



Forest & Bird

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

To: Environment Committee
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Wellington

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Submission on the Natural Environment Bill and Planning Bill

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A. Introduction and overall comments

1. The Royal Forest and Bird Protection Society of New Zealand Inc (Forest & Bird) has been Aotearoa New Zealand’s independent voice for nature since 1923. Forest & Bird’s constitutional purpose is:

To take all reasonable steps within the power of the Society for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.

2. Forest & Bird is a key participant in district and regional planning and consenting decisions relating to indigenous biodiversity, freshwater, coastal environment and natural landscapes across New Zealand. Through resource management processes, it is a staunch defender of the life-supporting capacity of ecosystems, maintenance of biodiversity and protection of significant indigenous vegetation and significant habitat of indigenous fauna.
3. It has over 100,000 members and supporters who are passionate about enhancing, restoring and protecting nature in rural and urban areas throughout the country.
4. Forest & Bird is supportive of some aspects of the Bills, but submits that very significant changes are needed in order for the Bills to achieve their stated goals of unlocking development capacity and enabling delivery of infrastructure and primary sector growth while safeguarding the natural environment.

B. One integrated Act is preferable

5. Forest & Bird has carefully considered the reasons given for moving to a two Act system, but cannot see how this provides for a more efficient and effective system. The two Act approach results in the need to duplicate content between the two Bills. More substantively, it creates real uncertainty over how activities or environmental features that span both Bills are provided for (biodiversity being a key example of this, as discussed below). It will not be possible for people to simply “go to one place” to find out what is permitted or requires consent. Activities on land create impacts on water, air,

climate and ecosystems: land use planning cannot be separated from wider environmental considerations. For those reasons, Forest & Bird records its preference for one integrated environmental planning system rather than the two Acts proposed. That does not mean Forest & Bird is wedded to the RMA. It can see areas where the Bills propose meaningful improvements on the RMA and has noted its support for those features below. However, separation of the system into two separate acts is not an improvement.

C. Climate change

6. We are living in a climate emergency. The Bills will influence where and how we develop land for housing, whether and where we mine for coal, whether we protect or damage natural carbon sinks, and many other activities with direct and long-lasting impacts on the climate.
7. The Expert Advisory Group (“EAG”) in its recommendations on the Bills¹ reasoned that New Zealand’s main policy instrument for reducing emissions nationally is the Emissions Trading Scheme. However, it acknowledged the significant overlaps between greenhouse gas emissions reduction and land use (including infrastructure planning, urban planning and rural land use) and the Climate Change Commission’s advice that complimentary policies (beyond the ETS) are needed to support emissions pricing in addressing climate change. It said that the future land-use planning system could complement emissions pricing by providing policy direction on land-use matters relevant to reducing greenhouse gas emissions, such as increasing the use of renewable energy and developing an urban form consistent with reducing emissions.²
8. The Commission’s advice is that even with improvements, the ETS – acting alone – will not be capable of delivering a successful low emissions future. In an opinion piece titled “Why the ETS alone won’t get us to net zero emissions”,³ Commissioner Catherine Leining explains why:

It rewards the fastest and cheapest forestry removals regardless of impacts on biodiversity, landscapes and communities.

It does not apply foresight to manage risks from long term constraints on energy supply and land use or impending impacts from climate change itself, and the need to align mitigation with adaptation.

This is why other jurisdictions with large-scale emissions trading systems have not relied solely on emissions pricing to deliver on their targets.

¹ Expert Advisory Group, *Blueprint for resource management reform: A better planning and environmental management system 2025*, 24 March 2025

² EAG Report at 120 - 123

³ Commissioner Catherine Leining, *Insight: Why the ETS alone won’t get us to net zero emissions* <<https://www.climatecommission.govt.nz/news/insight-ets>>

Additional policies are needed to secure equitable outcomes, overcome barriers to change that are not about price and coordinate research and investment at the frontier of innovation.

9. Government/MfE modelling around ETS settings and scenarios indicates that even with other assumed reductions, some pathways do not meet New Zealand's budgets and targets.⁴ New Zealand needs to "pull all the levers" to meet budgets and targets that are aligned with a safe climate and comply with the Minister for Climate Change's obligation to ensure that emissions do not exceed emissions budgets.⁵
10. Other than making some provision for renewable energy, the Bills do not address effects on the climate, even in the modest way anticipated by the EAG. There is no climate-related goal, no requirement for policy direction on land-use matters relevant to reducing greenhouse gas emissions, such as developing an urban form consistent with reducing emissions, and no attempt to integrate with Emissions Reduction Plans prepared under the CCRA. It is uncertain whether it is even permissible for effects on the climate to be considered in planning and decision-making, particularly the climate effects of land use. Persons exercising functions, duties or powers under the Planning Bill must disregard any matter where the land use effects of an activity are "dealt with under other legislation": it is uncertain whether this includes the effects of land use on climate change.
11. Climate adaptation does not receive adequate emphasis in the Bills. No goal comprehensively covers climate adaptation: while managing natural hazard effects is a goal, the impacts of climate change are relevant as a natural hazard only where they affect another natural hazard such as landslips or flooding.⁶ This would exclude direct climate change effects such as warming ocean temperatures, ocean acidification and sea level rise, all of which have the potential for significant impacts on ecosystems, communities, and important industries like aquaculture - which is contrary to the system goal of increasing certainty for the marine sector. There is no requirement to consider climate adaptation in national instruments (other than as it affects natural hazards). Mandatory matters for spatial plans include "priority locations for adaptation plans prepared under the CCRA", but this phrase is not defined and "priority locations" does not have a meaning in the CCRA or the National Adaptation Plan itself. Adaptation plans under the CCRA are a matter to "have regard to" when preparing spatial plans, land use plans and natural environment plans, which is not sufficiently directive. The intention for both Bills is that its growth and development objectives are achieved while also adapting to the effects of climate change.⁷ Currently the Bills do not achieve the adaptation aspect of this intention.

⁴ <https://environment.govt.nz/assets/publications/climate-change/Review-of-the-New-Zealand-Emissions-Trading-Scheme-Summary-of-Modelling.pdf>

⁵ Section 5X CCRA.

⁶ See definition of "natural hazard"

⁷ Explanatory note, Planning Bill and Natural Environment Bill

12. The Bills must be changed to place climate impacts at the centre of planning and decision-making. Nature-based solutions to the climate crisis along with safe and environmentally sound adaptation to sea level rise and extreme weather events are essential.

13. **Forest & Bird recommends:**

- a. A comprehensive framework (goal, limit, planning and consenting requirements) for managing effects on the climate, to complement the emissions trading scheme and integrate with the CCRA:
 - i. In both Bills, a goal of contributing to the achievement of New Zealand’s emissions budgets and 2050 target. National policy direction would then be required to particularise that goal in the resource management context, in a manner that integrates with the Emissions Reduction Plans adopted under the CCRA.
 - ii. Addition of “climate” to the domains for which a regional council must set ecosystem health limits in cl 50 Natural Environment Bill.
 - iii. A requirement for spatial plans, natural environment plans and land use plans to be consistent with (instead of have regard to) Emissions Reduction Plans set under the CCRA.
 - iv. In the consideration of applications for permits and consents under both Bills, a requirement to consider effects on climate change and consistency with Emissions Reduction Plans.
- b. A comprehensive framework (goal, limit, planning and consenting requirements) for managing effects of climate change:
 - i. Recognition of climate change both as an exacerbator of natural hazards and as having its own direct environmental effects.
 - ii. A goal of safe and environmentally sound adaptation to the impacts of climate change, including through reliance on nature-based solutions. National policy direction would then be required to particularise that goal in the resource management context, in a manner that integrates with National Adaptation Plans adopted under the CCRA.
 - iii. Addition of “climate” to the domains for which the Minister must set human health limits in cl 49 Natural Environment Bill.
 - iv. A requirement for spatial plans, natural environment plans and land use plans to be consistent with (instead of have regard to) National Adaptation Plans set under the CCRA.
 - v. Clarification of what “priority locations for adaptation plans prepared under the CCRA”, which must be included in spatial plans, means.

- vi. In the consideration of applications for permits and consents under both Bills, a requirement to consider effects of climate change and consistency with National Adaptation Plans.

D. Biodiversity, significant natural areas and wetlands

Goals

14. Forest & Bird strongly supports the inclusion of biodiversity-focussed goals. A goal of safeguarding the life-supporting capacity of air, water, soil and ecosystems is essential in recognition that people, communities and the economy rely on a healthy, resilient environment. A goal of no net loss in indigenous biodiversity is also a good starting point. However, the framing of that goal, and the way in which these goals are implemented through the Bills carries significant risks to biodiversity.
15. Many indigenous terrestrial species are threatened or at risk of becoming threatened with extinction. Pressures on ecosystems, including from land-use change, have resulted in New Zealand having one of the highest proportions of threatened or at-risk species in the world. Remaining indigenous forest, scrub and tussock provide important habitat for indigenous species, but continue to be lost to other land uses.⁸
16. A goal of “no net loss” of biodiversity means some loss of biodiversity is acceptable, provided it is offset by gains elsewhere. It means that ongoing loss of biodiversity from human impacts is built into the system.
17. It appears to envisage no net loss at a national level, which would allow for loss at the ecological district or district/regional scale provided there are gains in other parts of the country. This is extremely difficult to assess, particularly for ecosystems that are less well monitored and understood, such as marine ecosystems.
18. There is no goal relating to environmental enhancement even though the purpose of the Natural Environment Bill includes establishing a “framework” for the “enhancement of the natural environment”.⁹ Given the extent of environmental degradation that has already occurred, a goal of enhancement is needed to ensure the system can provide for environmental improvement. This would align with the approach to land use and development: the Bills are seeking to drive growth and development to improve social and economic outcomes, and they should similarly seek to drive improved environmental outcomes, through environmental restoration and enhancement. If a “net” approach is retained, it should recognise the extent of loss that has already occurred and aim to achieve a net gain in biodiversity. The United Kingdom has recently introduced legislation mandating a requirement for development projects to achieve a minimum of 10% biodiversity net gain by the end of the development, to be maintained for a minimum of

⁸ Our Environment 2025, p 23-24.

