



THE CATALYST GROUP
planning and environment

**INDEPENDENT
ANALYSIS OF THE
2017/2018
COMPLIANCE
MONITORING AND
ENFORCEMENT
METRICS FOR THE
REGIONAL SECTOR**

DECEMBER 2018 – FINAL REPORT

USE OF THIS REPORT

This report has been prepared by The Catalyst Group at the request of our client for the purposes for which they intended. Where we have relied on information from external sources, we have referenced these sources as appropriate and assumed them to be accurate. If you are unsure about interpretation of the content of this report, or its use beyond that for which the client intended, please get in touch with us at enquiries@thecatalystgroup.co.nz

This report was developed by Dr Marie A. Brown of The Catalyst Group for the Waikato Regional Council (on behalf of the Compliance and Enforcement Special Interest Group).

PREPARED BY:

Dr Marie Brown

.....

CONTRACT REPORT NO:

Instruction from the client dated 21 August 2018

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PREPARED FOR:

Waikato Regional Council on behalf of the Compliance and Enforcement Special Interest Group.

.....

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p. +64 6 358 6300
e. enquiries@thecatalystgroup.co.nz
a. Level 3, 31 George Street,
PO Box 362, Palmerston North
www.thecatalystgroup.co.nz



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EXECUTIVE SUMMARY

The RMA is New Zealand's flagship environmental legislation and its implementation is highly devolved. Achieving the purpose of the Act – the sustainable management of natural and physical resources – is dependent on the quality of that implementation. Monitoring and reporting on the activities and performance of agencies charged with applying the Act is pivotal to understanding our nation's stewardship of the environment and to reviewing and validating the institutional arrangements in place to carry out that important role.

Compliance monitoring and enforcement (CME) is a significant tool in achieving the overarching purpose of the RMA. Carried out poorly it can result in slippage that erodes the potential of the regulatory regime to achieve its statutory goals. Carried out in a robust manner, it can assist in driving positive environmental outcomes and mitigating failures elsewhere in the policy process. However, data on performance of the agencies charged with the CME role has always been patchy, and councils have historically been provided little overarching guidance and support.

This independent report represents a sector-led effort, under the leadership of the Compliance and Enforcement Special Interest Group (CESIG), to improve the availability of data on CME functions. This inaugural survey saw all 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participate. The dataset - while patchy due to various factors - provides a very interesting insight into the conduct of CME agencies under the RMA, and its value will only increase in subsequent iterations.

Four hundred and thirty-six FTEs are employed in regional CME roles under the RMA. Collectively the regional sector receives nearly 30,000 complaints annually, 87% of which are responded to. Regional councils and unitary authorities monitor 92% of consents requiring monitoring and encounter highly variable levels of compliance region to region. In response to non-compliance, the sector issued (in the 2017/2018 year) 905 formal warnings, 1844 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (a total of more than four thousand formal actions).

Overall, the sector also secured 114 convictions against 49 individuals, and 102 convictions against 60 corporate defendants (216 convictions of 109 defendants in total), with the dominant offence being the discharge of contaminants. Collectively, the prosecutions netted more than two million dollars in fines in addition to other sanctions (e.g. restorative justice and costs awards).

The data contained within this survey is the most comprehensive made available on the CME activities of councils under the RMA in the Act's 27-year history. It also exceeds the publicly available detail available on the activities of any other environmental regulatory regime in the country. Councils have made the data available in a way that leaves them subject to criticism and analysis that many agencies are unlikely to receive, which is brave and should be commended. Throughout the analysis of the survey, several key

issues surfaced, and these perhaps represent something of a 'blueprint' for improvement, identifying the key sector-level priorities to enhance operations in the coming years.

Key recommendations for improvements arising from the findings within this report are as follows:

- While variation is to be expected given the diffuse nature of the regime and lack of oversight in the past, there is ample opportunity for councils to now work to standardise approaches to fundamental CME tasks, which would enable national scale data to have much stronger value due to increased comparability
- Resourcing for CME is varied, but overall appears to be relatively low in several councils, possibly too low to carry out the minimum requirements set down within the newly promulgated Best Practice Guidelines. The variation is not generally explained by relative wealth, land area or population - but appears often driven by other matters.
- Many councils were unable to provide some relatively basic Information for these survey questions. While information management is doubtless an area in which the sector has improved greatly in recent years, further development is required to maintain reasonable levels of transparency.
- The internal policy framework for CME in many agencies is incomplete or has aspects that open councils and individuals within those councils up to reputational risk from an inability to demonstrate fair and clear decision-making processes. The sector must carefully consider performance in this space as independence, transparency and consistency are fundamental components of being a credible regulator.
- Some councils perform consistently well across all or most measures in this survey while the reporting of others demonstrates some significant shortcomings that should be addressed. Continuing to administer a robust and regular reporting framework, including review and improvement of the current suite of metrics, will help to drive performance improvement year on year.
- Unitary authorities do not sufficiently demarcate their regional vs district CME activities in their information management systems, meaning that the level of transparency on regional-level operations they can provide is lower than their regional council counterparts. This erodes both the comparability of the collective dataset and has reputational implications for the unitary councils.

Monitoring reports such as this one help to discern areas of strong performance and areas where improvement is needed. They also help to give insight into the appropriateness of institutional arrangements and crucially provide public transparency. They are of greatest value when conducted regularly and consistently over time, with agencies gradually orienting their information management system such that they can fulfil the data requirements comprehensively.

Contents

EXECUTIVE SUMMARY	iii
CONCISE SUMMARY AND ANALYSIS	1
Key findings from each section	1
Analysis	3
Regional context.....	3
CME Operations	3
Managing the workload.....	4
Acting on non-compliance.....	6
Sanctions and outcomes	7
CME Reporting	7
Summary of overall key recommendations.....	7
Regional snapshots.....	9
PART 1 OVERVIEW.....	13
How to read this report.....	13
Data limitations.....	13
INTRODUCTION.....	15
CME under the RMA in New Zealand.....	15
The credible regulator – what should we look for?.....	16
A brief background on CME monitoring and reporting in New Zealand	17
PART 2 - DATA ANALYSIS – QUESTION BY QUESTION PLUS INTERPRETATION.....	18
Regional context (questions 3-7, 10-12).....	18
Working with iwi (Questions 8 and 9).....	22
CME operations (Questions 16-17, 20-21, 28-40).....	22
Making decisions on priorities (Questions 16, 17, 20-21, 28-29).....	24
Staffing levels (Questions 30-33).....	31
CME Policies and procedures (Questions 34-38).....	35
Educating and engaging with the regulated community (Questions 39 and 40).....	40
Managing the workload.....	42
Dealing with complaints (Questions 13-15, 18).....	42
Monitoring consent activity (Questions 19 and 22-23)	45
Classifying compliance levels (Question 24).....	48
Compliance of consented activities (Question 25)	49
Monitoring permitted activities (Questions 26-27)	51
Acting on non-compliance	53

Formal enforcement actions (formal warnings, abatements, infringements and enforcement orders – Questions 41-44).....	53
Prosecutorial actions (Questions 45-50).....	55
Total convictions (Questions 45-48).....	56
Types of offences (Questions 49-50).....	57
Sanctions and outcomes (Questions 51-54).....	62
Fines imposed (Question 51).....	62
Other sanctions imposed (Question 52).....	64
CME reporting (Question 55).....	66
PART 3 - REGIONAL SNAPSHOTS.....	69
PART 4 - SUMMARY AND ANALYSIS.....	72
What did the survey results tell us about alignment with minimum requirements?.....	73
What improvements could be made to the survey in the future?.....	74
PART 5 - CONCLUSIONS AND RECOMMENDATIONS.....	76
REFERENCES.....	77
APPENDIX 1.....	78
APPENDIX 2.....	82



CONCISE SUMMARY AND ANALYSIS

Monitoring reports such as this one help to discern areas of strong performance and areas where improvement is needed. They also help to give insight into the appropriateness of institutional arrangements and crucially provide public transparency. They are of greatest value when conducted regularly and consistently over time, with agencies gradually orienting their Information management system such that they can fulfil the data requirements comprehensively.

