



# 1 Risk-based monitoring

Compliance monitoring is critical to achieving the purpose of the RMA – promoting the sustainable management of natural and physical resources. The NES-PF is based on an approach where *plantation forestry activities* are generally permitted where the relevant permitted activity conditions are complied with. A resource consent will be required where the risks are higher due to site-specific factors or where permitted activity conditions cannot be complied with, to allow for site-specific oversight and a more tailored response to particular issues.

This risk-based approach and the NES-PF conditions encourage foresters to take a proactive approach to identify site specific risks and implement appropriate management practices to respond to those risks. It also places a greater emphasis on councils adopting proactive compliance monitoring programmes for permitted activities to ensure foresters are complying with the NES-PF. A risk-based approach to compliance monitoring that focuses on activities with a higher risk of non-compliance, and/or a greater risk to the environment in the event of non-compliance, is the most efficient and effective approach.

Councils undertake compliance monitoring of both permitted activities and resource consents through their duty to observe and enforce policy statements and plans (section 84 of the RMA), monitor the environment (section 35(2)(A) of the RMA), and monitor resource consents in their region or district (section 35(2)(d) of the RMA). The Ministry for the Environment has developed draft guidelines to assist councils with their general compliance, monitoring and enforcement (CME) responsibilities under the RMA<sup>1</sup>.

This guidance is focused on how councils can take a risk-based approach to monitor *plantation forestry activities* under the NES-PF. This guidance draws on the approach to compliance monitoring promoted in the Ministry for the Environment's CME guidelines and the Regional Sector Strategic Compliance Framework 2016-2018<sup>2</sup>. This Framework was developed for the regional sector and advocates a strategic approach to compliance and enforcement so that councils focus their efforts on 'important problems' based on a range of risk-based factors.

The approaches that councils take to monitor compliance under the NES-PF and the levels of compliance with the NES-PF will be monitored as part of the NES-PF Monitoring and Evaluation Plan. This recognises that compliance with the NES-PF is important to ensure environmental outcomes associated with *plantation forestry activities* managed under the NES-PF are maintained or improved.

## 1.1 COMPLIANCE MONITORING

Compliance monitoring allows councils to identify whether permitted activity conditions and resource consent conditions are being complied with to allow for appropriate action to be taken. Compliance monitoring activities are likely to cover 'the four Es'<sup>3</sup>:

- **Engage** to provide proactive advice on what compliance means
- **Educate** on actions required to achieve compliance
- **Enable** users to comply
- **Enforce** by using available enforcement tools to enable positive behaviour change.

<sup>1</sup> Refer: <http://www.mfe.govt.nz/consultation/draft-best-practice-guidelines-compliance-monitoring-and-enforcement-under-rma>

<sup>2</sup> Developed by the Compliance and Enforcement Special Interest Group which includes representatives from all regional councils and unitary authorities. The purpose of the Strategic Compliance Framework is 'To assist councils in using a consistent approach to developing strategic compliance programmes and a range of interventions to fix important problems'.

<sup>3</sup> Described in more detail in the Regional Sector Strategic Compliance Framework 2016-2018.



Enforcement responses range from informal direction to address non-compliance, or more formal enforcement proceedings under the RMA. One of the key benefits of compliance monitoring is enabling early detection of any adverse environmental effects resulting from non-compliance. This is particularly important for larger scale or higher risk *plantation forestry activities* that have the potential to cause significant adverse effects where there is non-compliance with the NES-PF.

