

Cleaning Up

Fixing compliance, monitoring and enforcement in the dairy sector

Including an audit of dairy effluent serious non-compliance
in 2016-17, and a report card on regional council
compliance, monitoring and enforcement performance

Forest & Bird, August 2018



Forest & Bird

TE REO O TE TAIAO | Giving Nature a Voice

CONTENTS

01 Introduction

04 Methodology

05 Executive Summary

07 Monitoring

09 Advance warning
of inspections

10 Serious
non-compliance

12 Enforcement

15 History of serious
non-compliance

16 National
Monitoring System

16 Accountability

17 Compliance
staff workloads

18 Summary

19 Conclusion

20 Recommendations

AUTHORS:

Annabeth Cohen & Kevin Hackwell

CONTACT:

freshwater@forestandbird.org.nz

*Thanks to Forest & Bird staff and
volunteers, and regional council
and Ministry for the Environment
staff who helped us compile the
data for this report.*

© Forest & Bird, August 2018

26 Council Report Cards

28 Northland
Regional Council

29 Auckland Council

30 Waikato
Regional Council

32 Bay of Plenty
Regional Council

33 Gisborne
District Council

33 Hawke's Bay
Regional Council

34 Taranaki
Regional Council

35 Horizons Regional Council
(Manawatū-Whanganui)

36 Greater Wellington
Regional Council

37 Marlborough
District Council

38 Nelson City Council

38 Tasman District Council

39 West Coast
Regional Council

40 Environment Canterbury

41 Otago Regional Council

42 Environment Southland

43 Appendix 1
Missing information

44 Glossary

45 References

An aerial photograph showing a river winding through a vibrant green, hilly landscape. The river is dark and contrasts with the bright green grass and vegetation. The terrain is uneven with small gullies and patches of different shades of green. The text is overlaid on the lower half of the image.

In the last 20 years, concern about the impact of dairy intensification on our fresh water has increased, with a growing public demand for the industry and government to take actions to alleviate the pollution pressures on rivers, lakes and wetlands across the country.

INTRODUCTION

*In 2017, the Ministry for the Environment wrote, '[t]he main pressures on the quality of our fresh water result from land-based activities.'*¹
*That same year, the Prime Minister's Chief Science Advisor wrote that challenges were arising, 'particularly through dairy expansion' and brought, 'major and adverse impacts on the quality of our fresh water.'*²

Dairy cow numbers have increased by 69 percent since the 1990s. During this time dairy cow numbers in Southland and Otago have increased five-fold and in Canterbury by four-fold.^{3,4} Currently, for every 10 New Zealanders there are 13 dairy cows,⁵ and each cow has the potential to produce nine times the amount by weight of effluent as the average person.⁶

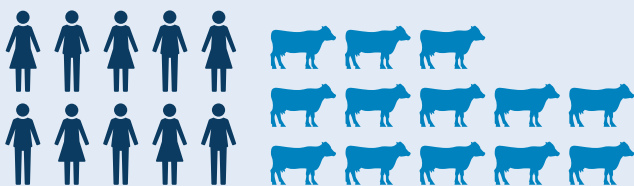
Dairy effluent management is a high risk activity which carries significant consequences for human and environmental health if not handled properly. The most easily managed pollution source is the effluent from dairy shed operations. The average dairy cow produces 70 litres of faeces and urine per day. Ten percent of this is generated during milking, and depending on the efficiency of the wash down system, the total effluent generated in the cow shed is between 35-100 litres per cow per day.⁷

Regional councils have responsibility for managing water quality. Councils write plans that contain rules for managing activities that affect land and water. They are also responsible for issuing resource consents for activities such as the disposal of dairy shed effluent, though not all regions require consent for dairy effluent discharge.

Councils monitor farmers for compliance with plan rules and individual resource consent conditions. In the event that a farmer does not comply with their legal requirements the council has a number of enforcement actions available under the Resource Management Act (RMA), including verbal or written direction, formal warning letter, infringement notice, abatement notice, enforcement order, and prosecution.

Since most regional councils introduced the requirement that effluent must be collected into settling/treatment ponds and then discharged by spray irrigation to land, the dairy industry and individual farmers have invested significant effort and resources into improving dairy shed effluent management.

In the last 15 years, the dairy industry and government have initiated two voluntary Accords aimed at reducing pollution entering waterways. The Accords set goals such as fencing waterways and riparian planting, but also set a target that dairy farms should be 100 percent compliant with regional rules and resource consent conditions for effluent management.



*For every 10 New Zealanders
there are 13 dairy cows*

While there have been many meaningful improvements in reducing dairy effluent pollution entering waterways, there is still significant work to be done. To date, most councils have been unable to achieve 100 percent legal compliance for dairy effluent disposal. As part of the annual progress reporting against the Accords' goals, the regional councils committed to report on dairy effluent management compliance, monitoring and enforcement in their regions. This is the only national reporting that exists on dairy effluent compliance. Given the size of the industry and the impact dairy effluent has on the environment, this level of accountability is insufficient.

Despite being the only Accord target that is legally enforceable, achieving full compliance has proven to be very difficult. In some regions poor performance by a significant minority of dairy farmers has been a long running problem.

In 2008, a report by Forest & Bird and Fish & Game concluded that Accords, while necessary, are not sufficient on their own. There is a real need for farmers to comply with the rules, but also for regional councils to enforce standards consistently across the country.⁸

In this report, we examine how well New Zealand's regional councils are carrying out their compliance, monitoring and enforcement (CME) responsibilities in respect of the country's single most important, and arguably its most environmentally damaging industry – dairy. We examine how well dairy effluent management rules and conditions are monitored and enforced by regional councils.⁹ We conclude that high levels of inconsistency within and between regions not only fails to protect the environment, it also fails to provide the public and the government with the necessary level of transparency and accountability.

1 Ministry for the Environment, *Our fresh water 2017*, www.mfe.govt.nz, accessed July 2018).

2 Office of the Prime Minister's Chief Science Adviser, *New Zealand's fresh waters: Values, state, trends and human impacts*, www.pmcasa.org.nz, April 2017.

3 Ministry for the Environment, *Our fresh water 2017*, www.mfe.govt.nz, (accessed July 2018).

4 During this period nitrate increased by 600 percent but the land for dairying only increase 60 percent. See Rowarth JS 2013. *Dairy cows – economic production and environmental protection*, www.landcareresearch.co.nz, Manaaki Whenua Press, Lincoln, New Zealand.

5 Total Dairy Cattle numbers: 6,474,500 (Jan 2018); NZ Population 4,871,300 (Mar 2018); <https://www.stats.govt.nz>, (accessed July 2018).

6 Fleming, R. and Ford, M., 2001. *Human versus Animals – Comparison of Waste Properties*, www.ridgetownc.com, Ridgetown College, University of Guelph, Canada.

7 Tasman District Council. *Frequently asked questions effluent storage volumes*, www.tasman.govt.nz, (accessed June 2018).

8 Deans, N. and Hackwell, H. Forest & Bird and Fish & Game, 2008, *Dairying and declining water quality – Why has the Dairying and Clean Streams Accord not delivered cleaner streams?*

9 The report does not address the difference in regional plan rules from region to region, or the differences in consent conditions from farm to farm or from region to region.

METHODOLOGY

Between November 2017 and June 2018, Forest & Bird used the Local Government Official Information and Meetings Act 1987 (LGOIMA) to request data and information from all regional councils and unitary authorities, except the Chatham Islands.

We asked councils to provide the results of their annual dairy farm monitoring, compliance and enforcement programmes for the 2016-17 monitoring year. The request included questions about instances of serious non-compliance (SNC) in that year, and what enforcement action the councils took in response.¹⁰

All councils, except for Waikato Regional Council, Environment Southland and Environment Canterbury were able to provide all of the information requested. Many councils provided the information in the format requested, however, other councils provided raw data that required processing by Forest & Bird staff, involving numerous communications and follow-up questions. The data was collated into a database and was used to derive the statistics presented in this report.¹¹

Forest & Bird also used the Official Information Act 1982 to request information from the Ministry for the Environment (MfE) on their National Monitoring System, which reports annually on all councils' compliance, monitoring and enforcement performance.¹² The 2016-17 report was not formally complete and therefore MfE asked us to include a disclaimer that the information provided had yet to be validated.¹³

Please see *Appendix 1: Missing Information* to find out more about the information that was not provided by some councils.



Councils provided the results of their annual dairy farm monitoring, compliance and enforcement programmes, including instances of serious non-compliance.

¹⁰ Serious non-compliance is defined by the Ministry for the Environment as non-compliance leading to 'significant environmental consequences and/or a high risk of adverse environmental effects.'

¹¹ The database and council correspondence is available here: www.bit.ly/DairyCME.

¹² The National Monitoring System's data released under Official Information Act 1982 can be found here: www.bit.ly/DairyCME.

¹³ Ministry for the Environment's disclaimer regarding information from the National Monitoring System (NMS) obtained by Forest & Bird under the OIA: 'This data was released in response to an Official Information Act 1982 request. It is not the final version of the NMS data for the 2016/17 financial year and may contain inaccuracies. This data should not be relied on as an alternative to the official NMS data. The Ministry for the Environment is expected to publish the official NMS data for the 2016/17 year in late 2018.'

EXECUTIVE SUMMARY

This report serves as an audit of all regional council and unitary authority performance on dairy effluent compliance, monitoring and enforcement for 2016-17.

Our analysis shows there is still a significant lack of consistency in how different regional councils monitor for compliance and take enforcement action against those dairy farms that are seriously non-compliant. Serious non-compliance means that an environmentally damaging activity has either occurred or was very likely to occur due to poor practice.

Our findings can be summarised as follows:



Not all councils monitor all of the dairy farms in their area

Three-quarters of New Zealand's dairy farms are in the eight regions that do not monitor 100 percent of their farms. Last year, around 5,000 farms were not monitored for dairy effluent compliance. This almost certainly means that many instances of serious non-compliance are likely to have gone undetected. Forest & Bird estimates there could have been as many as 349 additional instances of serious non-compliance that went undetected due to lack of monitoring.

The data also shows that at least nine farms found to be seriously non-compliant in 2016-17 had not been monitored for 10 years or more. Poor monitoring means some councils are not meeting their statutory requirement to manage adverse effects on water quality.