⁹ Clause 4 Natural Environment Bill

30 years.¹⁰ New Zealand's identity and prosperity rests on its biodiversity and so there is even more of a case for a goal of biodiversity net gain in New Zealand than in the UK.

19. The goals are only matters that functionaries must "seek to achieve." National instruments are very important for implementing goals, as the goals have very little relevance to subordinate instruments under the Bills' "funnel" approach. However, when particularising the goals in national instruments, "not all goals need to be achieved in all places at all times".¹¹ While it is inevitable that some goals will conflict, the biodiversity goal is already expressed as a "net" outcome: it envisages some biodiversity loss provided there is a commensurate gain elsewhere. If that goal is then traded off against other goals and not achieved, it will result in a net loss of biodiversity.
20. In summary, a goal of no net loss:
 - a. Is inadequate, given the extent of biodiversity loss that has already occurred.
 - b. Is uncertain, in the absence of a definition of "no net loss" and with no specified scale over which the "net" outcome is assessed.
 - c. Is very difficult to assess achievement or failure against, due to uncertain information about ecosystem extent and quality and species' abundance (this is even more of an issue for marine ecosystems).
 - d. Is undermined (even more so than other goals) by the nature and role of goals in the system.
21. There is no goal relating to wetlands. New Zealand has lost an estimated 90 percent of historical wetland (repo) area. The small fraction that remains is vital for the survival of many threatened plant and animal species. Wetlands continue to be lost. Freshwater wetland area decreased by 1,498 hectares (0.6 percent), and saline repo area by 69 hectares (0.1 percent), between 2012 and 2018. Wetlands continue to be degraded by drainage and disturbance from adjacent land use, particularly roading and grazing. Wetlands provide many benefits, such as storing carbon, regulating water flow during storms, and purifying water by filtering out nutrients and sediments. Wetland protection is particularly uncertain under the Bills due to the division between natural environment and land use, when wetlands span both categories.
22. There is no goal relating to significant natural areas. These are areas of vegetation or other habitat that are of particular importance for biodiversity. In practical terms, protection of significant natural areas is essential to maintain biodiversity. A "no net loss of biodiversity" goal does not protect significant natural areas because it anticipates loss, and treats biodiversity as interchangeable. Because there is no goal of protecting significant natural areas, there is no driver for national policy direction to particularise how significant natural areas are to be identified and protected.

¹⁰ Schedule 7A Town and Country Planning Act 1990 as inserted by Sch 14 of the Environment Act 2021

¹¹ Clause 69 Natural Environment Bill

23. In the Planning Bill, significant natural areas are generally treated in the same way as outstanding natural areas and high natural character areas: as constraints on development that must be mapped in spatial plans.¹² However, unlike outstanding natural landscapes and high natural character areas which are the subject of a specific protection goal,¹³ there is no overarching statutory goal for protection of significant natural areas. Forest & Bird's proposed changes below therefore recommend adding significant natural areas to cl 11(g) of the Planning Bill.
24. The words "from inappropriate development" in cl 11(g) should be deleted. These words are essentially redundant given they are interpreted from the perspective of what is sought to be protected (development is inappropriate if it does not protect the identified values¹⁴) and their retention will simply increase uncertainty and risk of litigation.
25. The words "identified values" in cl 11(g) should also be deleted. While identification of significant natural areas and other important sites in spatial plans is supported as a tool to protect these sites and provide certainty, the environment is not made of concrete. Ecosystems change, move, expand and contract over time. For example, some important coastal vegetation is moving landward due to climate change and sea level rise, and fauna such as birds, bats and lizards can move their feeding, breeding and roosting sites due to habitat availability or predation pressure. Areas may become significant that were not previously and significant areas may cease to be significant. In addition, the timeframes for identification of significant natural areas are short and it is highly likely that areas will be missed. If protection is limited to "identified values" of significant natural areas, this leaves unprotected any significant values that were not identified, or which have become significant since the spatial plan was prepared. Certainty should not be at the expense of biodiversity protection.
26. The relationship between significant natural areas and the biodiversity goal and associated biodiversity limits is unclear. The concept of limits works well for some environmental features such as quantitative water quality standards, but has conceptual difficulties in its application to biodiversity. The Bills' prioritisation of a "cap and allocate" method of achieving limits will not be suitable for biodiversity (discussed further in **Part F**)
27. **Forest & Bird recommends that:**
 - a. The goal in cl 11(d) of the Natural Environment Bill is replaced with "maintenance and restoration of indigenous biodiversity to achieve net gain in indigenous biodiversity", with "maintenance" and "restoration" defined in accordance with the National Policy Statement for Indigenous Biodiversity.^{15 16}

¹² Clauses 2 and 3 of Sch 2 Planning Bill

¹³ Cl 11 Planning Bill

¹⁴ *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [101]

¹⁵ In cl 1.7 NPSIB, "maintaining indigenous biodiversity" requires: (a) the maintenance and at least no overall reduction of all the following: (i) the size of populations of indigenous species: (ii) indigenous species occupancy across their natural range: (iii) the properties and function of ecosystems and habitats used or occupied by

- b. A goal of maintaining and restoring wetlands is added to both Bills.
- c. Clause 11(g) of the Planning Bill is amended to include a goal relating to significant natural areas and delete the words “from inappropriate development” and “identified”:
 - (g) to protect ~~from inappropriate development~~ the ~~identified~~ values and characteristics of—
 - (iA) significant natural areas
 - (i) areas of high natural character within the coastal environment, wetlands, and lakes and rivers and their margins:
 - (ii) outstanding natural features and landscapes:
 - (iii) sites significant historic heritage:
- d. Alternatively, “protection of significant natural areas” is added to the Natural Environment Bill goals, if the intention is that biodiversity-related matters sit fully within the Natural Environment Bill:
 - “maintenance and restoration of indigenous biodiversity and protection of the identified values and characteristics of significant natural areas”
- e. Significant natural areas are defined as “areas of indigenous vegetation or habitat of indigenous fauna that are of particular importance for maintaining and restoring biodiversity”.

Coverage across / division between the Bills

- 28. The Natural Environment Bill specifies effects of activities that are relevant for any person exercising functions, powers and duties under the Natural Environment Act, including effects “on natural resources including ... indigenous biodiversity”, and specifies that functionaries “must not consider effects regulated under the Planning Act”.¹⁷
- 29. The Planning Bill (cl 14) conversely specifies effects that are not relevant when exercising functions, duties or powers under the Planning Act, including “any matter where the land use effects of an activity are dealt with under other legislation”.¹⁸ Cl 14 does not restrict the management of outstanding natural landscapes and features along with some other high value areas, but significant natural areas are not part of that exclusion (meaning that cl 14 does restrict the management of significant natural areas). Consent authorities considering applications for planning consent must disregard effects that are outside the

indigenous biodiversity: (iv) the full range and extent of ecosystems and habitats used or occupied by indigenous biodiversity; (v) connectivity between, and buffering around, ecosystems used or occupied by indigenous biodiversity; (vi) the resilience and adaptability of ecosystems; and (b) where necessary, the restoration and enhancement of ecosystems and habitats.

¹⁶ In cl 1.6(1) NPSIB, “restoration” means the active intervention and management of modified or degraded habitats, ecosystems, landforms, and landscapes in order to maintain or reinstate indigenous natural character, ecological and physical processes, and cultural and visual qualities, and may include enhancement activities.

¹⁷ Clause 14 Natural Environment Bill

¹⁸ Clause 14 Planning Bill

scope of the Act,¹⁹ and must have regard to adverse effects on persons and on “the built environment”.²⁰ It is not clear whether significant natural areas form part of “the built environment”:

- a. The term “built environment” does not on its face indicate that it covers significant natural areas.
- b. The definition of “built environment” includes “land and the identified values and characteristics of land”.
- c. Whether a significant natural area (undefined) is an identified value or characteristic (undefined) of land (defined inclusively as land covered by water, the airspace above land and the surface of water in a lake or river) is uncertain. It is equally uncertain whether this phrase covers outstanding natural landscapes, high natural character areas and sites of significance to Māori.