Under the NES-PF, compliance monitoring can be used to:

- Undertake a site audit of a *plantation forest* to confirm the management practices are consistent with those described in the management plans for *earthworks, forestry quarrying* and *harvesting*.
- Confirm compliance with the performance based (i.e. outcome focused) conditions in the NES-PF, which will generally need to be assessed on site. For example, this may involve checking that *river crossings* and *forestry infrastructure* is constructed in accordance with the permitted activity conditions and is structurally sound, assessing the receiving environment for any evidence of unanticipated adverse effects (e.g. a conspicuous change in visual clarity of the receiving water body due to *sediment* discharges from *earthworks*).
- Confirm that NES-PF timeframes have been met. For example, whether exposed areas of soil from *mechanical land preparation* have been stabilised no later than 30 November or 31 May, whichever is the sooner (Regulation 74(5)), or whether a *slash trap* has been cleared of debris by 20 working days after a 5% Annual Exceedance Probability (AEP) flood event (Regulation 86(1)(b)).
- Respond to complaints and investigate environmental incidents.
- Identify where enforcement action needs to be taken to respond to non-compliance.

Compliance monitoring under the NES-PF should have a clear purpose to be efficient and effective. This should ideally be informed by an underlying compliance monitoring strategy (discussed further in section 4.4 of the [NES-PF Consenting and Compliance Guide](#)).

Compliance monitoring of *plantation forestry activities* will involve checking that these activities are carried out in a manner that complies with all applicable NES-PF permitted activity conditions (including management plans) and any resource consent conditions. This will generally involve a combination of:

- Site visits – to assess compliance with the performance-based conditions in the NES-PF (e.g. the effects of sediment discharges in receiving waters).
- Desktop audits – to assess compliance with the procedural based conditions in the NES-PF (e.g. confirming the management plan includes the relevant details required in Schedule 3 and 4).

Section 5 of the [NES-PF Consenting and Compliance Guide](#) provides guidance on the performance and procedural conditions in the NES-PF.

## 1.2 A RISK-BASED APPROACH TO COMPLIANCE MONITORING

A risk-based approach to compliance monitoring is an effective way of targeting activities that have a higher risk of incidences of non-compliance, or where non-compliance will have a more severe risk of harm to people and the environment. A risk-based approach to compliance monitoring has the following benefits:

- Enables limited resources to be prioritised according to the level of risk of adverse effects on the environment.
- Targets activities and areas where non-compliance is most likely.



- Enables councils to respond quickly to changing and emerging risks.
- Provides for robust and transparent decision-making.
- Ensures a fair and consistent approach to compliance monitoring.

In the context of compliance monitoring, a risk-based assessment takes into account the likelihood of non-compliance occurring and the risk of harm to people and adverse effects on the environment from that non-compliance. These two factors form a generic risk matrix as illustrated in Figure 1, sourced from the Regional Sector Strategic Compliance Framework 2016-2018.

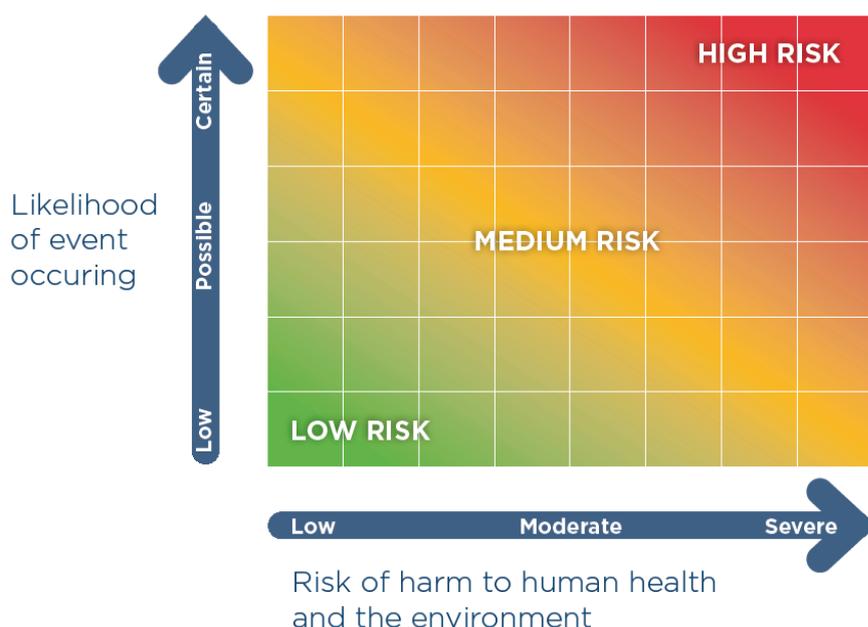


Figure 1: Generic risk matrix (source: Figure 2, Regional Sector Strategic Compliance Framework 2016-2018, unpublished).

