Submission

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TO

The Ministry for the Environment

ON THE

Managing intensive winter grazing – proposed changes to regulations

BY

Beef + Lamb New Zealand, Deer Industry New Zealand, and The New Zealand Deer Farmers Association

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1. Introduction

1.1 Beef + Lamb New Zealand (B+LNZ), Deer Industry New Zealand (DINZ) and the New Zealand Deer Farmers Association (NZDFA) welcome the opportunity to make a submission to The Ministry for the Environment (MfE) in response to the discussion documents "*Managing intensive winter grazing: A discussion document on proposed changes to intensive winter grazing regulations."* (2021, MfE publication number: ME 1586).

1.2 B+LNZ is an industry-good body funded under the Commodity Levies Act through a levy paid by producers on all cattle and sheep slaughtered in New Zealand. Its mission is to deliver innovative tools and services to support informed decision making and continuous improvement in market access, product positioning, and farming systems.

1.3 B+LNZ is actively engaged in environmental issues that affect the pastoral production sector, and in building famer specific capability and capacity in these areas to ensure that the industry supports an ethos of environmental stewardship, together with a vibrant, resilient, and profitable sector.

1.4 Deer Industry New Zealand ('DINZ') is a levy funded industry-good body established by the Deer Industry New Zealand Regulations 2004 under the Primary Products Marketing Act 1953 to promote and assist the development of the deer industry in New Zealand. DINZ's levy payers are producers and processors of venison and velvet. There are roughly 1,400 deer farmers and 9 venison processing plants.

1.5 The New Zealand Deer Farmers' Association (NZDFA) is a voluntary subscription based Incorporated Society (established in 1975) and acts as an industry-good body established to represent the interests of New Zealand deer farmers, families and staff and to promote and assist development the development of the deer farming industry in New Zealand. The NZDFA has approximately 1200 subscription paying members and is nationally represented by a four-person Executive Committee that works closely with DINZ directly via the Environmental Stewardship Manager and the Producer Manager.

1.6 B+LNZ, DINZ and NZDFA wish to note our support for submissions from Federated Farmers and DairyNZ. Please refer our joint letter for a summary of our collective views.

2. Summary of our recommendations

2.1 We support the need for changes to the National Environmental Standard for Freshwater provisions relating to Intensive Winter Grazing (IWG). A summary of our recommendations is provided below:

2.2

CONDITION or ISSUE	**OUR RECOMMENDATION**
TOTAL AREA	The 'area limit' is adjusted to '100 hectares 50 hectares or 10% of the farm, whichever is greater'
SLOPE THRESHOLD	Adopt a 15 degree maximum slope as per the Southland Advisory Group (SAG) report
PUGGING	Support for the deletion of the requirements relating to pugging and seek alignment with the SAG recommendations in this regard
RESOWING	Support for the deletion of the arbitrary dates for resowing, with reference instead simply to 'as soon as practicable'
BUFFER ZONES FROM WATERWAYS	Support for the removal of sub-surface drains from the definition of 'drains' included within the definition of 'waterways'
CRITICAL SOURCE AREA (CSA)	Support for the inclusion of a new condition for the protection of CSAs. Definition for CSAs that only captures a landscape feature that has a direct pathway for sediment or contaminants to a waterway and *excludes subsurface drains*
CERTIFIED FRESHWATER FARM PLANS (FWFPs) ARE LIKELY TO BE UNAVAILABLE IN 2023	Farmers can use an IWG module (using a template approved by their regional council). This module would then be included in a certified FWFP when these are available.
UNCERTAIN USE OF CERTIFIED FRESHWATER FARM PLAN AS A PERMITTED ACTIVITY PATHWAY	Suggest a review of the need for a full Certified Freshwater Farm Plan in order to effectively manage IWG activities under a permitted activity regime. Suggest the use of an approved IWG template as an alternative pathway.

2.3 We understand the need to balance practical default conditions, with the need to be sure they will not permit significant adverse effects on the environment. With this in mind, we recommend some modification of the proposed changes to ensure practical, realistic, effective, and timely implementation.