30. The intention appears to be that effects on indigenous biodiversity, including significant natural areas, are addressed under the Natural Environment Bill. Forest & Bird understands this to mean that the plan provisions concerning biodiversity would sit in natural environment plans, and that direct effects on indigenous biodiversity such as indigenous vegetation clearance would be managed through cl 17 land use restrictions, natural environment plan methods, and natural environment permits. However, this division between the Bills creates a conflict (or at least uncertainty):

- a. Significant natural areas operate as a “constraint on the use and development of land and the coastal marine area” but persons preparing land use plans and considering planning permits cannot have regard to effects on them (unless they are part of the “built environment”).
- b. Persons preparing spatial plans are exercising or performing a function, duty, or power under the Planning Bill. Clause 14 prevents them considering effects of land use on biodiversity, yet in preparing a spatial plan they must (i) map significant natural areas and “the spatial implications of environmental limits”²¹; and (ii) enable integration at the strategic level of decision making under the Planning Act and Natural Environment Act,²² both functions which require them to consider effects of land use on biodiversity.
- c. Wetlands are not one of the matters that must be spatially identified in regional spatial plans. Some wetlands may be mapped as significant natural areas but that depends on definitions and criteria. This creates significant risk of further wetland loss.

¹⁹ Clause 138 Planning Bill

²⁰ Clause 139 Planning Bill

²¹ Clauses 2 and 3, Sch 2 Planning Bill

²² Clause 67 Planning Bill

- d. Some activities that are managed under the Planning Bill, such as subdivision²³ and activities on the surface of water, affect biodiversity. Subdivision can adversely affect indigenous biodiversity, even in circumstances where it will not require a natural environment permit. For example, in the *Amberfield* case, the subdivision was predicted to have adverse effects on Threatened bat populations, including in nearby significant natural areas. The subdivision itself did not involve native vegetation clearance. These effects were managed through a setback and a consent notice preventing domestic cats. Consent was granted, enabling the subdivision to proceed while minimising adverse effects on Threatened species. Activities on the surface of water bodies can also have significant impacts on biodiversity that are not managed under a natural environment rule or permit (for example, jetboats in rivers that are important for vulnerable wildlife). It is unclear whether these types of activities' effects on biodiversity are required or able to be considered under the Bills' current division, particularly given cl 139 which provides that consent authorities considering a planning consent application may only consider adverse effects on persons and the built environment.
- e. Natural environment plans must ensure that environmental limits and water conservation orders are complied with²⁴, where-as that is not a requirement for land use plans.²⁵

31. Forest & Bird recommends that:

- a. The phrase "land and the identified values and characteristics of land" within the definition of "built environment" in the Planning Bill is amended to clarify that it includes values on, or pertaining to the land, including significant natural areas, outstanding natural landscapes, wetlands, high natural character areas and sites of significance to Māori.
- b. Clause 14 and cl 139 of the Planning Bill are amended to make clear that effects of activities on significant natural areas are relevant under the Planning Bill.
- c. Clause 2 of Sch 2 is amended so that the mandatory matters that must be mapped in regional spatial plans includes wetlands.
- d. The "core obligations" for land use plans are amended to include compliance with environmental limits and water conservation orders.
- e. Further consideration is given by officials and the Committee to the intended integration between significant natural areas (as provided for in the Planning Bill/regional spatial plans) and biodiversity goals and limits (in the Natural Environment Bill/natural environment plans) to ensure there are no other

²³ Clause 18 Planning Bill

²⁴ Clause 97 Natural Environment Bill

²⁵ Clause 80 (2)

conflicts or gaps. This is particularly important for biodiversity that is not squarely terrestrial (and therefore addressed through land use controls) or aquatic, such as wetlands.

Biodiversity targets

32. Setting and observing limits is a key method of environmental protection in the Bills. Forest & Bird generally supports limits because they can be used to protect important values with more clarity and certainty. Forest & Bird also supports the inclusion of indigenous biodiversity as a domain for which ecosystem health limits must be set.²⁶ However, there are system-wide inadequacies in the Bills' limits framework. Improvements are needed, particularly given the important role limits play in "enabling development within limits", avoiding over-allocation and managing cumulative effects under a more permissive system.
33. The Bills do not provide a framework for environmental enhancement. Limits will help to protect existing values but the extent of biodiversity loss that has already occurred means that without improvement the environment will remain significantly degraded in key domains including freshwater and biodiversity. For those reasons, Forest & Bird has recommended goals for restoration in addition to maintenance. Such goals could be implemented by setting evidence-based, measurable and enforceable targets for restoration in addition to limits. **Forest & Bird recommends that** the Natural Environment Bill includes a requirement for ecosystem health targets to be set by regional councils.
34. The efficacy of limits depends on how they are identified, applied locally and implemented. There are system-wide inadequacies in the Bills' limits framework that carry risks for biodiversity. These are addressed in **Part F** below.

E. Landscape and natural character

35. The Bills severely limit landscape and natural character protection.

Outstanding natural features and landscapes

36. Protection of outstanding natural features and landscapes from inappropriate development is a goal in the Planning Bill.²⁷ Territorial authorities must regulate and manage outstanding natural features and landscapes,²⁸ and such areas must be mapped as a constraint on land use in spatial plans.²⁹ However, it is unclear how consideration of landscape effects would be addressed in plans or "triggered" for specific activities. Given the regional/territorial division of function it appears unlikely that rules in natural environment plans will manage activities' effects on landscape, in which case it will

²⁶ Clause 50 NEB.

²⁷ Clause 11

²⁸ Clause 184 Planning Bill

²⁹ Clauses 2-3 Sch 2 Planning Bill

depend on rules being included in land use plans that either contain appropriate permitted activity standards or require resource consent for activities that would adversely affect outstanding natural features and landscapes. Under the Planning Bill, effects on landscape must be disregarded, except that this does not restrict the management of specified features including outstanding natural features and landscapes.³⁰ However, as discussed above: when it comes to planning consents, only effects on the “built environment” (and people) are relevant.³¹ It is unclear from the definition of “built environment” whether this covers outstanding natural features and landscapes. How and where outstanding natural features and landscapes are protected is very unclear and this should be clarified.

37. Parts of the coastal marine area have or contribute to outstanding landscape values, and areas on land can be impacted by activities in the coastal marine area. Activities regulated under the Natural Environment Bill such as discharges can also impact landscape values. It is unclear whether any person is required (or able) to manage those landscape values / activities / effects and this should also be clarified.

Other landscape values

38. Landscape values that are not outstanding nonetheless contribute in significant ways to the character of New Zealand and our social and economic wellbeing (such as through tourism). Generally, landscape effects can be managed through sensitive mitigation such as screening vegetation: there are very few instances where landscape effects have resulted in projects being declined consent under the RMA. Urban amenity is also highly significant to people’s enjoyment of the environment that they live in. It would better serve the nation’s interests to retain consideration of landscape effects and urban amenity more generally, and manage the prioritisation of landscape values vs major infrastructure projects or urban growth and intensification through national direction, rather than excluding these considerations altogether.

Natural character

39. The submission points above all apply equally with respect to natural character. There is one additional issue for high natural character, in that it is not listed as a constraint to be mapped in spatial plans.³² This seems to be an error given high natural character is otherwise treated in the same way as outstanding natural features and landscapes.
40. The comments below regarding the chilling effect of regulatory takings are also relevant to outstanding natural features and landscapes and areas of high natural character in the coastal environment, wetlands, lakes, rivers, or their margins, given these are all “specified topics” in the Planning Bill.

41. **Forest & Bird recommends that:**

³⁰ Clause 14 Planning Bill

³¹ Clause 139 Planning Bill

³² Clauses 2-3 Sch 2 Planning Bill

- a. The phrase “Land and the identified values of land” in the definition of “built environment” in the Planning Bill is amended to include values on and pertaining to the land, including landscape and natural character values.
- b. Cls 14 and 156 of the Natural Environment Bill are amended as necessary to ensure the effects of all activities (land use, discharge, activities on the surface of water, etc) on landscape and natural character are considered and appropriately managed.
- c. The Bills provide for mitigation of effects on landscapes other than outstanding natural landscapes.
- d. Clause 3(1)(a) Sch 2 Planning Bill is amended to include high natural character areas as a mandatory matter to be mapped.

F. Limits

42. Limits need to be based on the best available evidence, including mātauranga Māori, not economic or social considerations. Limits should only be used as a backstop to guarantee the minimum state of the environment, rather than a limit to develop up to. In the Bills, limits are conceived of as a level up to which the use and development of natural resources should be enabled.³³ The level of degradation or biophysical state that is acceptable (i.e. the limit)³⁴ is subjective and vulnerable to uncertainty, even if the best methods are used to identify limits. The Environment Court has recognised the difficulty in defining environmental “tipping points”,³⁵ and the need to be precautionary as a result:

...the concept of a 'tipping point' is not found in the RMA. It is a tempting but misleading metaphor: it adds a connotation of a valued resource being at the top of a cliff, and one more push (in the form of the activity being applied for) will see the resource in pieces at the bottom. In reality it is often impossible to say where tipping points are in relation to habitats. Ecosystems and their components react to the myriad of stressors they are exposed to in a multitude of ways, very few of them known with accuracy.