Key findings from each section

This section summarises the key findings from each section of the survey for quick reference. It is focused on the main findings and does not set out the full range of detail, thus is not exhaustive. However, it provides the important background to the analysis that follows.

Section	Questions	Key findings
Regional context	3-7, 10-12	<ul style="list-style-type: none"> * Councils carry out the CME role in very different contexts, with wide variation in land area, population and industry types, and these distinctions must be kept in mind in managing the sector at a national scale * Councils generally have limited but evolving relationships with iwi and hapū in respect of CME matters and this area is likely to increase in importance over time
CME operations	16-17, 20-21, 28-40	<ul style="list-style-type: none"> * Councils have relatively systematic approaches to determining priorities for incident response and consent monitoring, with less codification for permitted activity monitoring * Overall, the CME functions of regional councils and unitary authorities comprises 436 FTE, comprising 209.43 monitoring FTEs, 87.83 environmental incident and pollution response FTEs, 65.84 investigations positions, all supported by at least 68.7 support staff including non-regulatory education-based FTEs and administrative support. * Resourcing is highly variable, and that variation is not easily explained - councils require adequate resourcing to be credible regulators and shortfalls in capacity must be addressed. It is, however, difficult to determine what constitutes 'adequate' in each context, but the minimum resource requirements in the MfE Guidelines are referred to as a basic indicator. * Most councils have well developed internal policy frameworks, however where they are lacking, they make the council and staff vulnerable to criticism - deficiencies must be addressed. * The sector expends often significant resources in engaging with regulated communities on CME.

Managing the workload	13-15, 18	<ul style="list-style-type: none"> * Councils collectively receive 29143 complaints, of which 25,314 (87%) are responded to, (33% in person, the rest via other means). * Councils report relatively low rates of complaint verification (as low as 17%) which may be driven by a range of reasons * Councils administered a total of more than 200,000 active resource consents for the reporting year, of which nearly a quarter (49,491) were deemed to require monitoring (at least), Of these, more than 91% (45,070) were monitored at a sector level. Councils have varying approaches to classifying levels of compliance, making comparisons across sector impossible. * Councils detect varying levels of compliance in their regulated communities, ranging from only 22.1% considered to be in full compliance (Auckland) through to 96.3% (West Coast)
Acting on non-compliance	41-50	<ul style="list-style-type: none"> * Across the entire sector, councils issued (in the 2017/2018 year) 905 formal warnings, 1844 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (more than four thousand formal actions). * Overall, the sector secured 114 convictions against 49 individuals, and 102 convictions against 60 corporate defendants. * The dominant type of offence is the discharge of contaminants
Sanctions and outcomes	51-54	<ul style="list-style-type: none"> * The total fines issued for regional sector convictions was more than two million dollars (\$2,044,028) * Outside of fines, there are relatively few examples of restorative justice across the sector (10 total)
CME Reporting	11-12, 55	<ul style="list-style-type: none"> * All councils undertake some form of external reporting on CME functions via the National Monitoring System, but reporting besides that is highly variable * SOE reporting is typically only weakly linked to CME activities, and highlighting the important connections between these two forms of assessment could strengthen the internal priority for CME

Table 1: Key section findings for quick reference

Analysis

Regional context

The scene-setting questions answered by the participating councils helped give consumers of the data a sense of the context in which the different councils operate, and the implications the differences between those contexts might have for the CME function. The data demonstrated the significant variation in population, area, regional economic profile and rural to urban population ratio – all of which have a material impact on the scale and nature of the CME role. No specific analysis is offered in respect of these figures, other than to acknowledge that they must be kept in mind in undertaking any comparative evaluation of CME regime effectiveness.

CME Operations

Making decisions on priorities

Making the right choices about where to expend usually limited CME resources is critical to ensuring the greatest risks to the environment are managed first and most intensively. Councils must develop coherent and systematic approaches to making decisions on relative priority. The questions in this section requested councils provide an outline of how they make those choices and on what basis. Naturally, it is difficult to know the extent to which the theory is reflected in practice.

The three main sources of CME workload represent competing demands on the resources available. Current best practice denotes that a **risk-based approach** is desirable, noting that resources in environmental management generally and CME specifically resources are generally expected to always be in short supply. A robust risk-based approach has several specific requirements as outlined in the Best Practice Guidelines (see pages 43-45). The survey does not provide scope to assess the integrity of the different approaches being described as 'risk-based'. It is important that purportedly taking a risk-based approach is not used as a political shield against providing appropriate resourcing for the CME role wherever possible.

Analyses to date have demonstrated that the first and second categories usually dominate the workload, with issues of risk, priority and weak cost recovery mechanisms impacting the level of permitted activity monitoring undertaken. This trend is reflected in the present survey. Council approaches to allocating resources to permitted activities appears overall less systematic, and more dependent upon residual resources leftover from addressing the other two main sources of work. The extent to which this more *ad hoc* approach carries environmental risk is largely dependent upon the permissiveness of the regulatory regime. Where significant reliance is placed upon permitted activities being managed by way of standards, a systematic means of monitoring compliance should not be negotiable.

In this section we learned that the regional and unitary authorities are applying increasingly systematic approaches to determining the relative priority of incoming workstreams, most particularly in respect of consent monitoring and incident response. It would seem that a sector-wide adoption of a risk-based approach has occurred, doubtless informed by the recent development of both the Regional Sector Strategic Compliance Framework and the even more recent Best Practice Guidelines. Ensuring these approaches are followed and enshrined in practice is likely to better utilise what resources are available in any given agency and to ensure the most serious issues are quickly and efficiently addressed.

It is acknowledged that the cost recovery mechanisms for both incident response and permitted activity monitoring are opaque and not fit for purpose. Providing councils with a more clear-cut statutory context for cost recovery would assist in addressing this matter. In addition, if significant non-compliance events are

occurring from permitted activity standards, then it may – in the long term- be desirable for that council to reconsider its non-regulatory approach to that activity.

Staffing levels

Overall, the CME functions of regional councils and unitary authorities comprises 435.8 FTE, comprising 209.43 monitoring FTEs, 87.83 environmental incident and pollution response FTEs, 65.84 investigations positions, all supported by at least 68.7 support staff including non-regulatory education-based FTEs and administrative support.