2.4 We are particularly pleased that the Government is proposing to replace the unworkable pugging and sowing date rules with a practical management approach. This is a significant amendment that will restore the credibility of the regulations from our farmers' perspective.

2.5 We support the three pathways for farmers to be able to continue with their IWG practices as currently outlined in the regulations. However, we do not share the view of the Government that using a Freshwater Farm Plan will be the best way of managing intensive winter grazing into the long-term. Rather, we submit that an IWG module, which can be included within a Certified Freshwater Farm Plan, will be the best approach.

2.6 **We propose that farmers can use an IWG module (using a template approved by their regional council) if they are unable to meet the permitted activity conditions,** but their risks and effects can be managed in a way that is no more than minor (thus not requiring a restricted discretionary resource consent). B+LNZ, DINZ, NZDFA and other industry groups could run workshops in partnership with the respective council to ensure those completing IWG understand their obligations, and when they would need to apply for a resource consent. The completed IWG module would then also be included in a certified FWFP when these are required in the region/catchment.

2.7 We also support further deferral of the regulations to 1 November 2022. This will provide certainty for farmers that have already started to plan and plant for winter 2022 and allow sufficient time to implement the intensive winter grazing module alternative pathway for the following season.

~~2.8~~ We appreciate the focus of the consultation material on addressing implementation issues with the provisions. Our aim is to support the effective management of the risks of IWG can pose without causing unnecessary resource consent application or other administrative burden.

2.9 Our recommendations to the changes to the permitted activity conditions mean that farmers will:

- Better understand their requirements with regards to slope.
- Understand their requirements with regards to CSA and waterway management.
- Not feel the need to further intensify in some areas in order to stay within the permitted activity rules (e.g. total area constraints and unavailability of certified Freshwater Farm Plans, FWFPs, in a given region).
- Be less likely to apply for a resource consent within a very limited timeframe, but still be able to demonstrate that environmental risks of IWG are being managed appropriately.
- If a module option is provided in addition to the existing certified freshwater farm plan pathway, this would help to make up for the mismatch in timing between FWFP expected use and actual availability.

2.10 We are unconvinced that IWG will be best managed with the completion of a full Certified Freshwater Farm Plan rather than a certified IWG module. If there is not provision for the use of a module, either as the primary permitted activity pathway or in combination with a certified freshwater farm plan pathway, we are concerned that the roll-out of Certified Freshwater Farm Plans will mean that it will take several years until this pathway becomes available for many farmers. This is something we urge Government to have in mind when deciding on amended default conditions.

3. Recommendations in detail

Section 2. Why are we proposing changes?

3.1 Generally we agree with the context and rationale for the proposed changes to IWG regulations as described in Section 2. We appreciate that government has viewed the adoption of regulations through a practical and more realistic lens and has accepted many of the recommendations contained in the SAG report.

3.2 In particular, we strongly support alternative permitted activity pathways for farmers to undertake IWG. We support the inclusion of an IWG module in a certified FWFP in the longer term for farm operations that require them.

3.3 We note however that the implementation of certified FWFPs across the country will have significant challenges due to the need to:

- Clearly define the required elements in a FWFP that address regulatory requirements and provide meaningful and appropriate management of environmental risk.
- Identify and train FWFP certifiers and auditors
- Build capability and capacity to administer the certify and audit FWFP development and report on uptake and compliance

3.4 Each of our organisations have stated in our submission on FWFP regulations that a phased roll out of FWFP prioritised by region or catchments would allow more time for resourcing and building capability. Nevertheless, with IWG being a significant practice in major agricultural regions (Southland, Otago, Canterbury, Manawatu-Whanganui, Hawke's Bay, and Waikato) there will likely be many farmers that use IWG who are unable to obtain a certified FWFP by 2023.