43. While ecosystem health limits are mandatory, there is considerable discretion over the level at which they are set by regional councils, with methodologies and minimum standards also discretionary. Forest & Bird is not confident that ecologically appropriate limits will be set in that context. The lack of effective limit-setting by regional councils contributed to the significant degradation of water quality experienced in many areas over the last 25 years and the need for central government to set minimum standards.
44. Human health minimum requirements to protect human health “to an acceptable standard”: what is an acceptable standard is subjective and uncertain. While there are

³³ Natural Environment Bill, cl 11(a)

³⁴ Natural Environment Bill, cl 48

³⁵ *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 at [204]

specific requirements to be satisfied that certain outcomes will not arise before human health limits are set,³⁶ there are no “bottom lines” for ecosystem health limits other than the generalised requirement to safeguard ecosystem health.³⁷ The considerations for regional councils in determining ecosystem health limits, including the environment’s capacity to withstand/recover from pressure,³⁸ are a good starting point but not sufficiently stringent to ensure limits are set at an appropriate level given how critical they are to the overall functioning of the proposed system.

45. The purpose of environmental limits³⁹ is supported as are the criteria for decisions relating to environmental limits in cl 52⁴⁰ but these should also apply when the Minister is deciding whether and where to set a minimum acceptable level for an ecosystem health limit in national standards. The impact of proposed limits on social or economic matters should not drive limit-setting;⁴¹ these considerations should be relevant to how quickly the limit is achieved, not where the limit is set.
46. Effects vary spatially and temporally, making it more challenging to accurately identify environmental limits and whether a use or development is within an environmental limit, and therefore whether it is (un)acceptable. For instance, some effects may be instantaneous, delayed, acute or chronic. Limits need to be effective across regions, and in discrete locations.
47. The limits framework is also undermined by:
 - a. departures and exceptions from limits.
 - b. planning processes that are not robust or participatory enough, or appropriately sequenced, to ensure limits are set in the right place and achieved through plan methods (addressed in **Part G** of this submission).
 - c. the Bills’ favouring of permitted activities and preference for non-regulatory over regulatory methods (discussed in **Part H** of this submission).
 - d. the regulatory relief system which is likely to impede or disincentivise councils from identifying, setting, monitoring and enforcing limits (discussed in **Part I** of this submission).
48. Limits need to be strictly implemented with no (or very few) exceptions and strong compliance, monitoring and enforcement. The Bills do not do this.

³⁶ Clause 53 Natural Environment Bill

³⁷ Instead cl 55 has matters that councils must consider and a requirement to be satisfied that the proposed limit achieves the purpose of ecosystem health limits.

³⁸ Clauses 55-57 Natural Environment Bill

³⁹ Clause 46 Natural Environment Bill

⁴⁰ Clause 52 Natural Environment Bill

⁴¹ Clauses 55-56 Natural Environment Bill

49. First, limits themselves are set with reference to social and economic impacts,⁴² meaning they may be set at a level that does not safeguard the environment. Second, the Minister can, but is not required to, set minimum acceptable levels for ecosystem health limits in national standards. Third, regional councils can recommend an ecosystem health limit that is less stringent than the minimum acceptable level for that ecosystem health limit, provided the council or panel prepares a justification report.⁴³ Fourth, Council's ability to set ecosystem health limits above minimum acceptable levels should be made more express. Fifth, not all resource consents will be required to comply with limits:
- a. National direction can allow breaches of limits for categories of infrastructure with significant public benefits.⁴⁴
 - b. Under the FTAA, when considering a Natural Environment Bill or Planning Bill approval, panels will need to consider limits and the implications of breach of a limit if the approval were to be considered under the Natural Environment Bill, but will still be required to give greatest weight to the purpose of the FTAA; and not treat provisions of the NEB (including cl 164) that require an application to be declined as requiring the panel to decline the application.⁴⁵ As such, approvals considered under the FTAA are not required to comply with limits.⁴⁶
50. Allowing some activities to exceed limits has implications for other activities in domains where the ecosystem health limit is exceeded or nearly exceeded, as there will be less capacity for those activities (which do not have the same ability to exceed limits) to operate. Fast-tracked applications should be required to comply with limits unless they come within one of the narrow exceptions; simply being fast-tracked should not itself provide the exception. If exceptions are allowed, there must be more express obligations on councils and other developers (who are not subject to the exception) to reduce their impacts in order to ensure limits are achieved. While this is partly addressed by cl 67 of the Natural Environment Bill, this clause is only directed to regional councils not other users of the environment. The methods in cl 67 should include reviewing caps on resource use (not just setting a cap), reviewing permits themselves rather than only the conditions of permits (as a review of conditions may be insufficient to ensure a limit is achieved), and reviewing action plans. Without a stringent approach to counterbalance the inbuilt ability for some system users to breach limits, failure to meet limits is inevitable.
51. In practical terms, despite provisions requiring review of activities when limits are breached or likely to be breached, pressure from existing operators to continue to

⁴² Clauses 55-56 Natural Environment Bill

⁴³ Clause 51 Natural Environment Bill

⁴⁴ Clause 86 Natural Environment Bill

⁴⁵ FTAA, Schedule 5 cl 17(4)

⁴⁶ Although they may still be declined under s 85(3) FTAA provided that the breach is not the sole reason: ss 85(3) and (4) FTAA

operate will be intense and in those circumstances it is generally the environment, rather than existing users, that is forced to bear the burden of overallocation.

52. Limits are not easily applied to indigenous biodiversity. Not all aspects of ecosystems and species are amenable to quantified limits, so it is anticipated that any limit will be qualitative and largely based on maintaining the status quo (e.g. no loss of extent of wetlands; no loss of species abundance at the ecological district scale). Limits set at a level that allow further loss of biodiversity (e.g. a 10% reduction in a threatened species population) would not be ecologically or socially acceptable. The Bills currently have a preference for a “cap and allocate” method of achieving limits.⁴⁷ The concepts in cl 62 of a cap being a description of the maximum amount of resource use that can occur without breaching an environmental limit, and which informs the maximum quantum of resource use that a regional council may allocate through plan rules and permits, does not fit well with biodiversity. However if the alternative method of an action plan is used, there are hurdles to be passed before the action plan can include controls on land use, which effectively prioritise non-regulatory methods.⁴⁸ That is not appropriate or effective for achieving biodiversity limits.

53. **Forest & Bird recommends that:**

- a. Clauses 55-56 of the Natural Environment Bill are amended so that social and economic impacts are only relevant to how quickly exceeded limits are complied with, not to where limits are set.
- b. Minimum acceptable levels for ecosystem health limits are mandatory in national direction.
- c. The ability to set ecosystem health limits that are less stringent than national minimums is removed and the ability to set limits that are more stringent than national minimums is made express.
- d. Provision for activities to breach environmental limits are very tightly specified. The consequential amendments to the FTAA in Sch 7 of the Natural Environment Bill and Sch 11 of the Planning Bill are amended to require that fast-tracked projects comply with cl 164 of the Natural Environment Bill (so that they must meet environmental limits. There should be no general ability for fast-track projects to be approved when they fail to comply with human health and ecosystem health limits).
- e. Clause 67 of the Natural Environment Bill is amended to require Councils:
 - i. to account for the impacts of activities that have been authorised to breach limits by making changes to counterbalance the impact of the breach; and

⁴⁷ Clauses 60 – 62 Natural Environment Bill

⁴⁸ Clause 64 Natural Environment Bill

- ii. to expand the methods of remedying breaches of limits (or where limits are likely to be breached) to include reviewing caps on resource use, reviewing permits, and reviewing action plans, to counterbalance the breach.
- f. Further consideration is given to how limits for biodiversity will be implemented in practice, in particular given the prioritisation of the “cap and allocate” method for achieving limits, and the limitations on action plans including land use rules.

G. Planning processes

- 54. The process for setting national policy direction and national standards requires the Minister to establish and follow a process that includes giving the public “what the Minister considers to be adequate time and opportunity to make submissions” which must be not less than 20 working days.⁴⁹ There is no requirement for a hearing and the decision is made by the Minister rather than an independent hearing panel. The first suite of national policy direction must be issued within 9 months of the Acts’ assent with national standards to follow within 9 or 18 months depending on content.⁵⁰ For these instruments, the requirement for consultation with iwi is removed, and a 20-working day submission period is specified.⁵¹
- 55. This is not sufficient time to address all of the critical matters that will be set in national instruments. Without any requirement for a hearing or processes such as expert conferencing, the evidence base for national instruments will not be robustly tested. Ministerial decision-making means decisions on the content of these instruments is politicised. These shortcomings are of particular concern for standardised plan provisions which must then be adopted in land use plans and natural environment plans.
- 56. **Forest & Bird recommends that** the process for preparation of national instruments (including the first national instruments) includes as a minimum a 30-day submission period and a Board of Inquiry hearing, with provision for expert conferencing, legal submissions and cross-examination. The timeframe for issuing national policy direction should be extended to 18 months.
- 57. The first regional spatial plans must be notified within 6 months of the first national policy direction and decided within a further 6 months. This is far too short given the matters that spatial plans must include. In particular, proper identification of outstanding natural landscapes, natural character areas, significant natural areas and the spatial implications of limits is a detailed, time-intensive process that normally takes years. This process is

⁴⁹ Clause 70 Natural Environment Bill.