Some councils have very poor information management

Some councils, including Auckland, Southland and Waikato, had to manually search all dairy farm records to find which farms were seriously non-compliant. In addition, Waikato Regional Council and Environment Southland could not tell us how many dairy farms they had in their region in 2016-17.



Councils are inconsistent in their enforcement response

There was often variability within a council as well as between councils in the levels of enforcement for the same types of serious non-compliance. In Taranaki, four farms had the same serious non-compliance but received three different types of enforcement actions. Further, in only 55 percent of cases of serious non-compliance did the councils conduct a follow-up inspection.¹⁴

In one out of every five cases of serious non-compliance (21 percent), no enforcement action was taken at all. In 2016-17 there were 29 reported cases where farms were found to be seriously non-compliant for the third consecutive year. Only one of these cases resulted in a prosecution and incredibly, 10 resulted in no follow-up action by the council (eight in Northland and two in Marlborough).

¹⁴ Forest & Bird did not receive information on follow-up visits from West Coast, Canterbury or Southland. This statistic assumes these councils did not perform follow-up visits to seriously non-compliant dairy farms in the same year as the violation.



Three-quarters of New Zealand's farms are in the eight regions that do not monitor 100 percent of their farms.



Workload of compliance staff is highly variable

There were also considerable differences in the overall workloads of council compliance, monitoring and enforcement staff. One council had as many as 1,600 RMA consents (across all sectors) per compliance officer to monitor in a year, whereas another had as few as 50. However, these differences in overall staff workload did not explain the differences in the ability of the councils to annually monitor all or only some of their dairy farms.



Collection and reporting of national compliance, monitoring and enforcement data is inadequate

Finally, the Ministry for the Environment's collection of regional council compliance, monitoring and enforcement performance for all RMA consent conditions in the National Monitoring System does not contain enough detailed data to identify the inconsistencies in dairy sector performance reported here.

For example, Waikato Regional Council had a full compliance rate of 82 percent across all RMA consents but only had a full compliance rate of 26 percent for dairy effluent consents. The only national public reporting that exists for compliance, monitoring and enforcement of the dairy industry is facilitated by the industry through the Sustainable Dairy Water Accord. The Accord's annual report provides brief statistics on compliance, monitoring and enforcement, however it lacks any in-depth analysis or critique of council performance, or of the underlying reasons for the considerable regional variability in dairy farmer performance when it comes to effluent management.

Regional councils and MfE play essential roles in setting out consistent expectations, processes and procedures for how serious non-compliance is detected and dealt with. In order to achieve a higher level of consistency there is a need for stronger oversight by a central agency like MfE. The goal of any changes must be to significantly reduce the level of serious non-compliance in relation to dairy effluent management.

MONITORING

Regional councils are required under the RMA to protect and manage freshwater quality in their region. To do this, councils set rules in their plans, and set conditions in resource consents, which farmers and other land users are required to follow.

Not all councils monitor all of the dairy farms in their region. If a farm is monitored, it is most likely to receive just one visit during the milking season. This represents a single monitoring inspection and is therefore a 'snapshot' of farm practice over the remainder of the year.

While Environment Southland and Waikato Regional Council were not able to identify exactly how many dairy farms they had in their regions during the 2016-17 year,^{15 16} Forest & Bird was able to estimate there were around 12,500 dairy farms in New Zealand. Of these, close to 7,500 farms were monitored in 2016-17 (60 percent), compared to around 5,000 (40 percent) that were not.

Of the nearly 5,000 dairy farms that were not monitored, the majority of these were in the Waikato (approximately 3,350).

Our research revealed that some farms found to be poorly performing the 2016-17 year had not been monitored for many years prior. For example, Waikato Regional Council had nine seriously non-compliant dairy farms that hadn't been monitored for 10 or more years.

There are eight councils that monitor 100 percent of the dairy farms in their region annually. The other eight councils did not monitor all farms; these councils are Auckland, Waikato, Bay of Plenty, Horizons, Nelson, Canterbury, West Coast and Southland. Together these regions accounted for nearly three-quarters of the country's dairy farms.¹⁷ Had these regions monitored 100 percent of the farms, there would have likely been many more detected cases of serious non-compliance.

For those councils that did not monitor all their dairy farms, the level of monitoring ranged from 23 percent for Auckland and 26 percent for Waikato, to 60 percent for Canterbury and 77 percent for West Coast.¹⁸

Waikato is the region with the most dairy farms (around 4,520), but had one of the lowest monitoring rates. The vast majority of Waikato dairy farms (approximately 3,350) went unmonitored and this accounted for nearly two-thirds of the national number of unmonitored dairy farms.

¹⁵ Environment Southland could not tell us how many permitted dairy farms operate in the region.

¹⁶ Waikato Regional Council's database has limitations – staff were not able to determine the number of dairy farms in a previous year.

¹⁷ Nelson City Council now has a policy in place to monitor all dairy farms for effluent compliance every year.

¹⁸ Nelson City Council did visit all three dairy farms in the year; however the visits were not related to effluent compliance. They have since established a policy of inspecting all farms for compliance with regards to dairy effluent.



Environment Southland and Waikato Regional Council couldn't identify exactly how many dairy farms they had in their regions in 2016-17.

REGION	DAIRY FARMS	MONITORED	SNCs	RATE OF SNCs
Northland	919	100%	168	18%
Auckland	295	23%	3	4.4%
Waikato	4,520*	26%	104	9%*
Bay of Plenty	660	52%	5	1.4%
Gisborne	5	100%	0	–
Hawke's Bay	80	100%	2	2.5%
Taranaki	1,721	100%	17	1.0%
Manawatū/ Whanganui	938	58%	26	4.8%
Wellington	163	100%	3	1.8%
Tasman	139	100%	4	2.9%
Nelson	3	0%	0	–
Marlborough	52	100%	5	9.6%
West Coast	383	77%	1	0.3%
Canterbury	1,309	60%	36	4.6%
Otago	474	100%	13	2.7%
Southland	900*	not provided	38	4%*
TOTAL	12,561		425	

TABLE 1: Number of dairy farms, percent of farms monitored, number of serious non-compliant (SNC) farms, rate of SNC by region 2016-17. Figures with a symbol (*) indicate an approximate figure because the exact value was unknown or not provided.

Advance warning of inspections

The majority of councils carried out their 2016-17 compliance visits with no warning or minimal warning.¹⁹ Some councils provide a notice period of more than 24 hours, notably Auckland, Waikato, Horizons and West Coast.

Waikato Regional Council have since changed their policy, so that staff no longer routinely give advance warning but may choose to make an appointment with the farmer if there are other matters to discuss.

Auckland Council reports their compliance staff make an appointment with farmers, providing notice of between 48 hours and a week.

Horizons Regional Council (Manawātū-Whanganui) provides between 24-48 hours notice. Gisborne District Council told us they give advance warning before formal compliance visits so that the farmer is present and can show the compliance officer their records.

West Coast Regional Council reported that their staff give advance notice to the farm before an inspection and the notice time varies. West Coast only detected one serious non-compliance in 2016-17.

All other councils reported giving no more than 24 hours notice. In Northland, Taranaki, Marlborough, Canterbury and Southland, there is no warning. In some cases staff call the farmer when they are on their way, or when they have arrived at the gate.

¹⁹ Several councils who do not currently provide advance warning to farmers ahead of compliance visits told us this may change for the upcoming season due to Mycoplasma Bovis.

*The councils that did **not monitor** all their farms are: Auckland, Waikato, Bay of Plenty, Horizons, Nelson, Canterbury, West Coast and Southland. Together these regions accounted for nearly three-quarters of the country's dairy farms.*



SERIOUS NON-COMPLIANCE

Serious non-compliance means that an environmentally damaging activity has either occurred or was likely to occur due to poor practice. All figures reported by councils should be interpreted as representing a minimum actual rate of serious non-compliance, as even those councils that monitor 100 percent of their dairy farms usually do so only once during the milking season.

Furthermore, the practice of many councils to give significant warning before an inspection visit means that the background rates of serious non-compliance in those regions are likely to be even higher.

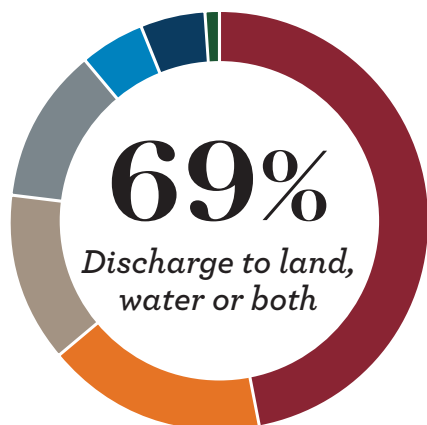
Of the dairy farms that were monitored, there were 425 cases where councils found a farm to be seriously non-compliant,

meaning that the farm had significantly failed to follow the plan rules or resource consent conditions set by the council to protect the environment. The levels of serious non-compliance detected ranged from 0.3 percent (1 out of 295 farms) on the West Coast to 18 percent (168 out of 919 farms) in Northland (Table 1).



Examples of serious non-compliance observed by councils last year included:

- > *Effluent spill*
- > *Inadequate maintenance that could lead to a serious infrastructure failure*
- > *Water quality test results were outside limits*
- > *Unburied dead stock was found in or close to water*
- > *Untreated effluent from the sump discharged to water*
- > *Effluent discharged over a pond embankment to water*
- > *Ponding caused by an infrastructure failure*



Based on notes taken by compliance officers, Forest & Bird categorised the serious non-compliance into the following categories:

47%	Discharge to land	5%	Discharge to both land and water
17%	Discharge to water	5%	Water quality
13%	Unknown ²⁰	1%	Dead stock
12%	Other		

Discharge to land was the largest single category. In instances where discharges were made on 'land', or 'land and water', there could be ponding of effluent on the surface of the soil. This ponding could potentially have contaminated the groundwater. In at least 16 percent of all serious non-compliance, dairy effluent ponded on land.

'Discharge to water' and 'discharge to both land and water' resulted in dairy effluent in a waterway. In some instances of discharge on land, dairy effluent also ended up in a waterway.

Twenty nine percent of all serious non-compliance resulted in dairy effluent ending up in a waterway.

This figure will be conservative as some councils do not categorise the receiving environment as a waterway if water is not flowing at the time of the inspection. These breaches often occurred because an effluent storage pond overflowed (10 percent) or there was an infrastructure or operator failure (nine percent).

