

Practice and Guidance note

National Environmental Standards for Freshwater - Application to the Coastal Marine Area

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1 Introduction

The [Resource Management \(National Environmental Standards for Freshwater\) Regulations 2020](#) (NES-F) include regulations in Part 3 Subpart 1 that relate to natural wetlands. Natural wetlands are defined in the [National Policy Statement for Freshwater for Freshwater Management 2020](#) (Freshwater NPS) to include natural wetlands within the Coastal Marine Area (CMA). However, a recent decision of the Environment Court has given further guidance on the application of the NES-F to natural wetlands in the CMA¹. This Practice and Guidance note (PGN) provides guidance on how to apply the NES-F to the CMA.

Note: an appeal to the Environment Court declaration has been lodged at the time this PGN was prepared. This PGN will be updated when the appeal is resolved.

2 Environment Court Declaration

The Environment Court, in a declaration relating to appeals on the Proposed Regional Plan for Northland has determined that the NES-F only has regulatory effect to that part of the coastal marine area (CMA) upstream of a river mouth.

The Environment Court found that²:

“The Resource Management (National Environmental Standards for Freshwater) regulations 2020) ... apply to the coastal marine area (CMA) only to the extent that they cover the area of the CMA upstream of the ‘river mouth’ as defined by the Resource Management Act 1991. In particular, they do not apply to the general CMA, open oceans, estuaries, bays and other areas not falling within the definition of “river or connected area”.”

...

We conclude the NES-F is not directed at the coastal marine area. The boundary is the “river or connected area” upstream of the river mouth. We conclude that the NES-F only has regulatory effect upstream of the river mouth, even if it includes coastal water. Below that point natural wetlands are included as part of the coastal marine area and/or coastal water and are controlled by regional coastal plans and the [New Zealand Coastal Policy Statement] as appropriate.”

¹ *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 006

² *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 006 at [A] and [60]

In this context “river or connected area” (defined in the NES-F) means the river or any part of the CMA that is upstream of the ‘river mouth’. That is, that part of the CMA between the river mouth and the CMA boundary.

NES-F natural wetland provisions only apply to ‘connected areas’ within the CMA

The Environment Court has confirmed that the appropriate interpretation of the definition of ‘natural wetland’ in the Freshwater NPS includes wetlands within the CMA³.

However, the Environment Court declaration determined that the NES-F regulations only apply to natural wetlands in the CMA that are upstream of a river mouth, within ‘connected areas’.

Application of the NES-F to other activities in the CMA

The Court primarily focussed on natural wetlands, but also stated that⁴:

Our concluded view as to the best interpretation of the documents that are before us is that the NES-F is intended to apply to all areas of freshwater and to rivers or connected areas, including not only for fish passage, but in respect of water quality control and all provisions including those relating to natural wetlands. This in our view would give the desired degree of certainty as to the application of the Regulations and accordingly as to the scope of matters controlled.

The NES-F in Part 3, Subpart 3 - Passage of fish affected by structures also has the same limitation in terms of area, Regulation 58 reads “*The purpose of this subpart is to in, on, over, or under the bed of any river or connected area.*”

Given this, Part 3 of the NES-F applies to that part of the CMA upstream of the mouth of a river, not below. Similarly, any other part of the NES-F that refers to “river or connected area” would apply to that part of the CMA upstream of the river mouth.

3 How is ‘Connected Area’ determined?

“River or connected area” is defined in the NES-F (Section 3) as: (a) a river; or (b) any part of the coastal marine area that is upstream from the mouth of a river. In determining this, the Court also referred to the RMA definitions of Coastal marine area’ and ‘mouth’, which are:

³ *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 006 at [3]

⁴ *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 006 at [61]

Coastal marine area means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea:
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - (i) 1 kilometre upstream from the mouth of the river; or
 - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

Mouth, for the purpose of defining the landward boundary of the coastal marine area, means the mouth of the river either—

- (a) as agreed and set between the Minister of Conservation, the regional council, and the appropriate territorial authority in the period between consultation on, and notification of, the proposed regional coastal plan; or
- (b) as declared by the Environment Court under [section 310](#) upon application made by the Minister of Conservation, the regional council, or the territorial authority prior to the plan becoming operative,—

and once so agreed and set or declared shall not be changed in accordance with [Schedule 1](#) or otherwise varied, altered, questioned, or reviewed in any way until the next review of the regional coastal plan, unless the Minister of Conservation, the regional council, and the appropriate territorial authority agree