⁵⁰ Clause 5 Sch 1 Planning Bill

⁵¹ Clause 7 Sch 1 Planning Bill

essential to identify and protect New Zealand's most important natural features, and for spatial plans to provide a reasonable level of certainty.⁵²

58. Regional spatial plans also have a 20-working day submission period⁵³ and benefit from consideration by an independent hearing panel and a mandatory hearing requirement.⁵⁴ However, there is provision for the Minister to make decisions on some matters⁵⁵ rather than local authorities and there are generally no merits appeals to the Environment Court,⁵⁶ with the only exception being “a decision to reject the independent hearings panel’s recommendation relating to infrastructure”. This enables decisions on spatial plans which are contrary to the recommendations by the hearings panel, which removes decisions from their evidence base, reduces the relevance of public participation, and politicises the plan-making process.
59. Ecosystem limits are set in national environment plans after spatial plans have been adopted. This carries real risks that spatial planning decisions will provide for activities in a way that then either impacts how limits are set or in a way that does not comply with limits that are set. It is unclear how spatial plans will map the spatial implications of limits when ecosystem limits have not yet been set.
60. **Forest & Bird recommends that:**
 - a. The timeframe for notifying a regional spatial plan is extended to 2 years and the timeframe for adopting a regional spatial plan is extended to 18 months.
 - b. The submission period is extended to 30 working days and decisions on spatial plan content are made by independent hearings panels not local authorities or ministers. Merits appeals to the Environment Court are provided.
 - c. Ecosystem limits are set before regional spatial plans are prepared, with regional spatial plans then required to comply with ecosystem limits.
61. Land use plans and natural environment plans must be supported by a justification report wherever they contain a bespoke plan provision or a provision on a specified topic,⁵⁷ with specified topics being matters of high public and environmental importance.⁵⁸ In contrast there is no requirement for a justification report in relation to plan content relating to urban growth, infrastructure etc. This creates additional hurdles

⁵² It is also a very short timeframe for including the content necessary to achieve a 30-year trajectory for development and investment, noting the purpose of regional spatial plans is to set the strategic direction for development and public investment priorities in a region for a time frame of not less than 30 years.

⁵³ Clause 14 Sch 2 Planning Bill

⁵⁴ Clauses 15-17 Sch 2 Planning Bill

⁵⁵ Clause 19 Sch 2 Planning Bill

⁵⁶ Clauses 24 – 25 Sch 2 Planning Bill.

⁵⁷ Clause 11 Sch 2 Planning Bill

⁵⁸ Under the Planning Bill, historic sites and structures, outstanding natural features and landscapes, sites of significance to Māori and areas of high natural character; and under the Natural Environment Bill, significant natural areas, sites of significance to Māori, and terrestrial indigenous biodiversity.

for environmental protection which risk failing to achieve the Bills' environmental goals and limits.

62. The submission period for land use plans and natural environment plans is "at least 20 working days"⁵⁹ which is not sufficient in circumstances where expert evidence may be required. There are several significant limitations on public participation in plan-making. A proposed plan change or variation can be limited notified⁶⁰ and only specified people can make a submission on a plan.⁶¹ The most significant limitation is that submitters cannot seek a change to a standardised plan provision and cannot ask for a bespoke plan provision to be used instead of a standardised plan provision.⁶² The implication is that decisions made by local authorities that standardised provisions are sufficient to protect the region or district's environment are not able to be challenged. If there is a dispute about whether a natural environment plan or land use plan implements a national instrument or a regional spatial plan, only the Minister or regional council or spatial plan committee is enabled to refer the dispute to the Environment Court.⁶³ There is no apparent mechanism for interested persons to raise an implementation failure, or participate in the proceeding if an implementation failure is raised by one of those entities (except if it can be framed as an error of law). This is a critical matter which should be the subject of broad participatory rights.
63. An independent hearings panel makes recommendations on land use and natural environment plans with final decisions made by local authorities or designating authorities, and appeals are allowed only on questions of law where a local authority decides to include a standardised plan provision in a proposed plan or excludes a provision or matter from a proposed plan.⁶⁴ Appeals are not limited to questions of law where they relate to the spatial application of a provision on a specified topic or to compliance with cl 80(3) Planning Bill or cl 97(3) Natural Environment Bill. Forest & Bird supports the ability to make merits appeals in relation to the spatial application of a provision on a specified topic. The reference to cls 80(3) and 97(3) is unclear; if it is intended to refer to cl 80(2) Planning Bill and cl 97(2) Natural Environment Bill (the requirements to implement national instruments and regional spatial plans and ensure compliance with environmental limits and water conservation orders) Forest & Bird supports that outcome also.
64. As noted above, the "core obligations" for land use plans do not include a requirement to ensure compliance with environmental limits or water conservation orders. This risks authorising land use that does not comply with limits or WCOs.

65. **Forest & Bird recommends that:**

⁵⁹ Clause 15 Sch 3 Planning Bill.

⁶⁰ Clause 16 Sch 3 Planning Bill.

⁶¹ Clause 17 Sch 3 Planning Bill

⁶² Clause 18 Sch 3 Planning Bill

⁶³ Clause 118 Natural Environment Bill, clause 101 Planning Bill

⁶⁴ Clause 32, Sch 3 Planning Bill

- a. The timeframe for land use plans and natural environment plans is extended to 2 years.
- b. The submission period is extended to 30 working days.
- c. The limitations on who may submit on plans are deleted. If that change is not made, the definition of “qualifying resident” in the Natural Environment Bill should be corrected to refer to “region” in clause (d).
- d. Core obligations for land use plans are amended to include compliance with limits and water conservation orders.
- e. Submitters are enabled to submit on decisions to adopt standardised provisions.
- f. The scope of appeals is amended to include merits appeals on decisions to adopt standardised rather than bespoke plan provisions. Clause 32(4) of Schedule 3 of the Planning Bill is amended to refer to s 80(2) of the Planning Act and s 97(3) of the Natural Environment Act.

H. Framework for effects management and compliance with limits

Permitted activities

- 66. The principles for classifying activities provide that an activity should be classified as a permitted activity if either (A) the activity is acceptable, anticipated, or achieves the desired level of use, development, or protection of the natural environment; or (B) any adverse effects of the activity on the natural environment are well understood and can be managed. In both cases there must be sufficient allocation for any anticipated cumulative effect without breaching an environmental limit.⁶⁵
- 67. This approach means activities with significant impacts on the environment can be classified as permitted activities. Forest & Bird supports the requirement for permitted activities to comply with limits (cl 32(a)(ii)), but this will not be achieved if activities whose environmental effects are not well understood are enabled as permitted activities. In addition, not all resources will be “allocated” within a limit.
- 68. More permitted activities and less consents requires careful monitoring to avoid environmental harm. More is required in terms of the Bills’ monitoring requirements and resourcing of local authorities to undertake monitoring for this approach to succeed.
- 69. **Forest & Bird recommends that:**
 - a. cl 32(a)(i) is amended to require that both (A) and (B) are met, and that cl 32(a)(ii) is amended so that it there is “no risk that cumulative effects could breach an environmental limit”.

⁶⁵ Clause 31 Planning Bill, clause 32 Natural Environment Bill

- b. There is more specificity in the Bills' monitoring requirements as to regular monitoring of permitted activities and their potential cumulative effects.
- c. Government commits to ensuring that local authorities can resource monitoring of permitted activities, particularly those councils with large land or marine areas and small ratings bases.

Effects management

70. The Bills do not contain an effects management hierarchy. With respect to biodiversity at least, it is preferable for adverse effects to be avoided rather than minimised or remedied, and **Forest & Bird recommends** an effects management hierarchy is incorporated.
71. Decision-makers must not consider a less than minor effect (defined as "an adverse effect that is acceptable and reasonable in the receiving environment with any change being slight or barely noticeable") unless the cumulative effects are "greater than less than minor". "Receiving environment" is not defined. (cl 15(2)) and the concept of a "change being slight or barely noticeable", while potentially applicable to people's perception of activities (e.g effects on character or amenity) is difficult to apply to biodiversity. **Forest & Bird recommends that** if this concept is retained, it is reworded to be more applicable to the natural environment rather than people's perception of it.

Resource allocation and comparative permitting

72. Regional councils are responsible for allocating natural resources, including the taking, diverting, or use of freshwater, geothermal water, or coastal water and the occupation of space in the common marine and coastal area.⁶⁶
73. The Bills include new resource allocation methods called 'market-based allocation processes' and 'comparative permitting processes', which include auctions, tenders and comparative consenting. They can be used by councils only where required or authorised by national standards.⁶⁷
74. Forest & Bird's key concerns in respect of the new allocation processes relate to:
- a. Over-prioritisation of economic efficiency when making allocation decisions; and
 - b. Over-reliance on limits to prevent over-allocation.
75. The new methods seek to enable growth by improving allocative efficiency⁶⁸ but risk prioritising economic efficiency at the expense of other important considerations like the potentially significant cultural, ecological and social benefits that may be associated with resource use. To avoid this opportunity cost, allocation methods need to enable a holistic

⁶⁶ Natural Environment Bill, cl 223

⁶⁷ Natural Environment Bill, cls 100 and 87

⁶⁸ Ministry for the Environment, Supplementary Analysis Report: Replacing the Resource Management Act 1991 – Further Policy Decisions, December 2025, at p 33

consideration of resource use, rather than a simplistic one-dimensional focus on economic efficiency. At worst, Forest & Bird is concerned that such a one-dimensional focus will undermine the goals of the NEB that seek to safeguard the life-supporting capacity of ecosystems and prevent loss of biodiversity.

76. Allocation can be reduced, changed or limited where required to achieve environmental limits.⁶⁹ The risks that arise as a result of a system-architecture that relies heavily on ecosystem and human health limits for environmental protection are canvassed earlier in this submission, and are particularly concerning in the context of resource allocation. For the reasons previously discussed, overreliance on limits risks over-allocation beyond sustainable levels.