Northland had the country's highest rate of serious non-compliance for dairy effluent management. Northland monitors all of its 919 dairy farms and does not give farmers advance notice of its compliance visits.

Northland has a long history of reporting high levels of serious non-compliance going back to 2004.²¹

The 425 cases of serious non-compliance reported nationwide in 2016-17 represent 5.7 percent of the total number of farms that were monitored that year. If this monitored national rate of serious non-compliance were to be applied to all the farms that were not monitored, that could have resulted in as many as 290 additional instances of serious non-compliance.

However, Waikato disproportionately weights the national number of unmonitored farms; it alone would have nearly doubled the cases of serious non-compliances nationally in 2016-17. So if we look at it region by region, using each region's rate of serious non-compliance, there could have been up to 349 additional undetected cases of serious non-compliance. This would translate to undetected cases of serious non-compliance in the following regions: Auckland (10), Bay of Plenty (five), Waikato (291), Manawatū-Whanganui (19), Canterbury (24) and Southland (unknown).

²⁰ This represents 38 SNCs in Southland and 16 SNCs in Canterbury.

²¹ Ministry for Primary Industries, The Dairying and Clean Streams Accord: Snapshot of Progress, 2004-05, www.mpi.govt.nz.

ENFORCEMENT

In the event that a farmer is seriously non-compliant with plan rules and resource consent conditions, the council has a range of enforcement actions available under the RMA to rectify the situation. They are: verbal or written direction, formal warning letters, infringement notices, abatement notices, enforcement orders, and prosecution.

Forest & Bird asked councils to indicate which serious non-compliant farms received an infringement, abatement or prosecution. Some councils offered additional information on other enforcement actions taken.

An abatement notice is a formal written direction requiring certain actions to be taken or to be stopped within a specific time. Last year 44 percent of seriously non-compliance farms received an abatement notice.

An infringement notice is a written notice that informs the recipient that an offence has occurred against the RMA and a fine of \$300 to \$1,000 accompanies the notice. Last year 41 percent of seriously non-compliance farms received an infringement notice.

A prosecution is an action by an enforcement agency to refer the offender to the Environment Court. Penalties can be fined up to a maximum of \$300,000 or up to two years in prison for individuals, or fines up to \$600,000 for organisations. In the 2016-17 year approximately 3.8 percent of serious non-compliance cases resulted in a prosecution.

The decision to take enforcement action – and what type of action – is guided by council policy, but in many cases is up to the discretion of the compliance officer. Not surprisingly this leads to inconsistencies both within a council and between councils.

Nearly two in every five seriously non-compliant farms did not receive any formal enforcement action such as an infringement notice, an abatement notice or a prosecution.

Some councils took informal actions. For example Environment Canterbury created 'action plans' with the farmers, and in Waikato seriously non-compliant farms may have received a warning or a letter of direction. We did not receive all the requested information from Environment Southland so we don't know exactly how many seriously non-compliant Southland dairy farms received formal enforcement actions. However, from the information we were given we have been able to estimate that no formal enforcement action was taken in response to at least 12 of the seriously non-compliant farms.



21 percent of seriously non-complying farms did not receive any enforcement action.

REGION	SNCs WITHOUT ENFORCEMENT ACTION	PROPORTION OF TOTAL SNCs
Northland	48	29%
Auckland	2	67%
Waikato	16	15%
Manawatū-Whanganui	18	69%
Marlborough	4	80%
Southland	12	32% ²²

TABLE 2: Number and percentage of dairy farms that were seriously non-compliant (SNC) in 2016-17 and did not receive a formal or informal enforcement action.

Even combining informal and formal enforcement actions taken by councils, there are still as many as 21 percent (one in every five) of seriously non-complying farms that did not receive any enforcement action.

There was sometimes variability within a council in the type of enforcement response for the same type of serious non-compliance. On four different farms in Taranaki, staff detected the same type of breach which resulted in untreated effluent being discharged to water. However, there were three different enforcement responses, with only one incident leading to a prosecution.

The data shows that 10 farms received four or more enforcement actions from their council.

One Northland dairy farm was found to be seriously non-compliant on two different dates in the same year, resulting in 12 enforcement actions (four abatement notices and eight infringement notices).

Compliance officer notes indicate that both serious non-compliances were issued because '[e]ffluent discharged over a pond embankment to land causing excessive ponding and overland flow to water.'

We don't know whether Northland Regional Council considered prosecuting this farm. However, the council did indicate that no prosecution had been taken against any of the 168 cases of serious non-compliance from the 2016-17 monitoring season.

²² Southland reported taking 26 enforcement actions against 38 SNCs in 2016-17. They did not provide information about which farms received which actions. For the purpose of this analysis, Forest & Bird assumed the best case scenario that 26 farms each received a single formal enforcement action. If this was the case then 12 seriously non-compliant farms did not receive any formal enforcement action.

REGION	SNCs	INFRINGEMENTS	ABATEMENTS	PROSECUTIONS	OTHER ACTIONS ²³
Northland	168	92	117	0	–
Auckland	3	1	1	0	–
Waikato	104	22	9	0	82
Bay of Plenty	5	0	5	2	–
Hawke's Bay	2	0	2	0	–
Taranaki	17	9	16	1	–
Manawātū – Whanganui	26	4	8	0	1
Wellington	3	3	3	0	–
Marlborough	5	1	0	0	–
Tasman	4	0	3	1	1
West Coast	1	1	1	0	–
Canterbury	36	20	16	1	11
Otago	13	6	0	6	1
Southland	38	16	5	5	–
TOTAL	425	175	186	16	96

TABLE 3: Enforcement actions taken by councils for dairy effluent serious non-compliance (SNC) during 2016-17

In total, there were 16 prosecutions across the country for instances of seriously non-compliant dairy effluent management. The prosecutions took place in six regions: Bay of Plenty, Taranaki, Tasman, Canterbury, Otago and Southland. Nationally, only 3.8 percent of cases of serious non-compliance were prosecuted in 2016-17. In Otago, nearly half of the cases of serious non-compliance resulted in a prosecution (six out of 13), compared to none of Northland's 168 and none of Waikato's 104. Regions responsible for 59 percent of all reported cases of serious non-compliance had no prosecutions in 2016-17.

We asked councils to indicate if seriously non-compliant farms received a follow-up visit in the same year. Waikato, Southland and West Coast councils were unable to answer this question.

Only 55 percent of seriously non-compliant farms received a follow-up visit in the same year the offence occurred.

²³ Forest & Bird asked all councils about the number of infringements, abatements and prosecutions. Only some councils offered information on 'other' enforcement actions.

HISTORY OF SERIOUS NON-COMPLIANCE

Councils were asked to indicate if the farms which were found in 2016-17 to be seriously non-compliant had a history of serious non-compliance in the two previous years. We found that at least 26 percent of seriously non-compliant farms had a history in either 2014-15 or 2015-16, while seven percent (29 farms) had a history in both of these previous years.²⁴

These 29 farms (in Northland, Taranaki, Marlborough, and Otago) were seriously non-compliant three years in a row. The majority of these farms were in Northland (25). Of the 29 farms in their third year of serious non-compliance, only one in Otago was prosecuted.

In Waikato, there were nine seriously non-compliant farms which hadn't been monitored for 10 years or more. Environment Canterbury also reported that one of the region's seriously non-compliant farms hadn't been monitored in either of the previous two years. This raises the question as to how much poor practice is being missed by councils that do not monitor all farms annually.

Ten repeatedly seriously non-compliant farms had no formal enforcement actions taken against them. Eight of these farms were in Northland and two were in Marlborough.

²⁴ There were 51 SNCs in Southland and Canterbury for which we don't know the farm's history over the two previous years. Therefore the percentage of farms with a history could be higher.



In Waikato, there were nine seriously non-compliant farms which hadn't been monitored for 10 years or more.

NATIONAL MONITORING SYSTEM

All councils are required to report their RMA compliance, monitoring and enforcement information annually to the Ministry for the Environment. This feeds into the National Monitoring System (NMS), which collates information regarding council staffing, compliance, monitoring and enforcement, and also information on all RMA consents which require monitoring.

The NMS data does not include compliance and monitoring associated with permitted activity rules in regional plans, nor does it break down data on any particular sector such as dairying.

Accountability

Unlike the NMS data, Forest & Bird collected information on monitoring for compliance with permitted activity rules as well as resource consent conditions for dairy effluent management. For example, there were over 1,300 dairy farms managing effluent discharge under permitted activity rules last year.²⁵ These farms would not necessarily have been included in the reported statistics in the NMS.

For councils that allow dairy effluent disposal as a permitted activity and don't monitor all their dairy farms, useful information on compliance will not be collected and reported. These regions are Waikato, Tasman, West Coast, Southland, and Auckland.

Full compliance rates for all RMA resource consents across all sectors monitored in 2016-17 by the regional councils ranged between 71 percent and 99 percent, with the median value being 84 percent.^{26 27}

Waikato Regional Council's data submitted to the NMS showed that across all their monitored RMA consents, there was an 82 percent level of compliance.

However, according to the dairy effluent data supplied to Forest & Bird, the rate of full compliance for consented Waikato dairy farms was only 26 percent, with an additional 11 percent considered to have a 'high level' of compliance.^{28 29}

The information reported in the NMS does not provide enough detail for the government and the public to be able to judge the adequacy of a council's RMA compliance, monitoring and enforcement performance. Serious non-compliance in the dairy sector is lost in the overall RMA compliance reporting system that combines the data from resource consents across all sectors. The Waikato example is indicative of the compliance gaps that are likely to be present in other regions.

At the moment the only regular national reporting on dairy effluent compliance is done via the voluntary Sustainable Dairy Water Accord. This reporting only provides a brief summary of the dairy effluent compliance, monitoring and enforcement information that the councils hold.³⁰

Given that poorly managed dairy effluent carries serious risk to environmental and human health, regular and comprehensive reporting at a regional level, and auditing and reporting at a national level should not have to rely on a purely voluntary mechanism. Such reporting and auditing should be a formal requirement.

Compliance staff workloads

Regional council compliance staff are required to monitor much more than just effluent management on dairy farms. Forest & Bird found that some councils' compliance staff had what appears to be an unrealistic number of RMA consents they were required to monitor in a single year.

West Coast Regional Council compliance staff had the biggest workload. There, each compliance officer had to monitor an average of 1,620 across all sector consents in a year.