Councils are differently resourced for the CME function, with wide variation in resourcing not necessarily explained by differences in population, area and regional GDP. For instance, more than half of these (236.2 or 54%) are employed by just 3 of 16 councils – Auckland, Waikato, and Canterbury. Other variables are likely material to determining the resourcing, and councils with limited resourcing are more likely to struggle to meet the minimum resource requirements referred to at the beginning of this section. Comparisons with other variables (i.e. number of active consents, complaints etc) is confounded by differences in priority frameworks. The lack of clarity is not helped by a lack of clear demarcation of information on the respective functions of unitary authorities. It may take time to establish a true notion of resourcing adequacy.

CME policies and procedures

Providing a coherent policy framework for CME is particularly important, as decisions made in this space can have wide-ranging implications for the public's perception of the agency's effectiveness. The majority of councils have a relatively robust policy framework, including 14 of 16 with enforcement policies. However, that means two do not have what is a relatively fundamental instrument in the CME toolbox – a credible and consistent means of guiding decision-making on enforcement matters. This does of course not automatically mean that all decisions that might arise from an ad hoc context are questionable but means there is no ability for the regulator to demonstrate the veracity of decisions that have been made. It is strongly recommended that this gap is addressed without delay, such that all councils have robust and publicly available enforcement policies aligned with the Best Practice Guidelines.

Engagement and education

Councils appear to undertake a broad range of both engagement and educational programmes but provided varying levels of detail. Some councils have an extensive variety of approaches in this space. While there is no 'correct' number or range of ways to engage and educate the regulated community¹, investing in the information-based end of the spectrum gives important balance to a regime.

Managing the workload

Dealing with complaints

Collectively the regional sector physically attends nearly 9000 complaints a year from a total pool of nearly 30,000 (a further 16,000 are addressed via other means). Key findings included that councils tended to receive volumes of complaints broadly commensurate with their populations, but that the way they responded to them varied considerably (no doubt influenced by prioritisation approaches and resourcing constraints). The responses to these questions provide a useful continuous dataset, in contrast to most CME reporting to date.

Unfortunately, many councils were unable to provide the full suite of data, and some were unable to provide an accurate number of the complaints that had been received. Councils are required, like all public agencies,

¹ The 'regulated community' is broadly defined as the community to which any regulation applies or could apply

to accurately record complaints and guidance on doing so has been available for many years from the Office of the Ombudsman. It is reasonable to expect that councils would hold accurate records of incoming complaints and strive to maintain that accuracy through to the resolution of those complaints.² This requirement is also reflected in the RMA.

A further interesting outcome from this section of the survey was the relatively low proportion of complaints that were reported to be verified – including a rate that was as low as 17% verification in Wellington.³ Many of these figures seemed extremely low. Potential drivers could include low public knowledge of the role of agencies, poor internal management of complaints leading to frequent misdirection to incorrect departments, difficulty in verifying particular complaints or inaccurate systems for recording legitimacy. Further information would be required to understand this trend better.

Monitoring consent activity

A failure to monitor a consented activity at an appropriate frequency removes the ability for the regulator (absent a complaint) to detect non-compliance and therefore address environmental harm. Councils routinely set goals for proportions of consents to monitor and appear to meet these goals most of the time. Current best practice suggests that consents should be monitored in a way that reflects the level of risk the subject activity (risk-based approach) may pose to the environment and/or the wider community and given the relatively robust basis for cost recovery of consent monitoring, there is no good reason why councils should fall significantly short of fulfilling this expectation. For some, resourcing may simply be inadequate for the task, which places undue stress on staff and management and should be addressed at a council level.

Classifying compliance levels

All councils had a system for classifying compliance status of an activity, ranging from a binary approach (Nelson with ‘satisfactory’ or ‘unsatisfactory’) through to more detailed taxonomies, including some targeted at certain sectors (usually dairy). Councils vary in the extent to which these categories are integrated into their overall information management system.

Having different categories (and presumably different thresholds within categories) makes the councils very difficult to compare. A possible future area of improvement would be the nationwide standardisation of such thresholds. A standard taxonomy is proposed within the Best Practice Guidelines released in 2018 (Table 4 of guidelines). A nationally consistent taxonomy would enable councils to more easily demonstrate that the allocation of resources sensibly follows environmental risk.

Compliance of consented activities

A key goal of any CME regime should be to secure behaviours that are desirable within the given statutory framework. Therefore, the compliance levels being achieved by the regulated community are a critical reflection of the effectiveness of the regime. Consistently poor levels of compliance usually denote a regime ineffective in marshalling appropriate behaviours and/or short on resourcing and signal that approaches to CME must be reviewed.

Notwithstanding that, a degree of non-compliance is typical and ‘perfect’ regimes are rare. In a typical regime it would be expected that there is a spread of compliance status along a spectrum, each part demanding a

² It is important to note that some councils may keep good records of complaints, but not necessarily in a way that makes it easy to report at a meta scale (i.e. individual complaint detail may be significant, but the overall picture is more difficult to extract). This type of reporting relies on the metadata.

³ Notwithstanding that, even in the absence of a breach responding to a complaint may provide an opportunity to educate a member of the regulated community or avert a future compliance matter.

different approach from the regulator. In the table on compliance levels, this expectation would translate into much of the regulated community occupying the left-hand columns with a gradual attrition in proportions as one moves to the right, which is exactly what is present.

Monitoring permitted activities

Permitted activity monitoring programmes are relatively rare outside of forestry and dairy. The need for them of course depends on the regulatory regime. The robustness of the CME regime is underpinned by whether it is appropriate in the first place for the activity in question to be approached in a non-regulatory way. If activities that potentially constitute significant environmental risk are permitted, then they may cause an unreasonable burden on the CME unit, particularly considering opaque cost recovery mechanisms.

Acting on non-compliance

Formal enforcement actions

Across the entire sector, councils issued (in the 2017/2018 year) 905 formal warnings, 1827 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (total 4042 formal actions). Some councils are demonstrably less active in enforcement than others. These differences are not explained by population etc but appear to be related to more opaque variables such as the council's individual approach to the CME function. A balanced approach across the spectrum of education and engagement through to taking formal and punitive actions when necessary is a vital component of being a credible regulator. A more long-term dataset will enable the trends in the activity levels of council to transcend year-on-year variability and should be carefully monitored.

Discharges of contaminants was the driver behind more than half of all notices (other than prosecutorial action) under the Act and sends a clear message that more work is needed. It is also possible that discharges are more readily recognised by the public than other actions and therefore have a greater chance of being notified to council or being detected in routine monitoring. Whatever the reason, work is required in this space by both regulators and the regulated community to better stay within the boundaries of the law.

Prosecutorial actions – total convictions and types of offences

The sector secured 114 convictions against 49 individuals and 102 convictions against 60 corporate defendants. These data clearly demonstrate that prosecution is both (a) relatively rarely used compared with other tools under the Act and (b) its use is predominantly clustered in a small number of agencies for the reporting year. It is possible that these trends in activity levels could vary significantly year on year as prosecutions and the investigations leading up to them can take many years. Notwithstanding that, 216 successful convictions against both corporate and individual efforts is a significant effort and likely has critical deterrent value within the RMA regime, particularly where outcomes are publicised in national media.