Complying with limits

77. The Natural Environment Bill's express requirements for regional councils to manage natural resources that are subject to environmental limits⁷⁰ are supported in principle. The requirement to give preference to using a cap on resource use⁷¹ may work well for quantifiable and allocable resources, but has difficulties for biodiversity as discussed above. The hurdles built into cls 62 – 62 as matters that Councils must be satisfied of⁷² may undermine achievement of limits. It will be difficult to demonstrate, to a level that does not create risk of litigation for councils, that non-regulatory or market mechanisms will not be effective (as required before action plans can recommend new land use rules). A cap on resource use, and associated rules are appropriate for quantifiable limits but regional councils should otherwise be able to decide how best to manage natural resources within limits without arbitrary preferences against land use or input controls. **Forest & Bird recommends** that cl 64(2) of the Natural Environment Bill is deleted.

Requirement for natural environment plan to comply with limits

78. Cl 97 requires natural environment plans to ensure that environmental limits are complied with, which Forest & Bird supports. However there is no express reference back to caps on resource use or action plans which are the key methods for achieving compliance with limits. **Forest & Bird recommends that** cl 97 is amended to expressly require natural environment plans to be compliant with caps and action plans.

I. Regulatory relief

79. The regulatory relief framework is of significant concern and should be deleted or substantially overhauled. It is fundamentally at odds with the intrinsic values of nature and New Zealanders' communal interest in a healthy environment. It is unfair that topics including biodiversity and significant natural areas are singled out as topics for regulatory

⁶⁹ Natural Environment Bill, cl 62(1)(b), 66(3)(b)(vi) and 67(3)(c)(iv)

⁷⁰ Clause 60 and 66 – 67 Natural Environment Bill

⁷¹ Clause 60(3) Natural Environment Bill

⁷² Clause 64(2) Natural Environment Bill

relief when other planning decisions that can also impact private property interests (e.g. spatial planning or designating a major road or landfill next door) are exempt.

80. Forest & Bird and others have been raising the significant concern that the regulatory relief framework will have a chilling effect on identification and protection of significant natural areas and other high value features such as outstanding natural landscapes. No meaningful response to those concerns has been given. How this chilling effect can be avoided so that the Bills' environmental goals can be achieved in practice should have received the same level of consideration as the impacts of planning controls on private property owners. **Forest & Bird recommends that:**
- a. The regulatory relief framework is deleted.
 - b. Alternatively, the Bills make clear that the costs of regulatory relief are not a relevant consideration when identifying and considering methods of protecting significant natural areas and indigenous biodiversity (or any other environmental feature).

J. Rules about fishing

81. Forest & Bird is aware that some submitters on the Bill are seeking that the ability for regional councils to impose rules controlling fishing are removed entirely. Forest & Bird opposes that outcome.
82. When the bill that resulted in the Fisheries Act 1996 was being considered by Select Committee, many submitters asked for the bill to provide for protection of areas of significant biodiversity, or maintenance and enhancement of the quality of the environment. The Select Committee did not agree, reasoning that these are "non-utilisation" principles that would be considered in other legislation including the RMA. It expressly left the RMA to manage effects of fishing on significant biodiversity.
83. The Bills generally continue the 2024 RMA amendments that limit rules controlling fishing. Forest & Bird appreciates the desire for integration between the Fisheries Act 1996 and the resource management system, but submits that there is no duplication of function in managing fishing's localised biodiversity effects under the resource management system. Constraints on rules controlling fishing under the Natural Environment Bill are not avoiding duplication but rather creating a regulatory gap.
84. Another issue raised by some parties in opposition to fishing-related rules is displacement. If displaced fisheries cause an effect on areas they are displaced to, this indicates that fishing pressure is too high overall and it is appropriate that additional controls under either the RMA or Fisheries Act (such as reductions in total allowable catch, spatial restrictions or gear restrictions) follow.
85. People and communities have only turned to the RMA for fisheries protection because management under the Fisheries Act has not been effective at protecting important areas with high biodiversity and cultural value. The Minister of Fisheries refusal to put a

temporary fishing closure around Otaiti / Astrolabe Reef under the Fisheries Act led Motiti Rohe Moana Trust to seek rules controlling fishing under the Bay of Plenty Regional Coastal Environment Plan. The Minister of Fisheries' refusal to put long-term protection measures in place at Maunganui Bay led hapū to seek protection under the Northland Regional Plan. The Minister of Fisheries' refusal to limit recreational fishing at Mimiwhangata similarly led hapū to seek protection under the Northland Regional Plan. In every case, the Environment Court considered evidence regarding the effectiveness of existing Fisheries Act controls, and the significant biodiversity impacts being experienced despite those controls, before authorising additional controls under the RMA.

86. **Forest & Bird recommends that** scope for natural environment plans to contain rules about fishing is retained, and that the limitations on rules controlling fishing⁷³ are removed.

K. Designations

Definition of "infrastructure"

87. The definition of "infrastructure" for the purposes of designations under cl 1 Sch 5 of the Planning Bill is overly broad. The current wording includes "resource recovery facilities or waste disposal facilities, including privately operated facilities that are open to the public" (cl 1(r)). The reference to "waste disposal facilities" cl 1(r) should be removed.
88. Waste disposal facilities, particularly landfills, should not be classed as infrastructure, for the following reasons:
- a. While traditional infrastructure may provide a lasting service that benefit the public, landfills release methane and may create long-term financial liabilities. Landfills often require long-term aftercare and monitoring after closing, leaving local authorities, ratepayers and in some instances central Government with the ongoing costs.
 - b. They normalise waste disposal rather than waste minimisation and reduction. To be financially viable, engineered landfills often require high and continuous volumes of waste. This discourages investment in recycling or composting infrastructure. This is likely to cause intergenerational burdens, and has no principled connection to the Planning Bill's own goals, for example, to ensure that land use does not unreasonably affect others (cl 11(1)(a)).
 - c. They pose continuous risks of groundwater and soil contamination through leachate leakage. Historical management of landfills and tips in Aotearoa New Zealand has generally been poor, with numerous legacy disposal sites across the country continuing to cause environmental harm (i.e. Fox Landfill). This is particularly the case for landfills sited in coastal or river margins or flood plains

⁷³ Clause 88, 106(3), 113 Natural Environment Bill

made vulnerable because of climate change, including more frequent severe storm events.

89. Clause 1(s) of Sch 5 (along with cl 281(1)(m) of the Planning Bill) allows regulations to deem “anything prescribed as core infrastructure operation” as infrastructure – effectively a ‘Henry VIII clause’. This enables the Executive to augment a listed matter in an Act through secondary legislation – opening the door to a wider range of projects to come within the definition of “infrastructure”. This benefit should not be extended lightly. Designations may impose significant land-use restrictions and simultaneously allow for environmentally harmful land-used practices, that can adversely affect landowners, the community, and the environment. Delegating this power to the executive is inappropriate given the rights and interests that designations can affect. Clause 1(s) of Sch 5 and cl 281(1)(m) should be removed.

Assessment of designations

90. Schedule 5 does not carry over the requirement under section 171 of the Resource Management Act to have particular regard to whether adequate consideration has been given to any alternative sites, routes, or methods of undertaking the work. This omission is significant. Where a proposal could compromise cl 11 “goals”, such as protecting areas of high natural character from inappropriate development or safeguarding communities from the effects of natural hazards, it is crucial that alternative locations or methods are considered.
91. Considering alternative sites or methods ensures that potential environmental effects are properly examined. It also better promotes efficiency, innovation, stronger and enduring planning outcomes, and helps determine whether a proposal will deliver genuine benefits.
92. Cl 13(5) should be deleted. It is curious that information need “only be at a level of detail that is proportionate to the nature and significance of any adverse effects of the project on the built environment.” This risks inaccurate or inadequate information being provided and ultimately will lead to poor decision-making and increased litigation risk. Projects risk being approved with unidentified or undisclosed adverse effects.
93. The “significance of any adverse effects” is left to the designating authority to determine, which means projects may be approved with unidentified, undisclosed, or downplayed impacts that will impose costs on people and the environment. Where an adverse effect is significant, but the designating authority claims it can be managed through conditions or a construction project plan, limited information may be provided. This prevents decision-makers from properly assessing whether those measures will effectively manage adverse effects. Relatedly, there is a risk that effects on biodiversity will not be considered in the assessment of designation (addressed in paragraphs 76 and 88 below).

Recommending authority considerations

94. Clause 24(1)(c)(ii) refers to “any significant adverse effect on the built environment” and should be amended to refer to “any adverse effect on the built environment”. Considering all adverse effects, rather than focusing solely on “significant” effects, is critical. Non-significant, incremental, or temporary impacts can combine to create substantial and long-term degradation (including cumulative effects). An assessment of adverse effects ensures a precautionary approach that prevents unforeseen, serious damage and accounts for any cumulative strain on the built environment.
95. As discussed above, limiting consideration to effects on the built environment does not enable impacts on outstanding natural landscapes, high natural character, significant natural areas and other biodiversity values to be considered. It cannot be assumed that designated projects will require natural resource permits and that those effects will be assessed elsewhere.
96. Clause 24(2)(a) should be deleted. It is antithetical to the cl 11 goals of the proposed Planning Bill to bar the consideration of alternatives when assessing strategic need. It will disincentivise infrastructure operators from undertaking thorough site selection processes to ascertain whether the final site selected achieves the most enduring and efficient benefits in accordance with the clause 11 goals. It also prevents infrastructure operators from properly assessing whether there is a “strategic need” for their chosen site, i.e. whether other sites would better fulfil the strategic need.