It is not surprising the Council managed to monitor only 20 percent of its total RMA consents, although it did manage to monitor 77 percent of all dairy farms (both consented and permitted).

By contrast, Waikato Regional Council had the country's lowest average, with only 45 RMA consents across all sectors to monitor per compliance officer. While this monitoring workload appears to be manageable, the Council monitored just 26 percent of their dairy farms last year.

Other councils such as Auckland, Hawke's Bay, Southland, Tasman and Taranaki had between 300-500 all sector consents that required monitoring per compliance officer. Some of these regions monitored all of their dairy farms, though some did not. For example, while Auckland was able to monitor 89 percent of its RMA consents, it managed to monitor only 23 percent of its dairy farms.

While overall compliance, monitoring and enforcement staff numbers have

increased nationally, in some regions the number of staff decreased from 2015-16 to 2016-17, for example Auckland lost 12 staff, Taranaki 13, and Wellington two.

REGION	RMA CONSENTS PER COMPLIANCE OFFICER
Northland	256
Auckland	387
Waikato	45
Bay of Plenty	no data
Gisborne	79
Hawke's Bay	425
Taranaki	387
Manawatū – Whanganui	137
Wellington	142
Tasman	364
Nelson	136
Marlborough	no data
West Coast	1,620
Canterbury	103
Otago	116
Southland	334

TABLE 4: Number of RMA consents (not just dairy effluent management) requiring monitoring per compliance officer 2016-17 (from the National Monitoring System preliminary data 2018)

25 Environment Southland and Waikato Regional Council did not know how many permitted dairy farms were operating in their area during 2016-17.

26 Bay of Plenty, Gisborne and Otago's data was missing from this analysis.

27 These figures were calculated taking the reported non-compliance figure away from 100 percent.

28 Waikato Regional Council, *Compliance Information for Farmers*, 2017. www.waikatoregion.govt.nz (accessed July 2018).

29 Waikato Regional Council had defined full compliance as when 'all conditions that include limits or other direct controls on adverse effects have been complied with' and 'a small number of minor technical non-compliance may have occurred.'

30 An inter-council group may be conducting an audit of CME relating to dairy effluent management, called the Compliance and Enforcement Special Interest Group (CESIG). This work has not been formally announced, but has been alluded to in the Ministry for the Environment's recently released Guidelines for RMA compliance, monitoring and enforcement.

SUMMARY

Our analysis of 2016-17 dairy effluent compliance, monitoring and enforcement has revealed significant inconsistencies and gaps in the following areas:



MONITORING

- *Only half of all councils inspect 100 percent of dairy farms annually*
- *Over 5,000 farms were not monitored*
- *Some farms had not been monitored for more than 10 years*
- *Some councils provide significant warning prior to an inspection*



ENFORCEMENT

- *21 percent of cases of serious non-compliance had no enforcement action*
- *Only 55 percent of cases of serious non-compliance had a follow-up visit*
- *Most regions didn't prosecute (in some cases despite multiple and repeated serious non-compliance)*
- *29 farms had three years of consecutive serious non-compliance*
- *Enforcement actions by the same council were sometimes inconsistent*



AUDITING & REPORTING

- *There is no regular detailed audit of compliance, monitoring and enforcement nationally*
- *The National Monitoring System doesn't provide analysis by sector*
- *The National Monitoring System omits permitted activity compliance monitoring*

CONCLUSION

There is an extraordinary amount of variability in the way that regional councils fulfil their dairy farm compliance, monitoring and enforcement responsibilities.

Examples of inconsistent and poor performance include:

- ✗ Waikato and Northland regions stand out for their high levels of serious non-compliance. Waikato had nine percent and Northland had 18 percent of the inspected dairy farms that were found to be seriously non-compliant. Neither council took any prosecutions in 2016-17. Waikato had 16 farms that received no enforcement action at all, and Northland had 48. High levels of non-compliance coupled with low levels of enforcement appear to encourage poor performance.
- ✗ Southland and Waikato could not tell us exactly how many dairy farms were operating in their region in 2016-17.
- ✗ In Waikato nine seriously non-compliant farms had not been monitored for 10 or more years.
- ✗ For 29 dairy farms this was the third year they were seriously non-compliant. The majority of these occurred in Northland (25).
- ✗ In Northland one persistent offender received four abatement notices and eight infringement notices but no prosecution.
- ✗ In Taranaki there were four separate serious non-compliance incidents involving untreated effluent being discharged to water, drawing three different enforcement responses.
- ✗ On the West Coast each compliance officer had an average of 1,620 consents to monitor every year, compared with 45 for Waikato.

The impact of dairy farming on the environment has been well known for many years. There is no excuse for some councils' poor performance in this area. In Forest & Bird's view, these poorly performing councils do not take their dairy sector compliance, monitoring and enforcement obligations seriously, and will need some encouragement to improve their performance.

Due to the decentralised nature of the RMA, each council has the discretion to determine how it fulfils its compliance, monitoring and enforcement function. The RMA provides minimal opportunities for directive central government interference in how councils carry out that function. The Ministry for the Environment's role is currently limited, mainly to monitoring, auditing and education. The Ministry's National Monitoring System report on councils' overall

RMA performance isn't detailed enough for a sector-by-sector and region-by-region analysis of performance. It does not reveal the sorts of inconsistencies and gaps in performance analysed in this report.

The Government has recognised that this inconsistency is contributing to New Zealand's water quality problems, and in the 2018 Budget it announced \$3.1m in funding over four years for an 'RMA Oversight Unit' within the Ministry for the Environment. The Unit is currently in its infancy, with its terms of reference not yet finalised.

The effectiveness of this Unit will be critical to improving compliance, monitoring and enforcement performance across all sectors including dairy. In order to be successful the Unit needs to be given a strong mandate to investigate and address the poor performance of some councils.

RECOMMENDATIONS

Regional councils have a responsibility to protect the environment by ensuring that their compliance, monitoring and enforcement functions are carried out effectively and consistently. However, there are a number of basic requirements that some councils are not fulfilling – the most obvious being to identify all dairy farms. Councils know – or should know – what they have to do to meet their obligations, but some appear to be making conscious decisions not to fulfil these obligations.

The RMA Oversight Unit provides an important opportunity to address the inconsistency in council performance. Forest & Bird's recommendations are therefore primarily aimed at ensuring that the Unit is established and has an appropriate mandate to address the poor performance of some councils. In the first instance, this should involve an annual audit of councils' compliance, monitoring and enforcement functions,

with reporting of that audit and ongoing work to improve their practices.

We also recommend that a review of the tools available to address ongoing poor compliance, monitoring and enforcement performance is undertaken. A key part of this is to assess options for more directive central government involvement where there is ongoing poor performance. This may require regulatory or legislative change.

Forest & Bird recommends the following:



For Regional Councils:

1. Identify all dairy farms
2. Annual inspection of all dairy farms
3. Give minimal notice of inspections (less than 24 hours)
4. All serious non-compliance should result in an enforcement action
5. Keep a digital database of all compliance monitoring and enforcement actions
6. Report on compliance, monitoring and enforcement actions by sector.



For the Government:

7. Establish the RMA Oversight Unit with terms of reference that allow it to properly monitor, audit and report on councils' performance, including ensuring councils are complying with Recommendations 1-6
8. Analyse and report on all serious non-compliance
9. Identify and investigate inconsistencies and review tools
10. Develop an enforcement decision support tool for serious non-compliance
11. Establish a recommended ratio of compliance staff to consents requiring monitoring.



FOR REGIONAL COUNCILS:

1. *Identify all dairy farms*

Forest & Bird recommends that councils identify all dairy farms in their region.

Waikato Regional Council and Environment Southland could not tell us how many permitted dairy farms were operating in their region in 2016-17. Councils are unable to meet their statutory requirements to manage adverse effects on water quality if they cannot identify where or how many farms exist in their region.

2. *Annual inspections of all dairy farms*

Forest & Bird recommends that all dairy farms be inspected annually.

Dairy effluent disposal is an activity that involves considerable risk to the environment and human health. In 2016-17, there were 425 known instances of serious non-compliance where significant damage to the environment was detected or imminent. Due to inconsistent monitoring, there could have been as many as 349 additional incidents that were undetected. A handful of farms found to be seriously non-compliant in 2016-17 in the Waikato hadn't been monitored for 10 years or more.

While some councils utilise a risk-based approach, this does not mean that all serious non-compliance will be detected. Annual inspections would increase the likelihood that serious non-compliance is identified and addressed in a timely way.

3. *Give minimal notice of inspections (less than 24 hours)*

Forest & Bird recommends that regional councils give farmers no more than 24 hours notice of inspections.

Visits with no – or minimal – warning increase the likelihood that compliance staff get an accurate snapshot of how the farm may operate on any given day the year.

This approach has been adopted by the majority of councils, but several councils are still providing more than 24 hours notice. Auckland Council reports that their staff give up to a week's notice of an inspection, which give non-compliant farmers considerable opportunity to address any issues with their effluent storage and disposal by the day of the inspection.

4. *All serious non-compliance should result in an enforcement action*

Forest & Bird recommends that all serious non-compliance should result in an enforcement action.

All dairy effluent disposal activities carry sufficient risk to the environment and human health that all cases of serious non-compliance should result in an enforcement action.

5. *Keep a digital database
of all compliance, monitoring
and enforcement actions*

Forest & Bird recommends that all compliance, monitoring and enforcement data is digitised and accessible (ie. fit for purpose).

Auckland Council, Waikato Regional Council and Environment Southland reported that it would take many hours for staff to manually collect serious non-compliance case notes. This was not an issue for other regional councils, which suggests these councils have poor information management systems. This is a barrier to efficient regional and national auditing and reporting.

6. *Report on compliance,
monitoring and enforcing
actions by sector*

Forest & Bird recommends that council performance on compliance, monitoring and enforcing in relation to high risk activities such as dairy effluent disposal must be analysed and reported annually to the public.

This information is in the public interest. Some councils are already reporting on their dairy effluent compliance, monitoring and enforcement performance, and we believe this should be a formal requirement in order to improve transparency and accountability.



The only reporting for dairy effluent compliance, monitoring and enforcement is conducted by the dairy industry.



FOR THE GOVERNMENT:

7. *Establish Ministry for the Environment's RMA Oversight Unit*

Forest & Bird's key recommendation is that the RMA Oversight Unit be established with the purpose of ensuring councils achieve high and consistent performance of their compliance, monitoring and enforcement function.