The level of risk in the risk matrix should be used to prioritise compliance monitoring activities and determine the most appropriate compliance monitoring approach, including timing, frequency and response. A risk-based approach to compliance monitoring under the NES-PF enables councils to assess:

- **The site-specific risks of particular *plantation forestry activities*** – the nature and scale of the *plantation forestry activity*, *Erosion Susceptibility Classification* (ESC) zoning, and sensitivity of the receiving environment will assist councils to assess site-specific risks under the NES-PF.
- **How frequently a *plantation forestry activity* should be monitored** – monitoring of *plantation forestry activities* should generally occur at key stages (e.g. immediately pre or post-harvest) or following the submission of a management plan to councils. Higher risk sites may warrant a regular compliance monitoring programme, potentially extending to annual site visits for larger sustained yield *plantation forests* where *earthworks* or *harvesting* operations are ongoing.
- **The appropriate type of monitoring** – high risk sites should be prioritised for on-site audits at key stages of the *plantation forestry activity* cycle. Conversely, low risk sites will generally not warrant a site visit and a desk-top audit may also be sufficient for many *plantation forestry activities*.

Councils should consider how they can achieve what they need from compliance monitoring while also aiming to minimise disruptions to foresters. Discussing the proposed monitoring frequency and approach of any regular compliance monitoring programme with the forester



will help ensure that it is workable from their perspective and ensure that compliance staff achieve what they need on site. For example, confirming site visits in advance will help ensure that the health and safety requirements for visitors can be planned for and met. Discussing the compliance monitoring approach with foresters may also help to encourage compliance and enable more efficient and targeted site visits.

## 1.3 MONITORING PLANTATION FORESTRY ACTIVITIES

### 1.3.1 Monitoring permitted activities

The NES-PF permits *plantation forestry activities* where the risks are lower and permitted activity conditions can adequately manage actual and potential adverse environmental effects. While there is no specific obligation in the RMA to monitor permitted activities, undertaking this function in some way is recognised as good practice both for activities permitted under regional and district plans, and activities permitted under NES. This reflects the obligations on councils to observe NES and enforce that observation to the extent that their powers enable them to do so (section 44A(7) and (8) of the RMA).

Councils should consider the need for proactive and targeted compliance monitoring programmes for *plantation forestry activities* permitted under the NES-PF based on the level of risk. This is particularly important for some *plantation forestry activities* where the permitted activity conditions in the NES-PF are reasonably extensive, and non-compliance may result in adverse environmental effects.

*Earthworks* and *forestry quarrying* (above specified thresholds) and *harvesting* are required to have a management plan in place that meets the requirements of Schedules 3 and/or 4 and undertake the activity in accordance with that management plan, to be permitted. Assessing compliance of these activities will generally involve a combination of:

- Desktop audits - i.e. that the management plan includes the details required in the relevant schedule; and
- A site audit - i.e. to confirm management practices on-site are consistent with those described in the management plan.

Compliance staff can also use the site visit as an opportunity to assess the receiving environment to determine whether the management practices on-site are achieving compliance with the performance-based conditions in the NES-PF. An initial review of the management plan should inform any on-site monitoring so that the visit can focus on higher risk areas within the *plantation forest*.

### 1.3.2 Monitoring resource consents

Section 35(2)(d) of the RMA requires every council to monitor the exercise of resource consents that are given effect to in its region or district. The requirement to monitor individual consents and the monitoring frequency will be determined by the nature and scale of the *plantation forestry activity*, the reasons that resource consent was required, and the type of resource consent conditions. Some resource consents required under the NES-PF will require minimal monitoring (if any), while other resource consents will require regular site visits to monitor compliance with consent conditions. Each council will determine how to monitor consents for *plantation forestry activities* in their region/district which should be informed by a risk-based approach.