3.5 To this end we propose that where this is the case, farmers can **use an IWG module (using a template approved by their regional council) *without the need* for it to be part of a certified FWFP.** This module can be put into a certified FWFP when it becomes available and is required based on the catchment context. It can also be assessed by the regional council as part of their Permitted Activity conditions assessments.

3.6 We are not convinced that there is a need to require a full Certified Freshwater Farm Plan as a permitted activity standard for IWG. Given the lack of detail provided on the content requirements for these documents, it is likely that a certified freshwater farm plan will go above and beyond what a permitted activity regime would expect of an applicant to manage the effects of a specific on-farm activity. Rather, they are more likely to fit into the realm of what would be required to be included as part of a resource consent application for IWG in partnership with other farming activities.

3.7 The use of a **module as a permitted activity pathway** condition provides several benefits including:

- Prevention of further delay of the IWG rulesets. By requiring the use of a module or compliance with the updated permitted activity conditions, the implementation of the IWG rulesets can come into effect as early as 1 May 2023 with sufficient plans in place to ensure that farmers are supported by their regional council and industry groups effectively.
- Preparation for FWFP implementation (farmers will know what to expect for FWFPs based on their experience in completing the IWG module.

- Preventing unnecessary resource consent application burden
- Still providing for regional council oversight of IWG implementation
- Supports farmer learning and engagement by focusing attention on risk assessment and effective mitigation.

Reg 26(4)(a): No change (i.e., the limit of area used for intensive winter grazing remains at 50 hectares or 10 per cent of the area of the farm, whichever is greater).

3.8 **We support other pastoral industry bodies' recommendation to increase the threshold to 100 ha.**

3.9 We note that while the SAG report accepted 50 ha as the upper threshold for IWG it also stated: "*This condition will likely drive the wrong behaviours…, such as encouraging farmers to operate their winter grazing more intensively to stay within the condition, and/or discouraging them from changing to lower yielding or mixed crops which may provide better environmental outcomes*".

3.10 We strongly agree with this statement which is further supported by a statement from a (deer) farmer in South Canterbury: *"[A] Farmer down country has all his beet under irrigation so can grow 25-28 tonnes easily whereas we can usually only get 15-18 t (no irrigation) and we are allowed same area - works way more in his favour and yet he's worse off in terms of nutrient loading. In order to balance cost and yield we would prefer to use higher ratio/mix of swedes and rape…That would mean larger area in crop but less impact on our heavier soils as less animals per ha and for less time. The really annoying/perverse bit is that we end up putting our whole 50 ha in beet rather than mix of crop types as that's the only way we can get enough feed and on heavy soils is not best land use as you know."*

3.11 We would consider cautious support for keeping the threshold at 50 ha ***if the IWG module was recognised as a temporary permitted activity pathway in areas where certified FWFPs were unavailable*.**

Reg 26(4)(b): Amend to measure the slope threshold as maximum allowable slope instead of mean slope of a paddock (while keeping the existing threshold of 10 degrees).

3.12 **We support the change from "mean slope of the paddock" to "maximum allowable slope".** This provides greater clarity than in the previous version of the rules and will be much easier to assess at farm-scale. However, it is noted that this is a more stringent threshold than using a mean slope.

3.13 This alternative way to assess the slope threshold could potentially result in more land requiring a resource consent or an FWFP. We encourage MfE to get a better handle of how many resource consent applications could be required based on regional council's initial assessments of IWG activities in 2021.

3.14 **We do not support retaining the 10 degree slope threshold.** There is very limited scientific evidence to support 10 degrees.

3.15 Given the limited evidence available to justify a 10 degree slope trigger, **we recommend a shift to a 15 degree slope threshold** (as per the SAG recommendation) with the ability for Regional Councils to seek different standards within their regional plans.

3.16 A 10 degree threshold puts hill country farmers at a disadvantage for implementing pasture renewal programmes on their steeper farmland. Not all winter forage cropping and grazing poses the same risks; as noted within the discussion document (page 13) slope is only one factor that needs to be considered (e.g. the type of farm animal can also have a significant impact on the likely sediment risk loses).