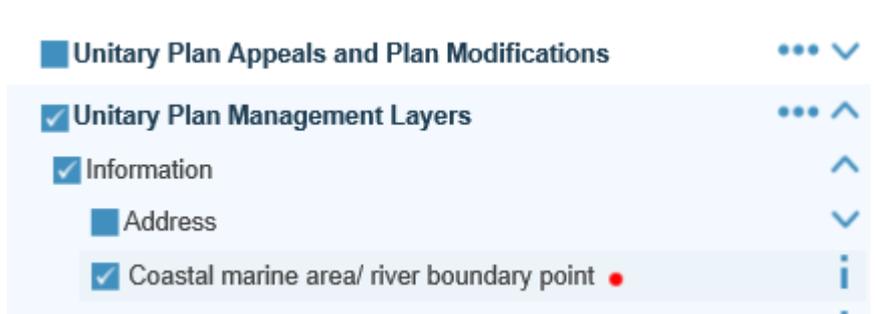
Finding the Extent of the Coastal Marine Area

The location of the ‘mouth’ and the extent of the CMA up stream of this point was agreed in the early 1990s. It was reviewed in the development of the [Auckland Unitary Plan \(Operative in Part\)](#) (“AUP(OP)”). Several of the CMA boundary points were moved so that they were more accurately aligned with the waterways.

The Auckland region’s coastal marine area is typified by drowned river valleys with long dendric estuaries. The CMA boundary process sought to ensure that these marine estuarine areas were managed as part of the CMA.

In almost all cases, the extent of the CMA as it crosses a river can be seen on the AUP(OP) maps by the extent of the General Coastal Marine zone up a river. In the AUP(OP) maps this will be marked in pale blue. If there are exceptions these will be other coastal zones.

The upper extent the CMA as it crosses a river can be ‘turned on’ in the AUP(OP) maps by selecting *Unitary Plan Management Layers and Information*, then *Coastal Marine area/river boundary point*.



This will then show a red dot at the upper extent of the Coastal Marine Area in the AUP(OP) maps. It will also show a reference number. For example, the Henderson Creek coastal marine area/ river boundary point looks like this on the AUP (OP) maps.



If you wish to locate the actual record, these are contained in [Appendix 7 of the AUP\(OP\)](#).

| Coastal Marine Area/River Boundary | | | | |
|------------------------------------|-----------------|----------|--------------|--------------|
| ID | River | Location | NZTM Point X | NZTM Point Y |
| 165 | Henderson Creek | | 1745715.71 | 5918184.05 |

Whilst Appendix 7 addresses many rivers and streams, it does not address all. Appendix 7 states:

For rivers not identified in the table below, the “mouth” shall be at that point depicted by a straight line representing a continuation of the line of mean high water springs on each side of the river.

Locating the Mouth of the River

The location of the mouth of rivers are not shown in the AUP(OP) maps or recorded in Appendix 7. For each application where a regulation in the NES-F may be triggered and the application area is near the upper limit of the CMA as it extends up a river, the location of the mouth of the river will need to be determined.

To assist with this, Appendix 7 of the AUP(OP) states:

The mouth of the river can be determined by back-calculating from the coastal marine area boundary across a river.