The terms of reference must ensure it can properly monitor, audit and report on councils' performance and have appropriate tools to address any poor performance.

We recommend that the terms of reference include the requirement for the Unit to achieve Recommendations 1-6 above for all councils. These are basic requirements for the effective exercise of a council's compliance, monitoring and enforcement function and some councils are not even achieving these.

A critical part of the Unit's role is monitoring, auditing and reporting of council performance. The terms of reference also need to include a requirement to investigate whether additional tools are needed if some councils persist in not adequately fulfilling their compliance, monitoring and enforcement requirements. This is a critical step in addressing the patchy performance by councils and needs to be done without delay.

8. *Analyse and report on all serious non-compliance*

Forest & Bird recommends that the RMA Oversight Unit closely analyse all compliance, monitoring and enforcement data on serious non-compliance, looking closely for inconsistencies and poor performance on a region-by-region and sector-by-sector basis.

The outcomes of this analysis would be part of an annual report addressing performance by region.

In its recent compliance, monitoring and enforcement guidelines, the Government recommended that councils, 'report on the effectiveness of their CME activities,' and that this should include all serious non-compliance by sector.³¹ Forest & Bird supports this recommendation and is calling on the Government to lead the way. The Government can facilitate a national database, require councils to participate, prescribe data collection criteria, standardise council decision-making processes, analyse the data annually, investigate inconsistencies and report to the public.

The only reporting for dairy effluent compliance, monitoring and enforcement is conducted by the dairy industry, and does not provide any analysis or critique of the regional councils' performance, or the reasons for the wide regional variation in the rates of serious non-compliance.

³¹ Ministry for the Environment, *Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991*, July 2018, www.mfe.govt.nz.

The RMA compliance monitoring and enforcement data collected by MfE for the National Monitoring System is not detailed or specific enough to allow a comprehensive assessment as to whether councils are properly carrying out their statutory requirements. This was well evidenced by the NMS data showing that while Waikato had 82 percent full compliance across all RMA consents, the Council's own report for the same year showed that it had only 26 percent full compliance with dairy effluent management consents. Dairying is the largest sector of the Waikato economy and has a significant impact on the region's environment.

We consider that information on permitted activities is just as important as information on consented activities. This is currently missing from the National Monitoring System.

9. Identify and investigate inconsistencies, and review tools

Forest & Bird recommends that the RMA Oversight Unit should identify and investigate inconsistencies between regions.

One of the terms of reference for the Unit should be to identify and investigate inconsistencies between regions, to try and understand why some councils are performing well and others are performing badly. The Unit should then try and address these inconsistencies, firstly through education.

However, it is possible that education will not be enough and the Unit will not have adequate tools to address persistent non-compliance. We therefore recommend that one of the terms of reference for the Unit is to evaluate whether the options available to central government to address poor council performance are fit for purpose.

When in opposition, the current Minister for the Environment stated that his party would look at funding the Ministry for the Environment to prosecute environmental breaches where regional councils have failed to do so.³² The cost of the prosecution could then be recovered from the regional council.

Forest & Bird supports the intention of this proposal. However, this will not address instances where other enforcement actions such as a formal warning, an infringement notice or an abatement notice should have occurred. It is also unlikely to create systematic change required to achieve national consistency. There are also likely to be practical difficulties in adopting this approach. For example, the evidence for such a prosecution is likely to come from council staff, who might be reluctant witnesses in a prosecution where their employer has decided prosecution is not appropriate.

We therefore recommend a wide-ranging review of central government powers to address poor council compliance, monitoring and enforcement performance.

.....

³² Comments made by Hon David Parker prior to 2017 election, as reported by Stuff: *Labour to fund Ministry for the Environment to prosecute errant behaviour if regional councils won't*. 10 September 2017. www.stuff.co.nz (accessed July 2018).

10. Develop an enforcement decision support tool for serious non-compliance

Forest & Bird recommends that the RMA Oversight Unit develop an enforcement decision support tool for serious non-compliance.

This report revealed that 29 farms had a serious non-compliance three years in a row, and that around 21 percent of seriously non-compliant dairy farms had no enforcement action taken against them. Further to this, only 55 percent of the seriously non-compliant dairy farms received follow-up visits in the same year.³³ A national approach is necessary to ensure that enforcement action is taken in all cases and is being consistently applied.

The Ministry for the Environment's recently released best practice guidelines offer 'advice on how [statutory requirements] should be exercised to achieve the purpose of the RMA.' In other words, it provides information on what other councils are doing as an example of best practice. The guidelines are mostly informative, for example they contain a decision matrix created by the Greater Wellington Regional Council, and references to the Solicitor-General's Prosecution Guidelines document. Forest & Bird believes that the guidelines are not strong enough to provide the necessary consistency at a national level.

Forest & Bird recommends that the RMA Oversight Unit creates a standard decision-making process for enforcement action against serious non-compliance, potentially by sector.

This would require:

- Councils to take an enforcement action in all serious non-compliance cases
- A follow-up site inspection in all cases where a desktop audit will not suffice
- Councils to justify why no enforcement action was taken.

A decision support tool on enforcement is necessary to achieve national consistency.

11. Establish a recommended ratio of compliance staff to consents requiring monitoring

Forest & Bird recommends the RMA Oversight Unit establish a 'best practice' ratio of compliance staff to consents.

For many councils, there are either too many RMA consents requiring monitoring, or not enough staff to complete the monitoring. The National Monitoring System data showed that most councils were not meeting their monitoring requirements. The worst performing regions are West Coast, where 20 percent of all RMA consents that require monitoring are actually being monitored, followed by Otago with 47 percent and Tasman with 54 percent. The median value for meeting monitoring requirements was 78 percent, meaning half the councils were below a 78 percent success rate for monitoring. Only two councils successfully met their monitoring requirements – Nelson and Taranaki.

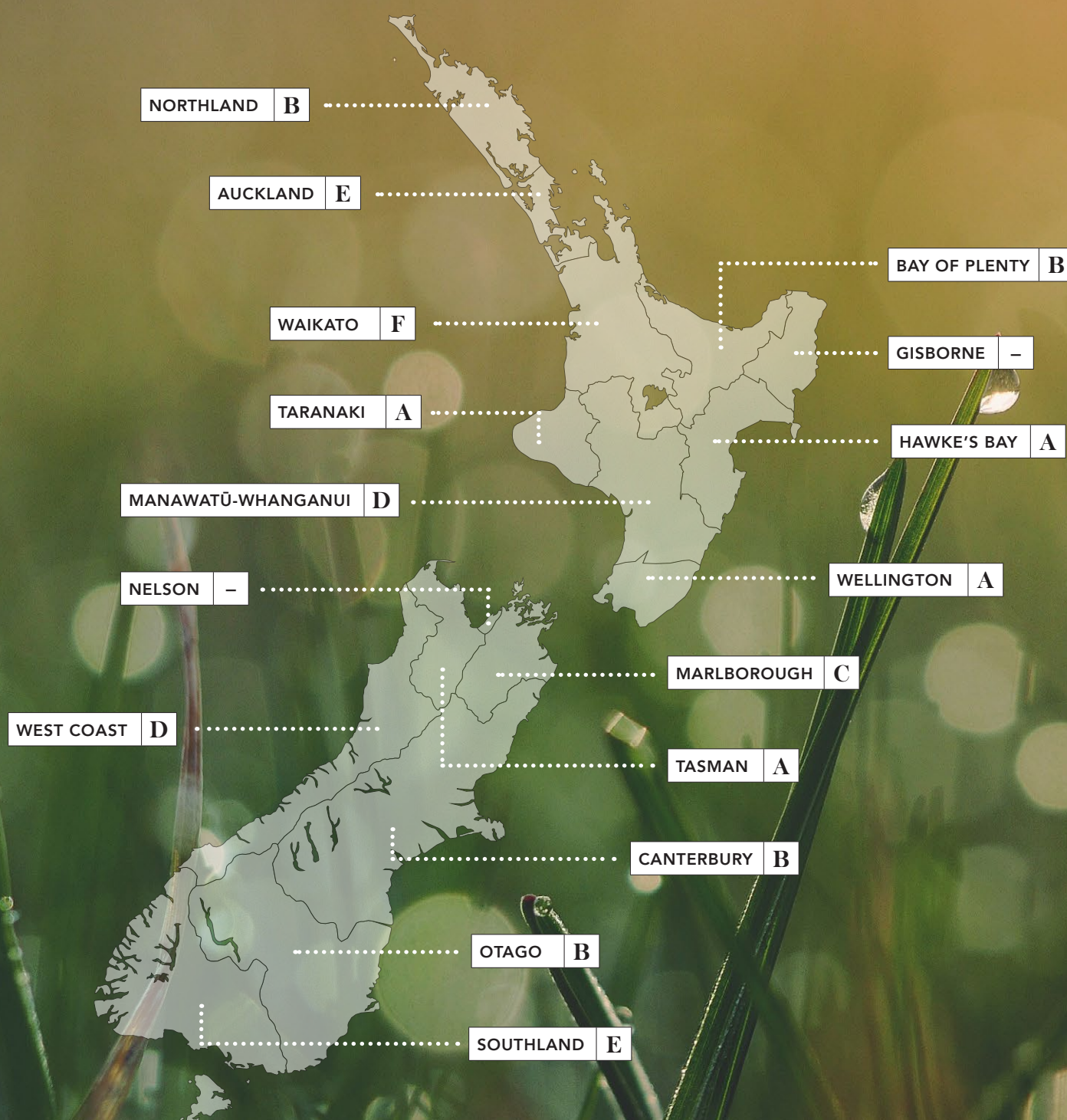
The data further revealed that at some councils, each compliance officer has a vast number of consents requiring monitoring. West Coast Regional Council for example had over 1,600 RMA consents per compliance officer in 2016-17, while other councils had between 200 and 500.

The Government should task the RMA Oversight Unit with establishing a recommended ratio of compliance, monitoring and enforcement staff to the monitoring workload for a given year.

.....
33 This excludes West Coast, Southland and Waikato.

COUNCIL REPORT CARDS

Forest & Bird rated regional councils' performance in relation to detecting and responding to dairy effluent serious non-compliance.



