017

Legend

NZFFD Fish Spawning Habitats

Group A

Modelled Probability of over 50% - Group A

COVENANT AREA
PROPOSED NEW PLANTINGS
HARVESTED AREA

PROPOSED ROAD
PROPOSED LANDING
RIVER CROSSING

0 400 800 1,600 Metres

Ministry for Primary Industries
Manatū Ahu Matua

08/11/17

NES-PF Fish Spawning Habitats Report

Common Name	Species Name	Sensitivity	Database Source	NZREACH	Spawn From Date	Spawn To Date	Notes
Brown Trout	Salmo trutta	Group A	Modelled	14068989	15 May	15 Sep	
Brown Trout	Salmo trutta	Group A	Modelled	14069068	15 May	15 Sep	
Brown Trout	Salmo trutta	Group A	Modelled	14069183	15 May	15 Sep	
Brown Trout	Salmo trutta	Group A	Modelled	14069138	15 May	15 Sep	
Brown Trout	Salmo trutta	Group A	Modelled	14069213	15 May	15 Sep	
Brown Trout	Salmo trutta	Group A	Modelled	14069205	15 May	15 Sep	

NES-PF Erosion Susceptibility Classification Report



08/11/2017

Legend

Erosion Susceptibility

Low

Moderate

08/11/17

NES-PF Erosion Susceptibility Classification Report

ESC July 2017	Erosion Terrain Code	Erosion Terrain Description	Hectares
Moderate	5.2.1	downlands developed on deep greater than 1m loess	21.2681
Low	5.2.1	downlands developed on deep greater than 1m loess	53.3970
Moderate	6.2.1	Hill country developed on deep greater than 1m loess	227.0984
Low	5.2.1	downlands developed on deep greater than 1m loess	89.4752

Answers for Scenario 1: NES-PF Overview

These answers are to assist in discussion, but aren't designed to be in-depth answers.

1. Who is liable?
The company doing and managing the operation is responsible in the first instance. In recent Environment Court judgements where there has been poor performance, it is generally the operator or their company that has been fined. However, as with health and safety, the “principal” or landowner can be responsible too, particularly in cases where they have cut corners.
2. It is not the role of council to provide advice on their preferred contractor. They can provide information on a contractor’s past environmental performance if it has gone through a formal council process (abatement or enforcement action has been taken). A better option would be to seek references from other people who have used that harvesting operator.
3. There will be a contract between the company and the landowner. This contract should set out the obligations and liability of each party. It is highly likely that the company managing the operation, in this case the logging company, is responsible for preparing the paperwork for the contractor to sign. There should be performance requirements within the contract which includes submitting the right documentation to the relevant council on time.
4. There is not enough time to do the paperwork. The scenario date is 12 June and there is a minimum 20-day notice period for harvesting. Notice must be provided to both regional and district (or unitary) councils. The notice must describe the location of harvesting and the start and end dates. This is covered in Regulation 64, section 5.6 of the [User Guide](#) and Section 5.2 of the [consenting and compliance guide](#).
5. Starting harvesting without giving at least 20 days’ notice would make harvesting a controlled activity – and processing a consent is likely to take at least 20 working days. The ESC layer (yellow) will not trigger a consent, but the harvesting activity could still trigger the need to get a consent if there is a risk that *Logging R Us* can’t meet all the permitted activity regulations. To operate as a permitted activity, all the relevant permitted activity regulations must be met. Look in the following three places:
 - those for the harvesting activity (regulations 65-69),
 - ancillary activities – regulations on slash traps (83-92) and indigenous vegetation (93) and
 - general provisions (97-105).
 Aspects of the operation you’d closely look at as to whether you could meet the permitted activity regulations are:
 - a. The stream in the harvest area, which is a fish spawning habitat (Regulation 97 covers effects on fish).
 - b. The landings are only a short distance from the stream. The trees are planted right up to the banks of the stream.
 To meet the permitted activity regulations 65-69 and 97(4) you will need a good contractor, a good harvest plan and good management practices.
6. Provided the purpose of the forestry infrastructure was specifically related to plantation forestry (i.e. to access the forestry block) and the forestry track/road or river crossing meet the definitions in the NES-PF, then the NES-PF would apply. This is regardless of whether the forestry infrastructure is located within or outside the boundary of the plantation forestry.

However, if the access road or river crossing is being constructed for other purposes, the NES-PF would not apply.

7. There are two parts to the question
 - a. Starting earthworks without giving at least 20 days' notice would make harvesting a controlled activity. If this condition was met and assuming a good management plan is prepared and followed, it is unlikely that the earthworks will require consent because:
 - i. The ESC is green and yellow – refer permitted activity condition 24(2).
 - ii. Earthworks are unlikely to generate sediment to a level where it will exceed the in-water quality standards in Regulation 26.
 - iii. There are no operational, setback, or fill and spoil related challenges - see regulations 28 - 30.
 - iv. Likewise, it is unlikely there will be sediment and stabilisation related issues – see regulations 31 - 33.
 - b. There isn't enough information to make a call on the river crossing. However, they were planning to construct it during a fish spawning period. Disturbance of the bed during this period will need a consent, unless a suitably competent person having followed the requirements of regulation 97(4)(b), has found that no fish were present. I.e. the easiest option is to avoid the spawning period.
8. A major driver in the NES-PF is to plan for forestry activities in advance. Part of that is also giving notice to council about what you are doing. Tacking on jobs will create problems unless you have built that notice period in. I.e. the NES-PF provisions lead time can make it difficult for woodlot purchasers. There is no shortcut to completing management plans and giving notice. The best way to address this issue is to front load it. E.g. by letting the neighbours know that you will be logging a block next door or nearby in the next few months, and if they want to log at a similar time it is essential that they get back to you by x date (a date that gives you enough time to meet the timeframes).
9. The neighbours are too far away to trigger the noise provisions (Regulations 98 and 99 in the General Provisions for noise and vibration).
10. Yes, as it is ESC yellow/green and the wilding calculator doesn't trigger the wilding risk score of >12. It still needs to comply with the permitted activity regulations for setbacks to SNA, waterbodies, and properties (Regulation 78).