Certain activities appear to lend themselves to higher visibility in enforcement statistics and without a doubt, the discharge of contaminants is one. It consistently tops the list of offences and managing these infractions evidently occupies a significant proportion of the regional sector's resourcing and energy. This may also reflect that the regulated communities may not be getting the message that unlawful discharges are unacceptable or that compliance regimes in respect of this matter are being less effective than they need to be in driving behaviour change.

Sanctions and outcomes

The sector secured more than \$2 million dollars in fines against both corporate and individual offenders. What can be demonstrated from these data is that the total quantum of fines is approximately 2% of the total possible fines for the entire suite of convictions (\$90 million). It is possible that the proportion of fines issued compared with those possible to have been issued would seem low to some commentators; although this could also be seen as a crude analysis.

At issue is whether such a small proportion of the total potential quantum being issued reflects any view of the judiciary that potential penalties are not justified, and what variables affect that assessment. The quantum of a fine reflects not only the seriousness of the incident/s that led to the prosecution, but also the quality of the information put before the Courts, precedence and judicial discretion. The degree of sanction is also an important element for whether it constitutes a sufficient deterrent to would-be offenders.

CME Reporting

Overall, there is a significant amount of variation in the scale and nature of reporting on the CME function between councils. Some operate with limited genuine public visibility while others appear to allocate significant resources to documenting their activities for the consumption of observers (e.g. Canterbury). This is in addition of course to participation in National Monitoring System surveys, this survey and other more ad hoc reporting efforts (e.g. Brown, 2017).

What is striking is that none of the SOE reports detail to any degree the importance or impact of the council's approach to CME as being material to environmental outcomes. While some reference the CME function in relation to specific matters (see for example Northland's SOE report in relation to wetland damage for swamp kauri extraction and associated compliance issues), there is a lack of comprehensive discussion of the linkage between CME operations and environmental outcomes.

This is an area that councils may wish to consider expanding on in the future. CME is a significant tool in achieving the overarching purpose of the RMA - done poorly it can result in slippage that erodes the potential of any regulatory regime to achieve statutory goals. Carried out in a robust manner, it can assist in driving positive environmental outcomes and mitigating failures elsewhere in the policy process. Connecting CME more robustly with state of the environment reporting may assist in providing a more robust basis for CME resourcing and delivery focus.

Summary of overall key recommendations

Key recommendations and observations arising from the findings within this report are as follows:

- While variation is to be expected given the diffuse nature of the regime and lack of oversight in the past, there is ample opportunity for councils to now work to **standardise approaches** to fundamental CME tasks, which would enable national scale data to have much stronger value due to increased comparability
- **Resourcing** for CME is varied, but is relatively low in several councils, possibly too low to carry out the minimum requirements set down within the newly promulgated Best Practice Guidelines. The variation is not generally explained by relative wealth, land area or population - but appears often driven by other matters.

- Many councils were unable to provide some relatively basic information for these survey questions. While **information management** is doubtless an area in which the sector has improved greatly in recent years, further development is required to maintain reasonable levels of transparency.
- The **internal policy framework** for CME in many agencies is incomplete or has aspects that open councils and individuals within those councils up to reputational risk from an inability to demonstrate fair and clear decision-making processes. The sector must carefully consider performance in this space as independence, transparency and consistency are fundamental components of being a credible regulator.
- Some councils perform consistently well across all or most measures in this survey while the reporting of others demonstrates some significant shortcomings that should be addressed. Continuing to administer a **robust and regular reporting** framework, including review and improvement of the current suite of metrics, will help to drive performance improvement year on year.
- Unitary authorities do not sufficiently demarcate their regional vs district CME activities in their information management systems, meaning that the level of **transparency** about regional-level operations they can provide is lower than their regional council counterparts. This erodes both the comparability of the collective dataset and has potential reputational implications for the unitary councils.

Monitoring reports such as this one help to discern areas of strong performance and areas where improvement is needed. They also help to give insight into the appropriateness of institutional arrangements and crucially provide public transparency. They are of greatest value when conducted regularly and consistently over time, with agencies gradually orienting their Information management system such that they can fulfil the data requirements comprehensively.

Regional snapshots

The following section sets out the most striking aspects of the survey at a regional level, highlighting areas in which each council performed very well or indeed their responses reflected clear room for improvement. Councils can note their performance relative to the rest of the sector in each part of the report, but a short overview of key take home messages for each region is included here for quick reference. It is not exhaustive and should not be relied upon to give the full picture of the council in question. Activity levels and other variables are also very likely to vary considerably year on year, and the following snapshots are solely based on the data within this survey.

Northland

The Northland region is vast and approximately half the population are located rurally, one of the largest proportionally rural populations in the country. Northland Regional Council has a relatively systematic approach to determining priorities and a well-regarded monitoring programme for Farm Dairy Effluent (FDE) compliance. A robust policy framework guides CME decision-making and the council administers a range of education and engagement programmes. Northland has average levels of resourcing on a population basis, is relatively active in the use of lower level enforcement tools and reports regularly on CME activities in a variety of ways.

Auckland

The scale of the CME operation of Auckland Council dwarfs all other councils in numerical terms, but resourcing for CME on a population basis is below average. Internal prioritisation approaches appear sound although, like all unitary authorities, there is no way to understand (from the survey questions) how the competing demands of regional and territorial local authority functions are juggled. Information management appears to be an area where improvement is needed, although it is recognised that the efforts to integrate the legacy approaches of the amalgamated councils are ongoing.

Waikato

Waikato Regional Council operates a comprehensive CME regime, with a well-developed policy framework, prioritisation protocols and relatively good information management. Bespoke approaches to managing compliance approaches sometimes constrain the council from being able to contribute to nationally comparative datasets, however. Resourcing is slightly below average, but the regime overall appears generally balanced and well-documented. Education and engagement programmes and formal relationships with iwi and hapū on CME matters all appear comprehensively managed. Waikato appears to utilise the full range of tools in the CME toolbox. It does not (at least for the reporting year) carry out high numbers of prosecutions but did secure significant fines for convictions that were secured.

Bay of Plenty

Bay of Plenty Regional Councils approach to CME appears comprehensive with respect to the data gathered, although resourcing is below average. The policy framework and internal prioritisation approaches appear sound, although the monitoring of permitted activities could benefit from greater codification. Information management is an area for improvement given the gaps in data provision. A balanced approach to CME appears to exist with the council appearing to use a wide range of tools, and reporting is comprehensive.

Hawkes Bay

The Hawkes Bay Regional Council has some of the lowest levels of resourcing across the sector on a population basis. Like Taranaki, express provision for the CEO to participate in decision-making on prosecutions is an area of potential reputational risk. Information management, particularly regarding the outcomes of incident response demonstrates room for improvement.

Taranaki

The CME approach of Taranaki Regional Council appears both well codified and well captured in their information management system. The council has the greatest number of FTEs of all councils relative to population and has a well-developed policy framework. The monitoring of permitted activities is generally reactive however and would benefit from greater codification. Taranaki administers a relatively balanced enforcement regime, although the express delegation to the Chief Executive on prosecutorial matters is of concern.