Forest & Bird's ratings were given according to whether the council:

1. *Monitored 100 percent of their dairy farms annually for effluent management compliance.*
2. *Conducted inspections with minimal warning, less than 24 hours.*
3. *Conducted a follow-up visit to most serious non-compliant dairy farms in the same year.*
4. *Took an enforcement action in every case of a serious non-compliance.*
5. *Freely provided all relevant requested data.*

Depending on the number of positive responses, councils were awarded a grade from A, representing a perfect score, to F, representing the worst score.

REGION	MONITOR 100%	MINIMAL INSPECTION NOTICE	FOLLOW UP VISITS	ENFORCEMENT ACTION	DATA PROVIDED EASILY	GRADE
Northland	✓	✓	✓	X	✓	B
Auckland	X	X	✓	X	X	E
Waikato	X	X	?	X	X	F
Bay of Plenty	X	✓	✓	✓	✓	B
Gisborne	✓	X	–	–	✓	– *
Hawke's Bay	✓	✓	✓	✓	✓	A
Taranaki	✓	✓	✓	✓	✓	A
Manawatū/ Whanganui	X	X	✓	X	✓	D
Wellington	✓	✓	✓	✓	✓	A
Marlborough	✓	✓	X	X	✓	C
Nelson	X	X	–	–	✓	– *
Tasman	✓	✓	✓	✓	✓	A
West Coast	X	X	?	✓	✓	D
Canterbury	X	✓	✓	✓	✓	B
Otago	✓	✓	X	✓	✓	B
Southland	X	✓	?	X	X	E

TABLE 5: Rating of Regional Councils' compliance monitoring and enforcement performance with respect to dairy effluent management.

* Nelson and Gisborne didn't receive an overall rating as they have a tiny number of dairy farms in their region (3 and 5 respectively) and no SNCs in 2016-17.

Northland Regional Council

B	Monitor 100% farms annually ✓	Less than 24h inspection notice ✓	Most SNCs had follow up visit ✓	All SNCs received enforcement action X	Data provided without difficulty ✓
----------	---	---	---	--	--

The region had 919 dairy farms which represented 7 percent of the country's total number of dairy farms. There were 168 instances of serious non-compliance. This represented 40 percent of the country's total reported serious non-compliance.

While Northland Regional Council monitored 100 percent of the dairy farms in the region and conducted a follow up visit to all seriously non-compliant farms, it did not show consistency with enforcement.

Nearly half of the seriously non-compliant farms (79) had a history of serious non-compliance. Twenty five of these farms had a serious non-compliance three years in a row and eight of these farms didn't receive any enforcement action at all last year.

For 166 farms in serious non-compliance last year, 209 actions were taken against 118 of the farms. For some reason, nearly 50 farms did not receive any formal action. That is 29 percent of seriously non-compliant farms that received no infringement, abatement or prosecution action.

This is very concerning, given that 'serious non-compliance' is reserved for instances where environmental damage has occurred or has the potential to occur. In 75 cases, effluent ended up in Northland waterways in 2016-17.

While one farm received 12 enforcement actions, not one serious non-compliant farm was prosecuted in 2016-17.

Northland has a long history of high reported rates of serious non-compliance with dairy effluent management. Since the beginning of the Cleans Streams Accord, Northland has consistently reported the worst or second worst rate of serious non-compliance in the country. The historic data also shows that the Council has exercised a lenient compliance and enforcement regime.³⁴

The Council's lack of rigorous compliance and enforcement practices is likely to be an important factor contributing to the high rate of serious non-compliance in the region. Forest & Bird believes that in order to avoid repeat offending, the Council should ensure that all cases of serious non-compliance receive an enforcement action.

³⁴ Ministry for Primary Industries, *The Dairying and Clean Streams Accord: Snapshot of Progress*, www.mpi.govt.nz.



NORTHLAND

919

Dairy farms

100%

Farms monitored

168

Serious non
compliances

256

RMA Consents /
Compliance Officer

Staff workload

Auckland Council

E	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	X	✓	X	X

The region had 295 dairy farms, which represented two percent of the country's total number of dairy farms. The region had three reported cases of serious non-compliance. This represented less than one percent of the country's total reported cases of serious non-compliance.

If the regional rate of serious non-compliance is applied to the unmonitored farms, there may have been at least another 10 cases of serious non-compliance that went undetected, as Auckland Council monitored only 23 percent of their dairy farms last year. Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

Two out of the three seriously non-compliant farms received a follow up visit in the same year, but only one had any formal enforcement action taken against it.

One of these two farms was said to have no enforcement taken 'due to location of ponds approved in flood prone area prior to dairy plan.' This means that environmental damage could still be occurring whenever there are heavy rains that lead to flooding.

None of the farms had a recorded history of serious non-compliance in the previous two years.

Forest & Bird is concerned that the Council provides notice ranging between 48 hours and one week ahead of compliance inspections. We recommend that minimal notice be provided, i.e. less than 24 hours.

Despite only having three seriously non-compliant dairy farms, Auckland Council initially refused to provide answers to all of Forest & Bird's questions without payment, stating the 'information requested will require substantial collation and research'. Forest & Bird refined the request and the Council responded that 'the request would still take substantial collation and research, due to the sheer volume of information we would need to manually go through.' Forest & Bird asked the Ombudsman to review the decision. Once the Ombudsman became involved, Forest & Bird received the disputed information from Auckland Council.

It is a concern that the Council's system is not fully digital and does not allow for an efficient search for information.



AUCKLAND

295

Dairy farms

23%

Farms monitored

3

Serious non compliances

387

RMA Consents / Compliance Officer

Staff workload

Waikato Regional Council

F	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	X	?	X	X

Waikato has the highest number of dairy cows and the highest number of dairy farms in New Zealand.

The region had approximately 4,520 dairy farms which represented approximately 36 percent of the country's total number of dairy farms.³⁵ There were 104 monitored cases of serious non-compliance. This represented 24 percent of the country's total reported cases of serious non-compliance but only two percent of its own dairy farms.

If the regional rate of serious non-compliance is applied to the unmonitored farms, there may have been another 291 additional cases of serious non-compliance that went undetected as Waikato Regional Council monitored only 26 percent of their dairy farms. Its reported rate of serious non-compliance is therefore nine percent of its monitored dairy farms. This high level of serious non-compliance occurred despite the fact that the Council gave advance warning of its inspection visits in 2016-17.

Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

Waikato had the second lowest rate of dairy farm monitoring (26 percent), yet it had the best ratio of compliance officers to all RMA consents (45 compared to the national median of 142 consents per compliance officer).

The Council issued 22 infringement notices, nine abatement notices and took no prosecutions. The Council used other less serious enforcement actions, such as a 'letter of direction' or a 'formal warning' 82 times for serious non-compliant dairy farms. However in 16 instances of serious non-compliance the Council did not take any sort of enforcement action at all.

Council data revealed 14 seriously non-compliant farms had a history of serious non-compliance in one of the previous two years. However this number could be higher, as nine of the seriously non-compliant farms hadn't been monitored for 10 years or more. It is an additional concern that these farms could have caused serious environmental damage for a decade or more with little chance of detection.



WAIKATO

4,520

Dairy farms

26%

Farms monitored

104

Serious non
compliances

45

RMA Consents /
Compliance Officer

Staff workload

Waikato had the second highest level of monitored and reported serious non-compliance, although the real number of cases of serious non-compliance was likely to be the highest in the country. Since the early days of the Clean Streams Accord Waikato has had historically high rates of non-compliance – often one of the three highest reported serious non-compliance rates in the country. The historic data also shows that the Council has exercised a lenient compliance and enforcement regime.³⁶

The Council's lack of rigorous compliance and enforcement practices is likely to be an important factor contributing to the high rate of serious non-compliance in the region.

Forest & Bird believes that in order to avoid repeat offending, the Council should ensure that all cases of serious non-compliance receive an enforcement action, whether formal or informal.

The Council wouldn't provide case notes for all of the seriously non-compliant farms without a payment, explaining that there were limitations to their database that complicated the provision of the information. They were however, able to provide categories which allowed us to analyse in general terms if the serious non-compliance involved, for example, a discharge to land or a discharge to water, etc.

The Council acknowledged that the information was of public interest, however they calculated that it would take a staff member at least a week to manually collate the information on the 104 identified instances of serious non-compliance. The Council was unable to determine the exact number of dairy farms in the region in 2016-17, due to limitations with their database. Forest & Bird is concerned that Council staff are unable to conduct historical data analysis or provide historical data accurately.

Forest & Bird has laid a complaint with the Ombudsman regarding the Council's wish to charge for the requested data.

.....

35 Data provided by Waikato Regional Council showed that there were 4171 dairy farms operating under permitted activity in 2016-17. The Council reported that it is unsure how many dairy farms it had in 2016-17 due to limitations with their database. For this reason, Forest & Bird has used the number of dairy farms from the previous year, 2015-16 as reported in the Dairy Environment Leaders Group 2017 audit report on Sustainable Dairy Water Accord.

36 Ministry for Primary Industries, *The Dairying and Clean Streams Accord: Snapshot of Progress*, www.mpi.govt.nz.

Bay of Plenty Regional Council

B	Monitor 100% farms annually X	Less than 24h inspection notice ✓	Most SNCs had follow up visit ✓	All SNCs received enforcement action ✓	Data provided without difficulty ✓
----------	--	--	--	---	---

The region had 660 dairy farms, which represented five percent of the country's total number of dairy farms. The region had five reported cases of serious non-compliances. This represented 1.2 percent of the country's total reported cases of serious non-compliance.

If the regional rate of serious non-compliance is applied to the unmonitored farms, there may have been another five serious non-compliances that went undetected as Bay of Plenty Regional Council monitored only 52 percent of their dairy farms last year. Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

Of the five cases of serious non-compliance, all received an enforcement action – either an abatement notice or a prosecution, or in one case both. Two prosecutions were reported for the 2016-17 year.

None of the farms had a recorded history of serious non-compliance in the previous two years.

All serious non-compliances were the result of effluent being discharged incorrectly to land or water.



BAY OF PLENTY

660

Dairy farms

52%

Farms monitored

5

Serious non
compliances

No data

Staff workload

Gisborne District Council

NO GRADE	Monitor 100% farms annually ✓	Less than 24h inspection notice X	Most SNCs had follow up visit —	All SNCs received enforcement action —	Data provided without difficulty ✓
---------------------	--	--	--	---	---

The region had five dairy farms which represents 0.04 percent of the country's total number of dairy farms. The region had no instances of serious non-compliance.