Monitoring of resource consents that authorise *plantation forestry activities* will generally involve an assessment of:

- **Compliance with consent conditions** - most resource consents are granted subject to consent conditions and some of these will warrant monitoring to confirm compliance. To assist with further compliance monitoring, it is good practice to identify the nature and frequency of monitoring required for any consent conditions imposed (e.g. those that do



not require monitoring, conditions that require one-off monitoring, and those that require ongoing monitoring).

- **The effectiveness of consent conditions** - i.e. are the conditions imposed having the desired environmental result, what is the impact of the consented activity on the environment.

## 1.4 DEVELOPING A COMPLIANCE STRATEGY

Councils may choose to develop a compliance strategy for *plantation forestry activities* under the NES-PF – either as a subset of their overall RMA compliance strategy or potentially a standalone strategy. This can be useful to clearly set out how the council will carry out compliance monitoring in relation to the NES-PF and enable this to be undertaken in a targeted, efficient and consistent manner.

A specific compliance monitoring strategy for the NES-PF is likely to be more beneficial for regional councils with large numbers of *plantation forests* in their region. For these councils, developing a NES-PF compliance monitoring strategy will help ensure that all compliance monitoring activities and decisions are:

- **Consistent** – to ensure a fair outcome for all those affected. As the NES-PF is a national set of standards, foresters will be expecting that compliance is assessed and dealt with in a consistent manner.
- **Cost-effective** – an established process will enable compliance activities and enforcement decisions to be made efficiently, benefiting both foresters and councils.
- **Transparent** – an established, documented process to monitor *plantation forestry activities* under the NES-PF that is communicated to foresters will enable them to understand how activities will be monitored and non-compliance will be dealt with. A transparent approach will also encourage compliance and promote an upfront assessment of risk.
- **Proportionate** – any response to non-compliance needs to be proportionate to the circumstances and the adverse effects on the environment. A compliance strategy will enable responses to non-compliance to be consistently matched with the severity of the event.

For general guidance on developing a compliance strategy, refer Part 2 of the Ministry for the Environment's CME guidelines<sup>4</sup>. These guidelines recommend that the principles outlined in Figure 2 below, from the Compliance and Enforcement Special Interest Groups' Regional Sector Strategic Compliance Framework, should guide all council compliance, monitoring and enforcement activities, and be included in RMA compliance strategies. These principles represent good practice and are relevant to compliance monitoring strategies developed for the NES-PF.

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<sup>4</sup> Refer: <http://www.mfe.govt.nz/publications/rma/draft-best-practice-guidelines-compliance-monitoring-and-enforcement-under-rma>



### **Principles to guide compliance, monitoring and enforcement activities**

#### **Transparency**

We will provide clear information and explanations to the regulated community about the standards and requirements for compliance. We will ensure the community has access to information about industry environmental performance, as well as actions taken by us to address environmental issues and non-compliance.

#### **Consistency of process**

Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

#### **Fairness and proportionality**

We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably, and ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment and the seriousness of the non-compliance.

#### **Based in evidence**

We will use an evidence-based and informed approach to our decision-making. Our decisions will be informed by a range of sources, including sound science and information received from other regulators, members of the community, industry, and interest groups.

#### **Collaborative approach**

We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will consider the public interest and engage with the community, those we regulate, and central government, to explain and promote environmental requirements and achieve better community and environmental outcomes.

#### **Legal, accountable and ethical**

We will conduct ourselves lawfully, impartially and in accordance with these principles, as well as relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

#### **Outcomes-focused**

We will focus on the most important issues and problems to achieve the best environmental outcomes. We will target our regulatory intervention at poor performers and illegal activities that pose the greatest risk to the environment. We will apply the right tool for the right problem at the right time.

Figure 2: Principles to guide strategic compliance programmes (source: Regional Sector Strategic Compliance Framework 2016-2018, unpublished).