Gisborne

Gisborne has a developing approach to CME, with internal policies and procedures having been subject to significant review in recent times, a process that is still ongoing. Resourcing levels are typical of the smaller unitary authorities (noting existing vacancies). Information management is an area of improvement, as the council was not able to provide some important data for the reporting year. However, Gisborne was the only unitary authority able to provide its consent monitoring data for regional consents only, enabling comparison with sector colleagues.

Manawatu-Whanganui (Horizons)

Manawatu-Whanganui Regional Council has a well-developed policy framework (noting that there is limited codification for prioritising permitted activity monitoring) but has some of the lowest resourcing in the sector. Information management is an area for improvement, as some datapoints were not able to be provided via council's systems. Manawatu-Whanganui used relatively few formal tools overall and recorded no prosecutions for the reporting year.

Wellington

Wellington Regional Council appears to have a comprehensive CME policy approach internally, with all expected policies and prioritisation procedures intact. Despite this, resourcing is the lowest of the entire sector, and the relatively scant use of formal tools (except non-statutory warnings) potentially reflects this. The council administers no permitted activity monitoring programmes.

Reporting appears comprehensive. Information management appears relatively sound. The relative sophistication of the internal framework for CME contrasts with the relatively low activity levels in the CME space, suggesting that the council has perhaps pulled back from this role for the at least the reporting year.

Tasman

Tasman District Council administers a large area and when combined with Nelson has slightly above average resourcing levels. However, less than half of consents that required monitoring were monitored in the reporting year and information management – like many councils – would benefit from some improvements.

Tasman has a relatively well-developed internal policy context for CME and is making progress in developing a prioritisation approach for permitted activity monitoring. The council appears to use the full range of tools

in the RMA enforcement toolbox and netted some significant fines from the few prosecutions they did undertake.

Nelson

Nelson City is the smallest jurisdiction of the sector and operates a slightly different CME model to most councils, relying on external contractors for much of the monitoring work. The resourcing appears reasonably adequate and the basic policy requirements are in place. For the reporting year, formal enforcement tool use favoured the softer end of the spectrum.

Marlborough

Marlborough District Council has a well-developed internal policy framework for CME and has above average resourcing for the CME function. Information management appears sound, with few gaps in the information provided, indicating that the council keeps good records of CME activities relative to the rest of the sector. Reporting seems comprehensive across a range of fronts.

Canterbury

Canterbury is New Zealand's largest region with the second largest population after Auckland, with significant resource management issues and a high level of public interest in council's approach to CME. Canterbury provided a significant level of detail on its CME activities in all instances and is evidently highly concerned with considering the CME function within its wider operations. The orientation of the council appears strongly focused on relationships with the regulated community and while this has many positive benefits, it can be a brake on punitive enforcement action where it is necessary. Canterbury relies heavily on non-statutory warnings notices and for the reporting year undertook relatively few prosecutions.

West Coast

The remote West Coast covers a large area, although much of it is public conservation land. CME resourcing for the West Coast Regional Council appears sound, although there are significant improvements likely required to the internal policy framework and information management – both appear lacking. The Council is relatively active at the lower end of the enforcement spectrum, mainly issuing non-statutory warnings, but carried out limited prosecutions.

Otago

Otago's narrative responses to questions were very brief, so it was difficult to discern how comprehensive their approach to some aspects of the role was. The categorical responses however generally showed that although there is room for improvement in information management, reporting is relatively comprehensive. Resourcing is below average, and council does appear to have struggled to meet its monitoring goals. The internal policy framework appears weak; it is one of the few councils to report that it does not have an enforcement policy for example. Notwithstanding the opaque internal context, Otago is one of the most active councils in high level enforcement proceedings

Southland

Southland has a well-codified approach to CME. The internal policy framework appears relatively sound, although like some other councils, provision for CE involvement in day to day enforcement decision-making is an area of reputational risk. Notwithstanding that however, Southland was the strongest performer in prosecutions of offenders, securing nearly a quarter of the fines for the entire sector over the greatest number of prosecutions of individuals and corporates. Information management and reporting appear generally sound.



PART 1 OVERVIEW

This report is the first of its kind – one derived from questions designed by the regional sector to improve and complement the present national monitoring system's brief CME aspects. Numerous analyses have raised concerns about poor information availability and a lack of continuous long-term data to demonstrate sector activities. Little guidance and direction exist for how environmental regulatory agencies must report on their activities, either internally or externally. Councils, given their local presence, also often face higher expectations for transparency than central government regulators.

This report represents a sector-led effort, under the leadership of CESIG, to improve the availability of data on CME functions. This inaugural survey saw all 16 of New Zealand's regional councils and unitary authorities (collectively referred to as the 'regional sector') participate. The dataset - while patchy due to the various factors - provides a very interesting insight into the conduct of CME agencies under the RMA, and its value will only increase in subsequent iterations.

How to read this report

The analysis of the data supplied by the regional sector is detailed below under headings which group like questions together into sections. At the beginning of each section is a box containing the exact wording of the relevant questions and results are graphed and tabulated for readability. Questions 1 and 2 contain identifying information for the councils and individuals filling in the survey so are excluded from analysis.

The format of information is generally:

- a boxed section containing the exact questions relevant to that section
- an overview of the purpose of the questions
- the tables and graphs of the information
- a description of findings
- a short analysis of the findings, at both a regional and national scale.

Questions exclusively devoted to giving opportunities for authorities to upload documents are not analysed but addressed in narrative form as standalone or within the relevant other question/s. Where an open-ended narrative-style response is required amidst an otherwise continuous series of numerical information, it has been spliced out and separately discussed. A full list of questions can be found in Appendix 1.

Unfortunately, unitary authorities were not generally able to demarcate the CME matters that relate to their regional functions and instead reported on their overall levels of activity. **Where this distinction is material, they have been separately analysed to ensure fair comparability.**

Data limitations

Reporting on CME activities is complex, and truly reflective metrics can be difficult to establish. The metrics within this survey were developed collaboratively by CESIG as a first and very important step toward a more robust sector-led framework for reporting on CME activities. There are several aspects of the metrics and the data that was submitted that should be kept in mind when reading this report. Where expressly relevant to the discussion, the limitations are also set out in the report. Otherwise they are contained here to avoid significant and lengthy repetition. Key limitations are:

- Many councils were unable to provide the required data for a range of reasons, including that the way the question was phrased was incompatible with present recording systems. This was accepted at the outset and will presumably be gradually addressed over time. The most notable example was that none of the participating unitary authorities – except Gisborne in respect of consent monitoring - were able to separate their total CME activities for regional functions from their territorial local authority functions, resulting in a significant issue of non-comparability.
- Councils also provided a significant amount of data that had caveats or was based on estimates. Special effort has been made to ensure the report carefully records those. The more the data are estimated and caveated, the lower their comparability and collective value however, and it is hoped that over time these can be reduced.
- The veracity of the data council-to-council is also unknown, and errors could possibly have been made while councils filled in the survey. A draft of the report was circulated to CESIG to provide councils with an opportunity to correct any data that was erroneous or to provide additional data they could to address gaps. Many amendments were received, which helped to mitigate this limitation somewhat. However, it would be useful if, in the future, greater time was allocated to gather the requisite information and to more carefully ensure its accuracy at the outset.
- While several questions focused on asking whether councils had policies or procedures in place, there is no easy way to determine whether (a) they are robust and reflect best practice, and (b) whether they are followed. This may be an area in which the survey could be expanded in the future.