Construction project plans and conditions

97. Schedule 5 (including clauses 24(1)(d), 25(1)(b)) provides the option to use construction project plans, rather than conditions, to manage effects. Clause 37 sets out the requirements for construction project plans which only details *how* effects are to be dealt with rather than require mandatory standards to be set.
98. Construction project plans may lead to sub-optimal environmental outcomes as there is no clear enforcement pathway for these plans.
99. Measures to manage the effects of designations need to be clear, certain, and enforceable. Conditions generally do this job, as they define the mandatory environmental standard, legal obligations, and are fixed. Management plans are generally a tool for compliance but do not replace the need for clear standards. If the emphasis on construction project plans is to be retained, amendments are needed to require that mandatory environmental standards must also be set in conjunction with any construction project plan.
100. The reference to a condition being “no more onerous than necessary” in cl 25(1)(a) is also problematic as these leave room for debate and subjective assessments as to what is onerous and levels of difficulty. Environmental standards by their very nature will have some degree of difficulty. Clause 25(1)(a) would benefit from replacing the words “is no more onerous than necessary to manage an” with the words “directly relates to”.

101. Forest & Bird recommends that

- a. The definition of “infrastructure” in cl 1 of Sch 5 is amended by deleting the reference to waste disposal facilities, and deleting cl 1(s) of Sch 5 and cl 281(1)(m).
- b. The s 171 RMA requirement to have particular regard to whether adequate consideration has been given to any alternative sites, routes, or methods of undertaking the work is added to Sch 5.
- c. Cl 13(5) of Sch 5 is deleted.
- d. Cl 24(1) is amended by deleting the word “significant” from the reference to adverse effects that must be considered, and enabling consideration of impacts on outstanding natural landscapes, high natural character, significant natural areas and other biodiversity values (this may be intended by the definition of “built environment” but is currently uncertain).
- e. Clause 24(2)(a) is deleted.
- f. Provision for the use of construction project plans to be used in place of conditions, and the reference to conditions being “no more onerous than necessary” are deleted (or amended as set out above).

L. Natural resource permit and planning consent applications: participation and consideration

102. In theory, the Bills front-load resource management decision-making through more emphasis on planning and less on the resource consent stage. This philosophy is understood, however the Bills actually decrease participation in plan-making, and therefore risk worse resource management decisions being ‘baked-in’ to the system. Further, it is unavoidable that some important decision-making about whether activities are acceptable and how their effects are managed can only occur at the resource consent application stage.
103. In that context, Forest & Bird opposes the raised effects thresholds for targeted and public notification. If relevant authorities with environmental functions (e.g. DOC) and people seeking to advocate for environmental protection are only able to participate where effects on the environment are predicted to be significant, this enables very major impacts to be authorised without important input from those entities.
104. In the biodiversity context, the magnitude of an activity’s effects is routinely assessed after biodiversity offsetting or compensation is taken into account. For example, an activity that will result in the loss of 100 hectares of kiwi habitat and cause 10 kiwi deaths, but which will also involve predator control over 200 hectares may well be assessed as not having significant net environmental effects. For an effect to be significant there would need to be a very large residual effect even after offsetting is considered. However

that prediction assumes that both the impact and the offset have been accurately predicted, and that the activity is acceptable on that basis. Those are matters that third parties might legitimately seek to produce different evidence about, not matters that should be determinative thresholds at the notification stage. If the effect threshold for notification is to be raised, it should be clarified that it is based on the activity's effects without taking into account biodiversity offsetting or compensation.

105. Public notification is limited to “qualifying residents”, which appears intended to exclude environmental NGOs such as Forest & Bird from having input into resource consent decisions. Forest & Bird submits on resource consent application processes that would have major environmental impacts as a way of discharging its constitutional purpose. It is a voice for nature for its members and supporters. It contributes to the robustness of resource management decision-making by presenting expert evidence and legal submissions that provide a counterpoint to that presented by the applicant. This assists decision-makers, including by avoiding the need for a peer review in some instances. Forest & Bird opposes the attempt to limit its involvement in resource consent decisions. The definition of qualifying resident is likely to exclude other interested persons, for example entities with property rights and interests (e.g. fishing quota) that are not resident or operating within the region where the activity is occurring, but who would be affected by cross-boundary impacts.⁷⁴
106. Hearings are not required unless the consent authority considers that a hearing will be the most effective and efficient means to test information and issues related to the application.⁷⁵ Forest & Bird acknowledges that not every application that is submitted on warrants a hearing, but submits that this provides too great a discretion to the consent authority, and instead the onus should be reversed so that a hearing is required unless it is not necessary in order to test information and issues related to the application.
107. For natural resource permits, the consent authority must consider adverse effects on persons and the natural environment.⁷⁶ For planning consents, the consent authority only considers adverse effects on persons and the built environment.⁷⁷ As set out above, this creates a gap where activities have effects on the natural environment but only require a planning consent. It is not clear how effects on outstanding natural landscapes and features, high natural character and significant natural areas can be considered, unless these are part of the “built environment”?
108. A consent authority must not grant a natural resource permit or planning consent in some circumstances.⁷⁸ Forest & Bird supports the restriction on granting a permit that would breach a water conservation order or environmental limit (subject to exceptions,

⁷⁴ As noted above there is an error in the definition of qualifying resident in the Natural Environment Bill (reference to “district”).

⁷⁵ Clause 153 Natural Environment Bill

⁷⁶ Clause 156 Natural Environment Bill

⁷⁷ Clause 139 Planning Bill

⁷⁸ Clause 164 Natural Environment Bill; Clause 147 Planning Bill

discussed above in **Part H**). There is no restriction on granting a planning consent that would breach a limit, which creates risks for achieving compliance with limits. There is no restriction on granting a planning consent where the activity requires natural resource permits that cannot be granted, which risks authorising activities that cannot be implemented. The legal status of such activities (whether they form part of the “existing environment” when assessing other activities) is unclear.

109. **Forest & Bird recommends that:**

- a. Opportunities for participation in planning processes are enhanced as set out in **Part G** above.
- b. The thresholds for limited and public notification are retained at “minor” and “more than minor” respectively.
- c. The Bills clarify that the magnitude of an effect is to be assessed for notification purposes taking into account measures to avoid, remedy or mitigate the effect but excluding consideration of offsetting or compensation.
- d. The requirement for a person to be a “qualifying resident” in order to submit on an application is deleted.
- e. Clause 153 of the Natural Environment Bill is amended to specify a hearing is required unless the consent authority is satisfied that a hearing is not necessary in order to test information and issues related to the application.
- f. As addressed above, changes to cls 156 of the Natural Environment Bill and cl 139 of the Planning Bill and the definition of “built environment” are necessary to ensure effects on landscape, natural character and significant natural area values can be considered.
- g. Clause 139 or related provisions concerning planning consents are amended to prevent a planning consent being granted where it would breach a limit, water conservation order or where it requires natural resource permits that cannot be granted.

M. Wildlife permits and other changes to Minister of Conservation role

110. Wildlife permits are required under the Wildlife Act 1953 for activities such as the killing or harming of protected species that would otherwise be an offence under that Act. Wildlife permits can only be approved where consistent with the Wildlife Act’s protective purpose.⁷⁹
111. Clause 128 of the Natural Environment Bill creates a new avenue for wildlife permits to be obtained as part of a natural resource permit:

⁷⁹ *Environmental Law Initiative v The Director-General of the Department of Conservation and Others* [2025] NZHC 391 at [38]

A natural resource permit may include a **wildlife approval**, which is a lawful authority for an act or omission that would otherwise be an offence under sections 58(1), 63(1), 63A, 64, 65(1)(f), 70G(1), 70P, and 70T(2) of the Wildlife Act 1953.

112. The Bill does not say how wildlife approvals will be determined, other than as part of a natural resource permit. In the absence of such direction, the decision-making requirements in cl 154-167 of the Bill that apply generally to natural resource permits would also apply to wildlife approval aspects of a permit, and decisions will be made by the permit authority rather than by the Minister of Conservation or delegate. This is a very significant change that lessens wildlife protections, because the Natural Environment Bill does not contain the same protective purpose as the Wildlife Act or a similar Treaty provision.
113. The Bill does not contain a wildlife-focussed goal, and there is no reference to incorporation of wildlife permit considerations into national direction, spatial plans and national environment plans. There is a complete absence of policy framework to guide wildlife permit decisions (contrary to the “funnel” concept that applies to the rest of the system). There is also a mismatch between regulator and function: regional councils do not have wildlife protection functions and as such do not have staff with the type of expertise required to assess wildlife permits (unlike the Department of Conservation).
114. Under the Bills, the Department’s role is set to be significantly reduced in several other important respects:
 - a. The Minister of Conservation will no longer have functions in respect of coastal policy preparation either at a regional or national level (e.g. the preparation of the New Zealand Coastal Policy Statement under the RMA) and will only have responsibility for specific offshore islands (e.g. Kermadec Islands, Campbell Islands).
 - b. Changes to participation in plan-making and to notification of consents under the Bills will reduce participation generally and therefore reduce the Department’s advocacy opportunities.
115. This will result in an overall reduction in prioritisation of the natural environment in planning and consenting, contrary to the goal of safeguarding life-supporting capacity and maintaining biodiversity.
116. **Forest & Bird recommends that:**
 - a. The ability to grant a wildlife approval under the Natural Environment Bill is deleted.
 - b. The Minister of Conservation and Department of Conservation’s existing roles are retained and enhanced in the new system.