Gisborne monitored 100 percent of their dairy farms last year.



GISBORNE

5
Dairy farms

100%
Farms monitored

0
Serious non
compliances

79
**RMA Consents /
Compliance Officer**
Staff workload

Hawke's Bay Regional Council

A	Monitor 100% farms annually ✓	Less than 24h inspection notice ✓	Most SNCs had follow up visit ✓	All SNCs received enforcement action ✓	Data provided without difficulty ✓
----------	--	--	--	---	---

The region had 80 dairy farms which represented 0.6 percent of the country's total number of dairy farms. The region had two instances of serious non-compliance. This represented approximately 0.5 percent of the country's total reported cases of serious non-compliance.

Hawke's Bay Regional Council monitored 100 percent of their dairy farms last year and both seriously non-compliant farms received a follow up visit in the same year.

Both seriously non-compliant dairy farms received an abatement notice. One of the farms had a history of serious non-compliance in the previous year.

One of the cases of serious non-compliance was the result of a travelling irrigator which had been stuck for enough time to create a visible growth response in the paddock. The other one was due to an effluent storage pond not having a lining. In both cases, it is likely that groundwater pollution could have occurred.



HAWKE'S BAY


80
Dairy farms

100%
Farms monitored

2
Serious non
compliances

425
**RMA Consents /
Compliance Officer**
Staff workload

Taranaki Regional Council

	Monitor 100% farms annually ✓	Less than 24h inspection notice ✓	Most SNCs had follow up visit ✓	All SNCs received enforcement action ✓	Data provided without difficulty ✓
---	--	--	--	---	---

Taranaki has the fourth highest number of dairy cows and the second highest number of dairy farms in New Zealand.

The region had 1,721 dairy farms which represents 14 percent of the country's total number of dairy farms. There were 17 instances of serious non-compliance. This represented four percent of the country's total reported cases of serious non-compliance.

Taranaki Regional Council monitored 100 percent of their dairy farms, gave no warning of inspection visits last year and all seriously non-compliant farms received a follow up visit in the same year.

All of the seriously non-compliant farms had formal actions taken against them with the Council issuing nine infringement notices, 16 abatement notices, and taking one prosecution.

The farm that was prosecuted discharged untreated effluent to water. There were three other cases

of serious non-compliance for the same offence that received abatement and infringement notices. While two of the three received both abatement and infringement notices, there was one farm that received only an abatement notice. In Forest & Bird's view, this is an indication of inconsistent compliance and enforcement practice.

Nearly all of the 17 serious non-compliances were a result of effluent being discharged incorrectly to land or water. There were three instances where water quality was found to be seriously non-compliant. Another case was due to management issues such as a hole in a pipe and vegetation growing on the effluent pond surface.

Two farms had a history of serious non-compliance in one of the previous two years, and one farm had a history in both of the past two years.



TARANAKI

1,721

Dairy farms

100%

Farms monitored

17

Serious non
compliances

387

**RMA Consents /
Compliance Officer**

Staff workload

F&B UID	INFRINGEMENT	ABATEMENT	PROSECUTION
TKI-5		X	
TKI-9		X	X
TKI-14	X	X	
TKI-15	X	X	

TABLE 6: Enforcement actions for serious non-compliant Taranaki dairy farms 2016-17
(untreated effluent 'discharge to water non-compliant')

Horizons Regional Council

D	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	X	✓	X	✓

The region had 938 dairy farms which represents approximately eight percent of the country's total number of dairy farms. The region had 26 instances of serious non-compliances. This represented six percent of the country's total reported cases of serious non-compliance.

If the regional rate of serious non-compliance is applied to the unmonitored farms, there may have been another 19 cases of serious non-compliance that went undetected as Horizons Regional Council monitored only 58 percent of their dairy farms last year. Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

The Council issued four infringement notices, eight abatement notices and took no prosecutions. While all serious non-compliant farms received a follow up visit in the same year, the majority of the farms (16) did not receive any formal enforcement action. Forest & Bird believes that in order to avoid repeat

offending, the Council should ensure that all cases of serious non-compliance receive an enforcement action.

All but two cases resulted in untreated dairy effluent incorrectly being applied to land and or water.

The Council did take three enforcement actions against one farm, one infringement and two abatement notices. This farm was said to have untreated '[u]nderpass discharge & 70 cows over consent.'

Other serious non-compliance occurred because of significant ponding and runoff. Another farm showed 'evidence of ongoing discharge to gully from sump overtopping' and had moved the irrigator prior to inspection.



**MANAWATŪ-
WHANGANUI**

938

Dairy farms

58%

Farms monitored

26

Serious non
compliances

137

**RMA Consents /
Compliance Officer**

Staff workload

Greater Wellington Regional Council

A	Monitor 100% farms annually ✓	Less than 24h inspection notice ✓	Most SNCs had follow up visit ✓	All SNCs received enforcement action ✓	Data provided without difficulty ✓
---	--	--	--	---	---

The region had 163 dairy farms which represented 1.3 percent of the country's total number of dairy farms. There were three cases of serious non-compliances. This represented less than 0.7 percent of the country's total reported cases of serious non-compliance.

Greater Wellington Regional Council monitored 100 percent of their dairy farms last year and all seriously non-compliant farms received a follow up visit in the same year.

All three of the seriously non-compliant farms had both an infringement notice and an abatement notice issued to them. The Council reported that the farms 'are now on 2 x a year inspections.'

Only one farm had a history of serious non-compliance in the previous year.

All three cases of serious non-compliance resulted in effluent being discharged incorrectly to land. The violations were for inadequate effluent storage leading to over-application to land via irrigator ponding, effluent pond over-topped and overflow of effluent in an underpass.



WELLINGTON

163

Dairy farms

100%

Farms monitored

3


Serious non
compliances

142

RMA Consents /
Compliance Officer

Staff workload

Marlborough District Council

	Monitor 100% farms annually ✓	Less than 24h inspection notice ✓	Most SNCs had follow up visit X	All SNCs received enforcement action X	Data provided without difficulty ✓
---	---	---	---	--	--

The Marlborough region had 52 dairy farms which represents 0.4 percent of the country's total number of dairy farms. The region had five instances of serious non-compliances. This represented 1.2 percent of the country's total reported cases of serious non-compliance.

While Marlborough District Council monitors 100 percent of their dairy farms every year, only one out of the five seriously non-compliant farms had any action taken against it and none received a follow-up visit.

Forest & Bird is concerned that four out of the five seriously non-compliant farms from last year have a history in one or both of the previous two years. For two farms, this means being in serious non-compliance for three consecutive years. Neither farm received any enforcement action as a result of this year's repeat serious non-compliance.

This could be why there was a high rate of serious non-compliance in the region. Forest & Bird believes that in order to avoid repeat offending, the Council should ensure that all cases of serious non-compliance receive an enforcement action.

One of the cases involved effluent discharging incorrectly (irrigator travelled too close to the waterway), and the other four related to poor practice that could lead to, or could have previously lead to, a pollution event.

In some cases serious non-compliance occurred because the effluent storage pond was located too close to a waterway and the farmer had not taken action after repeated non-compliance. According to the Council's rules effluent storage ponds must be more than 20 metres from a waterway. The Council commented that no environmental damage was observed and that in future this violation will be graded as a non-compliance rather than a serious non-compliance. The Council further indicated that these farms have either applied for resource consent to legalise the location of the storage pond (sump) or are planning to move the storage pond.



MARLBOROUGH

52

Dairy farms

100%

Farms monitored

5

Serious non compliances

No data

Staff workload

Nelson City Council

NO GRADE	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	—	—	—	✓

The Nelson region had three dairy farms which represents less than 0.1 percent of the country's total number of dairy farms. The region had no cases of serious non-compliance.

While none of the dairy farms were monitored for effluent compliance in 2016-17, Nelson City Council informed Forest & Bird that 'the farms have been visited for compliance monitoring on associated matters, but not for a targeted dairy farm audit.'

The Council also reported a change in its monitoring policy, stating, 'from this year NCC are carrying out annual targeted dairy farm compliance audits on all dairy farms in our region.'



NELSON

3

Dairy farms

0%

Farms monitored

0

Serious non
compliances

136

RMA Consents /
Compliance Officer

Staff workload

Tasman District Council

A	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	✓	✓	✓	✓	✓

The region had 139 dairy farms which represented one percent of the country's total number of dairy farms. There were four instances of serious non-compliance. This represented one percent of the country's total reported cases of serious non-compliance.

Tasman District Council monitored 100 percent of their dairy farms last year and all seriously non-compliant dairy farms received a follow up visit in the same year. All of the farms in serious non-compliance received at least one enforcement action. One farm received both an abatement notice and a prosecution, while all others received an abatement notice.

None of the four farms had a history of serious non-compliance in the previous two years.

All four cases of serious non-compliance resulted in effluent being discharged incorrectly to land and or water. One farm had, 'a temporary fix undertaken a few years prior' fail resulting in, 'a large volume of effluent being discharged to land from the hose end [which] flowed over land and also entered surface water.' Another farm was reported to have, 'a lack of contingency storage or back-up plan to avoid discharge to water.' The Council reported that the storage pond was, 'lapping at the brim and a heavy rain warning was in place.'



TASMAN

139

Dairy farms

100%

Farms monitored

4

Serious non
compliances

364

RMA Consents /
Compliance Officer

Staff workload

West Coast Regional Council

D	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	X	✓	X	✓

The region had 383 dairy farms which represented three percent of the country's total number of dairy farms. There was only one instance of serious non-compliance. This represented 0.2 percent of the country's total reported cases of serious non-compliance.

There may have been other cases of serious non-compliance that went undetected, as the West Coast Regional Council monitored only 77 percent of their dairy farms and gave the monitored farms more than 24 hours notice of the inspection. Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

The serious non-compliance was the result of an expired consent. The Council

notes indicated that the farm's 'consent to discharge agricultural effluent had expired prior to the inspection and therefore was expected to be operating under the permitted activity rule. At the time of the inspection there was a discharge from the second pond thereby breaching the rule.'

The Council issued both an abatement notice and an infringement notice to the farm.

The farm had no recorded history of serious non-compliance in either of the past two years.



WEST COAST

383

Dairy farms

100%

Farms monitored

1

Serious non compliances

1,620

RMA Consents / Compliance Officer

Staff workload

Environment Canterbury

B	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	✓	✓	✓	✓

Canterbury has the second highest number of dairy cows and the third highest number of dairy farms in New Zealand.