Notwithstanding the above limitations, and those question specific issues set out in the body of the report, the data contained within this survey is the most comprehensive made available on the CME activities of councils under the RMA. It also far exceeds the detail available on the activities of any other environmental regulatory regime in the country.

INTRODUCTION

CME under the RMA in New Zealand

The CME function is almost entirely delegated to regional and territorial authorities (and unitary authorities which carry out both functions). The Ministry for the Environment acts in a somewhat limited oversight role, providing overarching policy, guidelines and administering national reporting on the function. In the past it has not been particularly active, but this is slowly changing.

Councils can choose how to exercise their CME role within the relatively broad framework of the RMA. There are few specific parameters set down in the act other than procedural/tool-based sections. Because of this relatively high level of discretion and limited national direction, the role has evolved differently over different jurisdictions and culminated in high levels of variation nationwide.

Key definitions

Compliance: adherence to the RMA, including the rules established under regional and district plans and meeting resource consent conditions, regulations and national environmental standards.

Monitoring: the activities carried out by councils to assess compliance with the RMA. This can be proactive (e.g. resource consent or permitted activity monitoring) or reactive (e.g. investigation of suspected offences).

Enforcement: the actions taken by councils to respond to non-compliance with the RMA. Actions can be punitive (seek to deter or punish the offender) and/or directive (e.g. direct remediation of the damage or ensure compliance with the RMA).

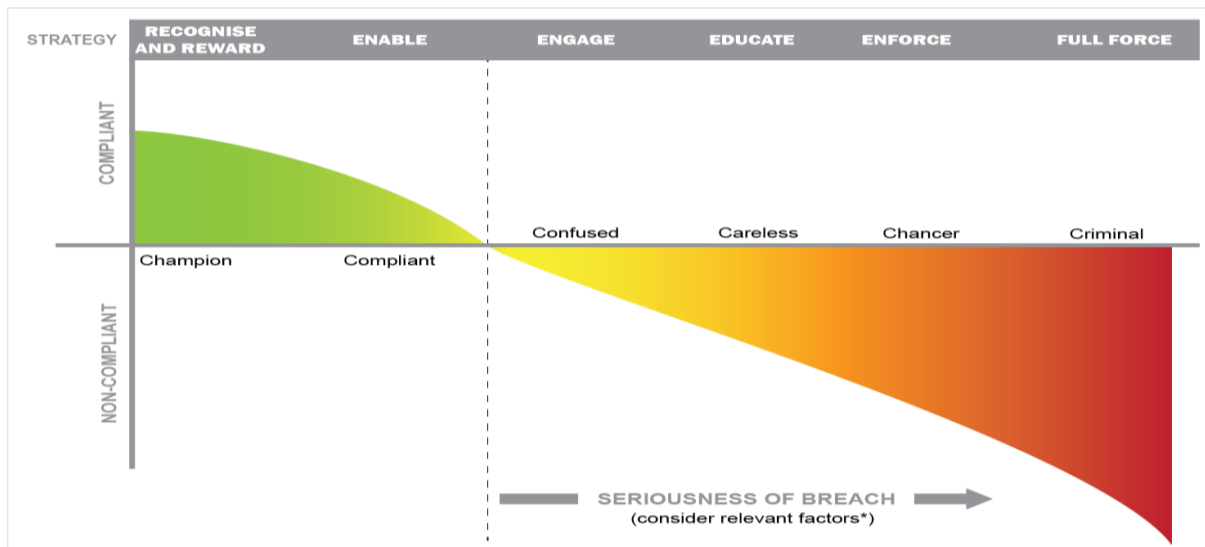


Figure 1: CME diagram (source: Best Practice Guidelines)

A robust approach to CME entails a council being able to work comfortably and competently across the above spectrum, applying tools and seeking sanctions that are appropriate to engender behaviour change.

The credible regulator – what should we look for?

It is important that regulators – in this case unitary and regional councils – are credible. But what does it mean to be credible? Insights into the kinds of expectations that might be had of the credible regulator under the RMA can be found in the following documents:

- Solicitor General Prosecution Guidelines
- Best Practice Guidelines (see ‘minimum resource requirements’ below)
- Basic Investigative Skills Manual

Expectations relate to the kinds of resourcing that is available for compliance (including capacity and capability), the policy context for CME and the procedures and reporting in place to record and demonstrate outcomes and effectiveness. Councils have significant discretion in how they carry out the CME role, and transparency in operation is the typical check on discretion in public policy.

Minimum resource requirements

There are certain CME functions councils should, at a minimum, support with sufficient resources. The list has been drafted so that it applies to all types and sizes of councils. For a well-functioning and effective CME programme, there are many other functions councils should consider resourcing.

As a minimum requirement, all councils should have sufficient access to resources to support:

- development and regular review of a compliance strategy, which includes an approach for addressing different behaviours, as set out in
- trained and qualified staff to undertake the CME role, including a combination of scientific, planning, regulatory, investigative and legal skills
- proactive programmes (eg, education and engagement) to achieve national, regional and local environmental objectives
- monitoring high-risk resource consents, and most medium-risk resource consents
- responses to and investigation of significant incidents, including appropriately trained investigation staff
- public reporting on CME at least once a year, fulfilling the minimum information requirements set out in the Best Practices Guidelines
- internal systems to support monitoring and reporting, including hardware/software to support the record-keeping requirements set out in the Best Practice Guidelines
- enforcement action (including taking a prosecution), ensuring staff are appropriately trained and qualified to do so
- access to legal representation and expertise in enforcement and prosecution
- administrative support for the CME function, for example to support financial matters such as charging for compliance monitoring.

A brief background on CME monitoring and reporting in New Zealand

The RMA contains high level guidance on what councils must do in terms of reporting and record keeping. These requirements include that they must;

- maintain records on the efficiency and effectiveness of plans (which includes CME) that is publicly available and in intervals of five years or less (section 35(2A))
- maintain a record of all written complaints received for the previous five years concerning alleged breaches of the Act or a plan and information on how the council addressed each complaint (section 35(5)(i))
- keep 'reasonably available at [their] principal office' a range of information including the monitoring of resource consents (section 35(3))

Outside of these relatively limited parameters, councils have significant discretion in how they conduct their CME role. Throughout this survey, the basic statutory requirements are referred to when considering the adequacy of some council responses to questions.

The regional and national context for reporting on CME activities to date can be best described as patchy. The sole specific data requirements are contained within the Ministry for the Environment's evolving National Monitoring System (and prior to this, the two-yearly survey of local authorities also administered by MfE). While the survey of local authorities provided some insight into the effectiveness of councils, a lack of continuous datasets (as questions have altered significantly over time) and limited quality control have undermined the utility of the exercise. Quality of the reporting and analysis varied significantly from report to report, with some being relatively comprehensive and carefully analysed and others being subject to only very limited analysis (especially the CME dimensions).