3.17 The application of a 'slope trigger' across the country does not reflect the diversity of winter grazing systems, landscapes, nor the non-linear relationship between slope and sediment loss. To the best of our expert knowledge, there is no known slope threshold at which soil losses increase dramatically. There are reasons why soil losses increase nonlinearly beyond some thresholds, but they are not *solely* due to slope, as it also has to do with convexity/concavity of a profile and flow accumulation.

3.18 As DINZ noted in its 2019 submission (Action for Healthy Waterways): *"A crop paddock on a 20 degree slope but not near to a waterway is more likely to result in better water quality than a paddock next to a waterway (assuming other appropriate good farming practices are in place)."*

Reg 26(4)(c): Amend so that farmers have to take reasonably practicable steps to manage the effects on freshwater from pugging (in areas that are used for intensive winter grazing).

3.19 We support the intention to remove pugging conditions that are impractical to implement, monitor and enforce and we agree with the sentiment that farmers should take "*reasonably practicable steps to manage the effects on freshwater from pugging"*.

3.20 However we regard the presence, depth and extent of pugging to only be very crude proxies for risk (leading to loss of soil) of contaminant loss to waterways. We therefore **seek that they are removed from the standards entirely***.*

3.21 The presence of pugging is more an indication of the rainfall, soil type, stock class, and stock concentration than potential risk posed to freshwater health. Pugging can damage the soil structure and increase compaction but does not necessarily result in an increased risk of overland flow. Pugging located well away from waterways, with a buffer strip, bunding or downstream sediment traps is likely to have minimal impact on water quality.

3.22 The issue of pugging exacerbating loss of soil to the waterways is best addressed by considering the above factors and others such as proximity to critical source areas (CSAs), depth of the feeding break and time spent at the feeding face, ideally through the IWG module.

3.23 We consider that significant pugging across a grazed paddock is likely to impact negatively on animal health and welfare. While this is not an environmental risk, we note and support this consideration being included in the IWG module – farmers need to consider both environmental and animal welfare risks together when planning and undertaking IWG.

3.24 We caveat paragraph 3.24 such that any auditing of the IWG module clearly separates out environmental and animal welfare considerations and that the audit is confined to the purpose of determining suitability of mitigations for environmental impacts (regional council approved auditors) *or* animal welfare (Ministry for Primary Industry officers).

Reg 26(4)(d): Amend the definition of 'drains' to exclude sub-surface drains (as originally intended). Manage sub-surface drains (where known to exist) through critical source areas.

3.25 **We support the proposal to specifically exclude sub-surface drains from the definition of 'drains'**. We note Federated Farmers' observation that: "*While farmers typically know where sub-surface drain outlet points into waterways are, the exact layout of the network of drains themselves are often unknown or unmapped, making implementation or enforcement of setbacks from these underground networks difficult if not impossible*".

3.26 In addition, to a lack of clarity on where the sub-surface drains actually are, it is not clear that winter forage cropping on a sub-surface drained area presents a greater risk to freshwater health than the same activity on a location without drains. However, we acknowledge that due to the complexity of the science and conclusions, effective management as part of an IWG module or Certified FWFP is the preferred means of manging intensive winter grazing on tiled drain areas so that the trade-offs/risks/effects can be better understood, estimated, and managed.

3.27 Managing sub-surface drains as a CSA means that many areas intended to be winter grazed would not meet the detailed set of permitted activity conditions. Thus, significant areas of land could require a resource consent until the freshwater farm plan is in place. **We therefore oppose the proposal to treat sub-surface drains as critical source areas**

Reg 26(4)(e): Remove the requirement to resow by 1 October (1 November in Otago and Southland) and, instead, require farmers to resow 'as soon as practicable'.

3.28 **We support the proposed changes** and appreciate the removal of a set date requirement as this does not reflect on-farm/in-paddock conditions across regions or the country.