The region had 1,309 dairy farms which represented 10 percent of the country's total number of dairy farms. There were 37 instances of serious non-compliance. This represented approximately nine percent of the country's total reported cases of serious non-compliance.

If the regional rate of serious non-compliance is applied to the unmonitored farms, there may have been another 24 cases of serious non-compliance that went undetected as Environment Canterbury monitored only 60 percent of their dairy farms last year. Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

The Council has risk assessment criteria which assesses the severity of the potential environmental damage and the probability that the damage could occur for each of its dairy farms. If the activity has a high risk rating then it will be prioritised for monitoring. Forest & Bird considers all dairy effluent disposal to be an activity that carries sufficient risk to the environment and human health that all dairy farms need to be monitored every year.

Forest & Bird was provided with the requested details for 20 of the 36 cases

of serious non-compliance. The Council did not supply the remaining data on the other 16 cases in time for this report. They indicated that remaining 16 cases of serious non-compliance were resolved before the end of the financial year, which is why they had chosen not to report them in answer to our information requests. This raises questions as to whether the Council has been publicly under-reporting the region's real rate of serious non-compliance with dairy effluent management.

The Council did report issuing 20 infringement notices, 16 abatement notices, and taking one prosecution. In 11 cases, the Council used an informal enforcement tool they call an 'action plan'.

Of the 20 seriously non-compliant farms for which Forest & Bird has data, there was only one farm which had a history of serious non-compliance in the previous two years.

Most cases of serious non-compliance were the result of effluent being discharge incorrectly to land. In a few instances sampling results or seepage tests, or a certificate were not submitted. In one case the farm failed to install a piece of equipment meant to avoid backflow.



CANTERBURY

1,309

Dairy farms

60%

Farms monitored

36

Serious non
compliances

103

RMA Consents /
Compliance Officer

Staff workload

Otago Regional Council

B	Monitor 100% farms annually ✓	Less than 24h inspection notice ✓	Most SNCs had follow up visit X	All SNCs received enforcement action ✓	Data provided without difficulty ✓
---	----------------------------------	--------------------------------------	------------------------------------	---	---------------------------------------

Otago had 474 dairy farms which represented four percent of the country's total number of dairy farms. There were 13 instances of serious non-compliances. This represented three percent of the country's total reported cases of serious non-compliance.

Otago Regional Council monitored 100 percent of their dairy farms last year and all seriously non-compliant farms had an enforcement action taken against them. However, only three of the 13 seriously non-compliant farms received a follow-up visit in the same year.

All serious non-compliances resulted in ponding of untreated effluent on land potentially polluting groundwater. In one case the Council issued a formal warning, while all remaining instances of serious non-compliances received an infringement notice or a prosecution was taken.

Three farms had a history of serious non-compliance, and one farm was seriously non-compliant in three consecutive years. The Council took a prosecution against this farm.

All cases of serious non-compliance were the result of untreated effluent being discharged incorrectly to land, resulted in ponding. Most of the notes reveal that irrigation occurred on saturated soils, or that there was a malfunction like a hose leak, a pipe blow-out or the automatic irrigator timer allowed irrigation for extended periods.



OTAGO

474

Dairy farms

100%

Farms monitored

13

Serious non compliances

116

RMA Consents / Compliance Officer

Staff workload

Environment Southland

E	Monitor 100% farms annually	Less than 24h inspection notice	Most SNCs had follow up visit	All SNCs received enforcement action	Data provided without difficulty
	X	✓	?	X	X

Southland has the third highest number of dairy cows and the fourth highest number of dairy farms in New Zealand.

Environment Southland couldn't tell us exactly how many permitted dairy farms operate in the region, but reported that it had approximately 900 dairy farms which represented about seven percent of the country's total number of dairy farms. The region had 38 instances of serious non-compliance. This represented nine percent of the country's total reported cases of serious non-compliance.

Council staff visited dairy farms 941 times. Because information supplied to Forest & Bird was incomplete, we don't know exactly how many farms were visited, but we conclude that not all dairy farms were visited for effluent compliance monitoring because the Council is unsure how many dairy farms it has.

The Council did not identify which farms received an enforcement action, although reported that in total there were five abatement notices, 16 infringement notices, and five prosecutions. We don't know whether all actions were taken against the same farm or if each action was taken against a different farm. We can calculate that at least 12 farms did not receive an enforcement action in 2016-17.

We know that five of the dairy farms that were seriously non-compliant in 2016-17 were also seriously non-compliant in 2015-16, and six of the dairy farms were seriously non-compliant in 2014-15. We do not know how many farms were seriously non-compliant in both years.

We don't know if all seriously non-compliant farms received follow up visits as the Council would not provide this information without payment.

Forest & Bird requested information from Environment Southland in November 2017, May 2018 and June 2018. Each time the Council failed to provide all the information requested. In the first two instances the Council did not tell us why they couldn't supply the requested information. The Council was late responding to the second request, and refused to provide the information requested in the third request without payment. Forest & Bird has asked the Ombudsman to review the Council's decision as nearly all other councils were able to provide this information without payment.

Forest & Bird believes this information is of significant public interest and should be readily available.



SOUTHLAND

900

(approximately)

Dairy farms

?

Farms monitored

38

Serious non
compliances

334

**RMA Consents /
Compliance Officer**

Staff workload

APPENDIX 1

Missing information

Environment Canterbury initially provided information on only 20 of their 36 serious non-compliances for 2016-17. Environment Canterbury informed Forest & Bird that the 16 additional cases of serious non-compliance that were not reported to us were resolved in the same monitoring year. While the council did provide enforcement information for the additional 16, it did not provide the requested information on the reasons for the breaches, or the history of compliance for those dairy farms.

Waikato, Auckland and Southland had difficulty accessing the data in their databases. All information requests included the notes taken by the compliance officers at the time of the discovery of the serious non-compliance activity. We received these notes from all councils except Waikato and Southland.

The Waikato Regional Council acknowledged that the information was of public interest, however they calculated that it would take a staff member at least one week to manually collate the information on the 104 identified instances of serious non-compliance. The council offered to provide the case notes of a subset of the serious non-compliance dairy farms free of charge; however they refused to provide case notes for all of the farms without a payment, explaining that there were limitations to their database that complicated the provision of the information. They were able to provide information that allowed us to analyse in general terms if the significant non-compliance was, for example, a discharge to land or a discharge to water, etc.

Due to issues with their database, Waikato Regional Council was also unable to determine the exact number of dairy farms in the region in 2016-17. Forest & Bird therefore used the number of dairy farms reported by Waikato Regional Council for 2015-16. We acknowledge that this may create minor uncertainties in the statistical analysis. However, we are confident that these uncertainties are small enough that the overall integrity of the analysis will be maintained.

From Forest & Bird's first (November 2017) to its last (June 2018) LGOIMA requests, Environment Southland did not answer several of our questions. After follow-up communications the Council did provide some information, but this information did not address our specific questions. Environment Southland refused to provide any further information to Forest & Bird without payment.

Forest & Bird was unable to obtain the case notes for the 38 cases of identified significant non-compliance in Southland. As this represents nine percent of the total reported cases of serious non-compliance, this has created some difficulty in the interpretation of some of the national statistics. The Council also refused to provide information about which enforcement actions were taken in response to particular serious non-compliance incidents. However, they did tell us the total number of actions taken in the year by the Council. We were therefore unable to determine how many actions were taken against each farm. For this reason we have made appropriate qualifications such as 'at least' or 'at most' when discussing the relevant statistics.

GLOSSARY

CME: Compliance, monitoring and enforcement

MfE: Ministry for the Environment

NMS: National Monitoring System

Permitted Activity: If an activity is permitted in a regional plan, then a resource consent is not required as long as any requirements in the plan are met.

Regional Plan: An operative plan approved by a regional council, to help it carry out its functions in accordance with the sustainable management purpose of the Resource Management Act.

RMA: Resource Management Act 1991

SNC: Serious non-compliance. Defined by the Ministry for the Environment as, 'Non-compliance with many of the relevant consent conditions, plan rules, regulations, and national environmental standards, where there is significant environmental consequences and/or a high risk of adverse environmental effects.'

Unitary authority: A city or district council that also performs the functions of a regional councils. There are five unitary authorities in New Zealand: Auckland Council, Gisborne District Council, Nelson City Council, Tasman District Council, and Marlborough District Council.

REFERENCES

- Brown M A, 2017, 'Last line of Defence: compliance monitoring and enforcement of New Zealand's environmental law', Environmental Defence Society, Auckland.
- Deans N and Hackwell H, 2008, 'Dairying and declining water quality – Why has the Dairying and Clean Streams Accord not delivered cleaner streams?' Forest & Bird and Fish & Game, Wellington.
- Fleming, R and Ford, M, 2001, 'Human versus Animals – Comparison of Waste Properties', www.ridgetownc.com, Ridgetown College, University of Guelph, Canada.
- Ministry for Primary Industries, 'The Dairying and Clean Streams Accord: Snapshot of Progress, 2004-05', www.mpi.govt.nz.
- Ministry for the Environment & Stats NZ, 2017, 'New Zealand's Environmental Reporting Series: Our fresh water 2017', retrieved from www.mfe.govt.nz and www.stats.govt.nz.
- Ministry for the Environment, 2018, 'Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991', Wellington: Ministry for the Environment.
- Ministry for the Environment, 2016, 'Compliance, monitoring and enforcement by local authorities under the Resource Management Act 1991', retrieved from www.mfe.govt.nz.
- Office of the Prime Minister's Chief Science Adviser, 'New Zealand's fresh waters: Values, state, trends and human impacts', retrieved from www.pmcsa.org.nz.
- Rowarth JS 2013. 'Dairy cows– economic production and environmental protection', www.landcareresearch.co.nz, Manaaki Whenua Press, Lincoln, New Zealand.
- Tasman District Council. 'Frequently asked questions effluent storage volumes', www.tasman.govt.nz, (accessed June 2018).
- Waikato Regional Council, 'Compliance Information for Farmers, 2017'. www.waikatoregion.govt.nz, (accessed July 2018).



Forest & Bird

TE REO O TE TAIAO | *Giving Nature a Voice*

Phone: 04 385 7374

Ground Floor, 205 Victoria Street, Wellington 6011

www.forestandbird.org.nz