The National Monitoring System - linked to the Environmental Reporting Act 2015 - has been an improvement in part not least because it has ushered in a more consistent and integrated approach to reporting and greater online availability of the data. However, the system has not yet addressed other matters that undermine the utility of the data, including the long delays between the submission of information and its analysis and release. An important reason for monitoring and reporting on performance is benchmarking and giving agencies guidance on what they must improve on - long lags between submission and analysis make this difficult as the information is time-sensitive and has generally lost business relevance when lags number years not months.

Councils are also free to determine how and when they report on CME activities (outside of their NMS contribution). Some execute this role keenly and in a variety of ways, but for others reporting is scant and irregular, usually unlinked to other reporting streams in local government (e.g. SOE reporting). This means different communities have very different levels of access to information about how their council is conducting this critical role around the country. Robust and regular reporting that is publicly accessible helps councils and the sector demonstrate their activities and outcomes, and improvements in operations over time.

This project hopefully represents the genesis of a more consistent and practical means of monitoring council performance on CME in a way that is operationally relevant and instructive for councils, oversight bodies, regulated communities and the public. It may also represent a blueprint for an overhaul of the CME questions in the NMS in the future.

PART 2 - DATA ANALYSIS – QUESTION BY QUESTION PLUS INTERPRETATION

Regional context (questions 3-7, 10-12)

3. What is the population of your region?

4. What is the geographic size of your region?

5. What is the percentage split of urban and rural population in your region?

6. What is your regional GDP percentage of national GDP?

7. What is the regional % of GDP for each of the following industries? *e.g. forestry 25%*

Agriculture (excl dairy)	Aquaculture	Construction
Dairy	Forestry	Horticulture
Mining	Oil and gas	Tourism
Viticulture	Other	

10. Are you a Unitary or Regional Authority?

If you are a Regional Authority, how many Territorial Local Authorities are in your region?

11. Provide link to your council's latest state of the environment report.

12. Alternatively, upload the report (if less than 16MB)

The survey begins with a range of questions designed to provide valuable context to the remainder of the questions. Questions 1 and 2 relate to which council and which staff member was responding and are not analysed further. All these variables demonstrate that regions face different levels of population pressure, land use type and intensity and must carry out their CME activities across sometimes very large geographical areas.

Councils operating at a regional and unitary level in New Zealand face different challenges and are differently equipped to meet those challenges. The types of CME issues that are confronted by each council and the way CME operations are conducted are logically going to differ. Providing context for the subsequent analysis is important. Several estimates differed from readily available national data, so the author has defaulted to the use of data drawn directly from Statistics New Zealand where it has been available at a regional level.⁴

Population, size, urbanisation and GDP of participating regions (Question 3-4, 6, 7 and 10)

Population and area within the council's jurisdiction varies significantly. So too does regional GDP and the industries from which it is generated. All these variables likely have a significant impact upon the level of activity required to implement a robust CME regime. Development activities generally coincide with where people are, as do complaints, so understanding the population that the CME functionaries must service, and the area over which they must undertake the task can provide some insight into their workload.

⁴ Unfortunately, the Nelson and Tasman unitary areas are combined in some regional context data. Where this has affected analysis, it has been clearly articulated in italics.

Population, area and total regional GDP

Council	What is the population of your region?	What is the geographic size of your region?	What is your regional GDP percentage of national GDP?	Regional or unitary authority (number of TAs)
REGIONAL				
Northland	173,500	12,500	2.6	Regional (3)
Waikato	455,000	23,900	8.4	Regional (11)
Bay of Plenty	296,900	12,071	5.3	Regional (6)
Hawke's Bay	162,900	14,137	2.7	Regional (4)
Taranaki	117,400	7,254	3.1	Regional (3)
Manawatu-Whanganui	238,800	22,220	3.8	Regional (7)
Wellington	509,700	8,048	13.2	Regional (8)
West Coast	32,500	23,245	0.6	Regional (3)
Canterbury	607,000	44,504	12.9	Regional (10)
Otago	221,900	31,186	4.3	Regional (5)
Southland	98,200	31,196	2.1	Regional (3)
UNITARY				
Auckland	1,637,000	4,941	37.5	Unitary
Gisborne	43,653	8,355	0.7	Unitary
Tasman		9,615		Unitary
Nelson	101,700	422	1.8	Unitary
Marlborough	45,900	10,457	1	Unitary

Table 2: Regional contextual data for participating jurisdictions (Questions 3-4,6 and 10)

The region with the largest population is Auckland with over 1.6 million people, almost three times larger than the next most populous region, Canterbury. The West Coast has the smallest population with 32,500 people. This enormous disparity must be kept in mind in comparing the activities of the different councils – the economies of scale that some organisations are able to achieve with respect to matters such as resourcing/training are simply not within reach of smaller councils within the present local government funding model.

The largest region by area is Canterbury (44,504.50km²), followed at some distance by Otago and Southland which are very similar in size, being just over 31,000km². The smallest region by some margin is Nelson City, covering just 422.2km² (roughly 100 times smaller than Canterbury). Some councils have a relatively small population over a relatively small land area (e.g. Taranaki) while others have a large population over a small land area (notably Auckland, but also Wellington's land area is roughly equivalent to Taranaki's with five times the population).

Regional GDP varies widely across the sector, with Auckland collectively contributing 37.5% of the national total and the West Coast contributing just 0.6%. The source of the GDP contribution varies widely, from some regions heavily focussed on one or two particular industries (e.g. oil and gas in Taranaki) through to regions with very diverse economies (e.g. Auckland).

Urbanisation

Much of New Zealand's population is urbanised, but many regions do not reflect this split. Both urban and rural areas have compliance issues, so while this information does not provide insight into the level of workload councils face, it may provide some idea of the types of issues commonly encountered.

Rural areas tend to be associated with large distances and lengthy travel times between incidents (depending on where staff are located) so may have logistical/resourcing implications. Urban populations may also tend to be more vocal and more proximal, meaning more local issues can displace wider regional matters if prioritisation approaches are not robust. Managing this potential tension should be of concern particularly to unitary authorities.