N. Treaty obligations

117. The Bills' Treaty clause is much narrower than under the RMA. It fails to acknowledge the intrinsic relationship of tangata whenua with the environment and the kaitiaki obligations that come with that relationship.
118. In the past, legal requirements to provide for the relationship of Māori with their ancestral lands, water, sites, wāhi tapu, and other taonga as a matter of national importance have been instrumental in protecting significant environmental values. The Bills' narrow approach to Te Tiriti o Waitangi / the Treaty of Waitangi does not uphold the Crown's obligations under the Treaty. The Bills must be changed to meaningfully provide for partnership, active protection, rangatiratanga and the exercise of kaitiakitanga.

O. Protecting the Hauraki Gulf

119. The Hauraki Gulf Marine Park Act 2000 (**HGMPA**) recognises and seeks to protect the national significance of the Hauraki Gulf. Section 7 recognises that the interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment, are matters of national significance.⁸⁰ Section 8 provides that, to recognise this national significance, the Gulf is to be managed in accordance with specific objectives, including:⁸¹
- a. the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment; and
 - b. the maintenance and, where appropriate, the enhancement of the contribution of natural, historic, and physical resources to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand.
120. Integrated management is a core purpose of the HGMPA⁸² and the HGMPA clearly articulates how the objectives of the HGMPA are to be implemented under the RMA. In particular, the HGMPA requires:
- a. regional policy statements, regional plans and district plans that apply to the Hauraki Gulf, its islands, and its catchments to not conflict with s 7 and 8;⁸³
 - b. consent authorities to have regard to ss 7 and 8, when considering an application for a resource consent for the Hauraki Gulf, its islands, and catchments;⁸⁴
 - c. section 55 of the RMA to be applied as though ss 7 and 8 of the HGMPA were a national policy statement;⁸⁵ and

⁸⁰ HGMPA, s 7; The meaning of 'life-supporting capacity' is discussed within this section and includes the capacity to provide for relationships, well-being, the maintenance of ecosystems, and the use of resources.

⁸¹ HGMPA, s 8

⁸² HGMPA, s 3(a)

⁸³ HGMPA, ss 9(2) and (3)

⁸⁴ HGMPA, s 9(4)

- d. ss 7 and 8 to be treated as a New Zealand coastal policy statement issued under the RMA (in respect of the coastal environment of the Hauraki Gulf).⁸⁶
121. Section 13 of the HGMPA further provides that all persons exercising powers or carrying out functions for the Hauraki Gulf under the RMA⁸⁷ must have particular regard to the provisions of sections 7 and 8 of the HGMPA. The HGMPA establishes the Hauraki Gulf Forum to integrate the management of the Hauraki Gulf for the benefit and enjoyment of the people and communities of the Gulf and New Zealand; to facilitate communication, co-operation and co-ordination, and to recognise the relationships of tangata whenua with the Gulf. Finally, the HGMPA also creates the Hauraki Gulf Marine Park:⁸⁸
- a. to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park;
 - b. to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth;
 - c. to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park; and
 - d. to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.
122. Any person holding, controlling, or administering land, foreshore, seabed, a marine reserve, a high protection area, a seafloor protection area, a taiapure-local fishery, or a mataitai reserve in the Hauraki Gulf Marine Park is required to recognise and give effect to the purpose of the Park.⁸⁹
123. The Bills do not articulate how these HGMPA duties in respect of the Hauraki Gulf and the Hauraki Gulf Marine Park will be retained in the new system. No amendments have been proposed to the HGMPA via Schedule 7 NEB or Schedule 11 PB and it is not clear whether this is an oversight or an intentional change, because integration with the HGMPA has not been addressed or explained in any of the background information that we have seen.
124. The risk of this oversight is that the Hauraki Gulf and its nationally significant values may be treated like any other coastal environment, undermining the "benefits" that the HGMPA provides (being an integrated land-sea framework for sustainable management).

⁸⁵ HGMPA, s 9(5)

⁸⁶ RMA, ss 62(3), 67(3)(b), 75(3)(b)

⁸⁷ A specified Act in Schedule 1 of the HGMPA

⁸⁸ HGMPA, s 32

⁸⁹ HGMPA, s 37(1)

125. The Bills also overlook the recently enacted Hauraki Gulf / Tīkapa Moana Marine Protection Act 2025 (**Tīkapa Moana Act**), which establishes new marine reserves, seafloor protection areas and high protection areas within the Gulf to contribute to the restoration of the health and mauri of the Hauraki Gulf / Tīkapa Moana.⁹⁰

126. **Forest & Bird recommends:**

- a. Amendments to the Bills and consequential amendments to the HGMPA to ensure equivalent recognition of and protection for the nationally significant features and values of the Hauraki Gulf and to give effect to the purpose of the Hauraki Gulf Marine Park.
- b. A requirement that national direction and plans established under the PB and NEB give effect to ss 7 and 8 of the HGMPA;
- c. Amendments to require consent and permit authorities, when considering an application for a land use consent or natural resource permit for the Hauraki Gulf, its islands, and catchments, to have regard to s 7 and 8 in addition to the matters contained in the PB or NEB;
- d. Identification and recognition of, and provision for, the special features and values of the Hauraki Gulf in spatial plans, including but not limited to the Hauraki Gulf Marine Park and the marine reserves, seafloor protection areas and high protection areas established under the Tīkapa Moana Act; and
- e. Amendments to require Ministers, spatial planning committees, or territorial authorities exercising planning functions in respect of the Hauraki Gulf to seek advice from the Hauraki Gulf Forum so that the objectives of and outcomes anticipated by the HGMPA (including the Hauraki Gulf Marine Park) and Tīkapa Moana Act can be integrated and adequately provided for in the resource management system.

P. Water conservation orders

127. Forest & Bird supports retaining the framework for making water conservation orders. Given the ongoing and significant decline of quality and ecological health of Aotearoa New Zealand's water bodies, water conservation orders remain a critical tool in the planning toolbox. Water conservation orders are aptly described by some as the "national parks of freshwater." They remain necessary as they provide the primary instrument for freshwater protection equivalent to those established for coastal and terrestrial environments such as marine reserves and national parks.

128. Cl 12 only allows appeals to the Environment Court on points of law. This should be amended to allow appeals on merits in the same way as section 209 of the RMA. Most water conservation orders currently in place have undergone merits appeals. This is

⁹⁰ Hauraki Gulf / Tīkapa Moana Marine Protection Act 2025, s 3

important as the Environment Court's inquiry provides an added layer of scrutiny, including further fine-tuning, of a proposed order. The inquiry into merits enables the more rigorous testing of expert evidence, including via cross-examination and Court facilitated conferencing, to determine whether values meet relevant criteria or whether an order is in fact necessary.

129. The "cultural" purpose of WCO's should also be carried over. Tikanga Māori has inextricable links to the matters listed in cl 1(2)(b) – for example in relation to mahinga kai and customary fisheries. Tikanga Māori is also recognised in existing water conservation orders for Te Waihora/Lake Ellesmere, Oreti, Kawarau, and Rangitata.
130. Forest & Bird supports the monitoring requirements under cl 3(2)(d) of Sch 4 and s 227 of the National Environment Bill. This will assist regional councils in undertaking their responsibilities, including regulating and managing water quality and quantity, under cl 221.
131. Further consequential amendments are needed in other parts of the Natural Environment Bill and Planning Bill to recognise the status of water conservation orders, as set out below.
132. **Forest & Bird recommends that** the water conservation order provisions in the Natural Environment Bill are retained subject to the following amendments:
 - a. Clause 1(2)(b) Sch 4 Natural Environment Bill is amended to include "cultural values".
 - b. Clause 12 is amended to enable merits appeals to the Environment Court.
 - c. In Part 6 "Enforcement and other matters" the words "restriction or prohibition in a water conservation order" should be added to listed matters in: Natural Environment Bill clauses 243(1), 245(1)(a)(i), the definition of "incident", 258(1)(a)(i), (b)(i), and (d)(iii), 266(1)(a)(i), (b)(i).
 - d. "Any relevant water conservation order" should be added to the listed matters in cl 97(2)(a) of the Natural Environment Bill and cl 80(2) of the Planning Bill.

Q. Declarations

133. The declaration provisions are supported but there is an error in cl 255(3) Natural Environment Bill; the reference should be to s 254(1)(e). The current cross reference would prevent any person other than a local authority, consent authority or Minister of Conservation applying for a declaration. It is clear this is an error when it is compared to cl 229(3) of the Planning Bill where the cross-reference is to s 228(1)(e) only.

R. Enforcement

134. Forest & Bird generally supports the enhanced enforcement provisions under the Bills.

S. Wish to be heard

135. Forest & Bird wishes to be heard in support of this submission.

Nicola Toki
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Forest & Bird