3.29 We do consider that there needs to be guidance on what constitutes 'reasonably practical' steps taken to resow. This guidance is best developed through discussions involving farmers and consultants, industry organisations and central and local government.

New condition: Include a new condition requiring that critical source areas must be protected (uncultivated and ungrazed).

3.30 **We support the inclusion of a new condition for the protection of CSAs**, but this needs to be supported by a definition for a CSA that only captures (above ground) landscape features that have direct pathways for sediment or contaminants to a waterway. **To be clear a CSA does not include sub-surface drains**.

3.31 Management of CSAs is a major focus for environmental risk mitigation in drystock farms. The "The Deer Industry Environmental Management Code of Practice" (2018) Explicitly defines CSAs and refers to a range of mitigation practices for CSAs.

3.32 The SAG report also recommended that there should be a focus onto the protection of CSAs for effective sediment and contaminant loss during IWG (see pages 12-14 for rationale and industry awareness).

3.33 We support Federated Farmers definition of CSAs: "*Critical source area means a landscape feature such as a gully, swale, or depression that accumulates runoff from adjacent flats and slopes and delivers contaminants to surface water bodies such as rivers, lakes, and artificial watercourses (excluding subsurface drains, and artificial watercourses that do not connect to natural water bodies).*"

4. Further considerations

4.1 We are of the view that if all of the proposed changes outlined within the Discussion Document were adopted by MfE, this could provide for increase certainty for farmers when adapting their IWG practices to meet the permitted activity conditions. However, if the proposals are not adjusted based on our recommendations, it is highly likely that there will not be a reduced consent application burden on farmers or councils. This would not be ideal and we seek further discussion with officials and Regional Councils on how best to ensure effective permitted activity conditions are put in place.

4.2 We are also concerned about the provisions within the restricted discretionary pathway and the ability for farmers and councils to effectively implement the rules as currently written. This is because there are no tools currently available that can tie farm management scale actions to the catchment impacts. This is especially important information to help determine the 'baseline' environmental risk and impact that must be deterred as part of this consenting process. As Donovan and Monaghan (2021) note: "At finer scales (e.g., farm) the relative susceptibility of surface erosion over space may be captured, but the exact quantity of modelled surface erosion should be considered as a reflection of long term (≥10 years) averages (pg, 9)." Thus, the rules as currently written could not be given effect to by Councils or farmers who wish to expand their winter grazing activities from their largest extent (as measured between 2014 and 2019). We look forward to working with officials and expert planners on how to navigate this issue.

4.3 There are a number of areas that farmers (and others) will require clarification and certainty on before changes to the Intensive Winter Grazing permitted activity rules (and others) are made. We look forward to supporting officials in their work on developing guidance for (but not limited to) the following -

- Regional councils on:
    - Content and risk management requirements for granting Resource consents
    - The definition of winter annual forage crop to be clear on whether arable crop grazing after harvest is included.
    - How to support the use of an IWG module and utilise their existing powers to assess these as part of permitted activity conditions.
    - Standards for IWG module templates and the ability for regional councils to add additional local context requirements to these.
    - The establishment of a 'baseline' for restricted discretionary resource consent applications to assess the 'nil' or 'beneficial' catchment effect from expanded IWG activities.
- For Certifiers on:

- how a certified freshwater farm plan can demonstrate that the likely effects are being effectively managed.
- when and whether a resource consent would be required instead of an FWFP or module option

- Guidance for farmers on:
  - what reasonable and practicable steps are to manage the effects from pugging,
  - what steps could demonstrate that farmers were resowing as soon as practicable (i.e. in order to minimise the amount of time that bare ground is exposed to the weather.
  - how critical source areas will be identified and best protected, and
  - how a certified freshwater farm plan can demonstrate that the likely effects are being effectively managed.
  - who is able to use the certified freshwater farm plan pathway (i.e. Use a FWFP as a permitted activity condition if Minister has not required their completion within that catchment?). This will have significant implications for Resource Consent applications numbers, costs, and FWFP implementation.