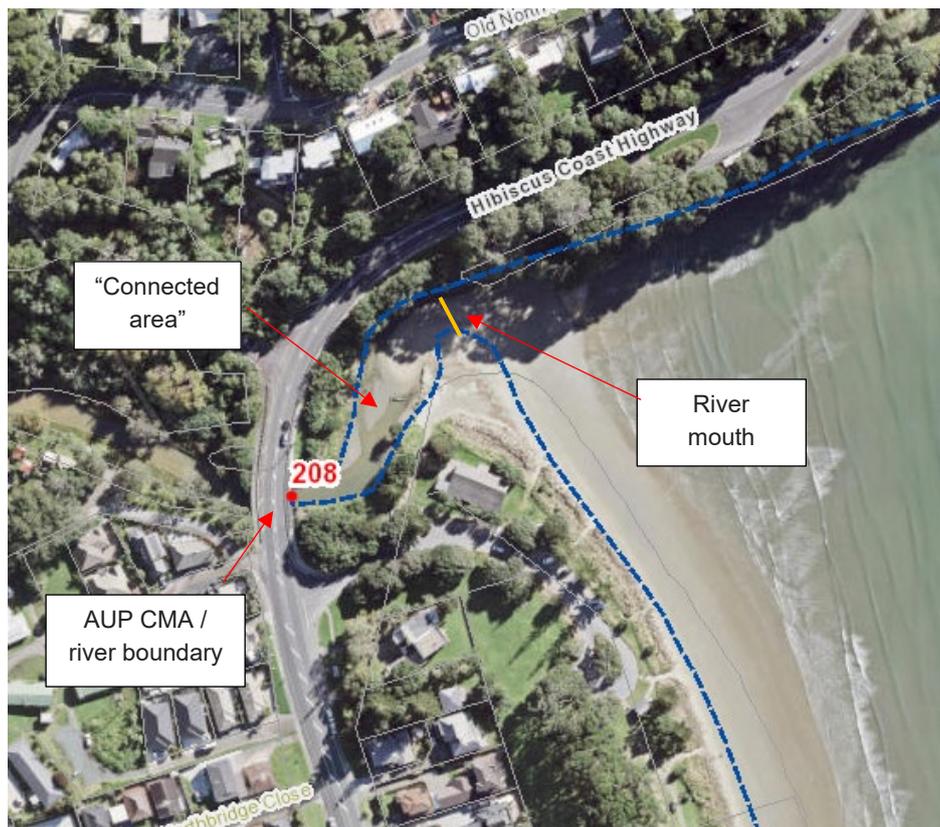
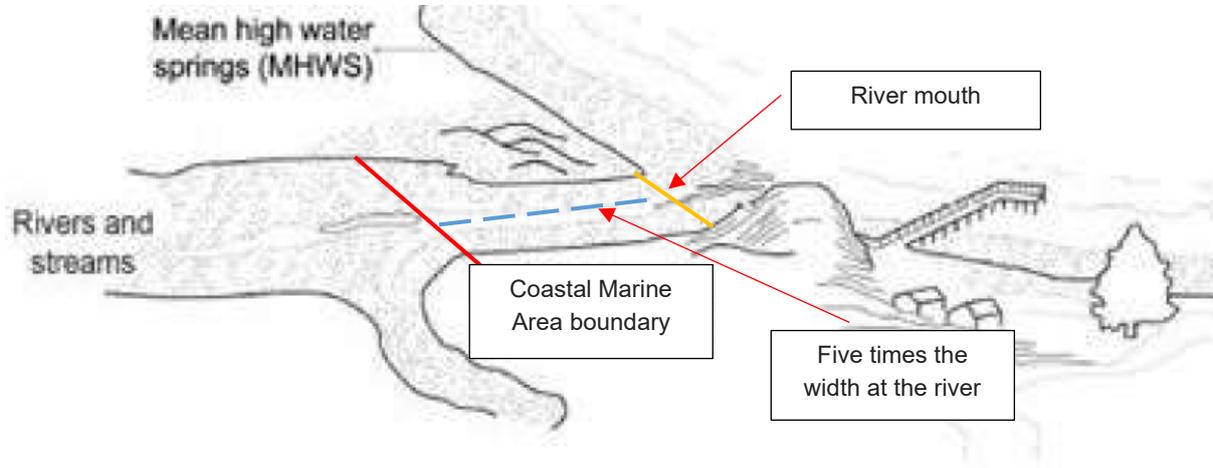
The relevant process steps are:

1. Determine the location of CMA boundary from the AUP(OP) maps and Appendix 7.
2. Manually locate the nearest point downstream where, by measuring the width of the river at that location, the calculation of 5x this width will lead the CMA boundary point on the AUP(OP) map/Appendix 7. The width of the river mouth is measured from the blue dotted lines depicting MHS (labelled 'indicative coastline') on either side of the CMA.
3. The connected area is that part of the CMA between the river mouth and the CMA boundary. The provisions of the NES-F apply to this part of the CMA only.

The only river in the Auckland region which triggered the 1km up stream boundary was the Kaipara River. In this case, the mouth of the Kaipara River is located 1km downstream of the CMA boundary.

Connected area examples

The following are some pictorial examples of river mouths, CMA boundaries and connected areas.





For further guidance, please refer to the “Essential Freshwater Policies & Regulations” section of the [Auckland Design Manual](#).