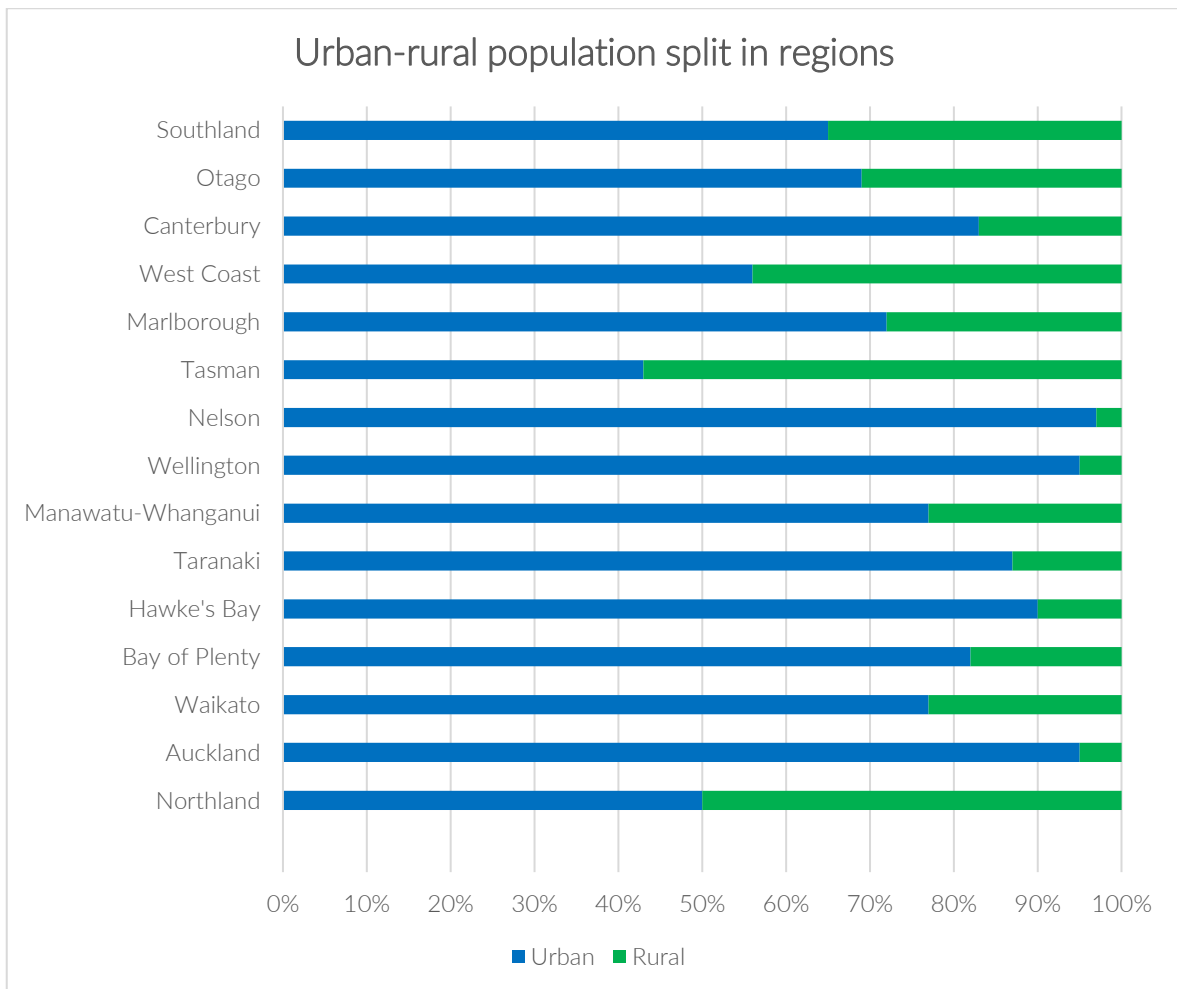


Figure 2 Urban and rural population split across regions (Question 5) Gisborne - DNR

There is no easily available source of information to verify the rural and urban population split reported by councils. Some figures reported were clearly in error and needed to be swapped around and a couple of councils reported two different sets of figures over 2-3 responses. All regions have a significant proportion of the population in urban areas, in line with national trends.

Of all the regions, Tasman has the highest proportion of the population classified rural (roughly half and half), followed closely by Northland and the West Coast. Conversely, the great majority of Auckland, Wellington and Nelson residents are in urban areas.

The scene-setting questions answered by the participating councils helped give consumers of the data a sense of the context in which the different councils operate, and the implications the differences between those contexts might have for the CME function. The data demonstrated the significant variation in population, area, regional economic profile and rural to urban population ratio – all of which have a material impact on the scale and nature of the CME role. No specific analysis is offered in respect of these figures, other than to acknowledge that they must be kept in mind in undertaking any comparative evaluation of CME regime effectiveness.

Working with iwi (Questions 8 and 9)

8. Describe your regional key commitments to work with iwi/Maori on CME (e.g. commitments in Joint Management Agreements or other co-management agreements)
9. Upload copies of any agreements related to this work with iwi/Maori.

The relationship between local government and iwi and hapū is increasingly well-recognised (see for example Part 3 of the Best Practice Guidelines). Across the breadth of council functions, there are many opportunities to broker agreements and commitments between these parties, and some of these refer to CME functions under the RMA. Examples may include the requirement to consult with local iwi on CME policy or to involve tangata whenua in CME-related processes such as freshwater monitoring or formal enforcement action.

All but one council responded to this question (Table 3). Two referred to programmes that were currently under development, while the remainder were able to share their operational experience working with iwi and hapū in CME. Detail varied, but overall the question responses signalled that this is a growing area of focus and that there are likely opportunities for cross-agency knowledge sharing.

Section findings

- Councils carry out the CME role in very different contexts, with wide variation in land area, population and industry types, and these distinctions must be kept in mind in managing the sector at a national scale
- Councils generally have limited but evolving relationships with iwi and hapū in respect of CME matters and this area is likely to increase in importance over time

Council	Describe your regional key commitments to work with iwi/Maori on CME (e.g. commitments in Joint Management Agreements or other co-management agreements)
Northland	Tai Tokerau Māori & Council Working Party that meet monthly
Auckland	Currently being developed
Waikato	Comprehensive requirements via existing joint management agreements and proposals for further work in this space (e.g. honorary ranger programme)
Bay of Plenty	Several governance-level agreements provide for formal engagement with tangata whenua
Hawke's Bay	Gravel Extraction Ngāti Pāhauwera
Taranaki	Iwi authorities involved in prosecutions by producing victim impact statement. Further involvement in enforcement being considered.
Gisborne	JMA with Ngati Porou, MOU with Te Runganui o Turanganui a Kiwa, Statutory Acknowledgments for Rongowhakaata, Ngai Tamanuhiri, Ngati Porou. Local Leadership Body being set up with 3 Turanga Iwi
Manawatu-Whanganui	DNR
Wellington	12 Key Forums, Agreements or functions which integrate iwi and our Mana Whenua partners into the work of the organisation
Nelson	No formal agreements - all iwi are informed about all resource consent applications and iwi monitoring occurs as required
Tasman	No formal agreements with Iwi for wider CME however does work with Iwi through consent conditions where they are have an active monitoring role.
Marlborough	Draft Iwi Engagement Policy
West Coast	Iwi are informed of all resource consent applications. Iwi representatives sit on the Council Resource Management Committee which compliance, monitoring and enforcement activity is reported to monthly. WCRC has strong working relationships with iwi and is working towards formal agreements.
Canterbury	<p>Quarterly meetings between the 10 Papatipu Rūnanga Chairs and Regional Councillors. Every 6 weeks ECan staff meet with the environmental experts from each marae to discuss regional projects, Te Waihora Co Governance, Te mana o Wai project at Wainono, ECan and Ngāi Tahu joint work programme, Service level agreements with 3 Ngāi Tahu environmental entities that support the 10 Papatipu Rūnanga. Regional Councillors meet at individual marae each year. Each marae has 2 representatives that sit on each of the 10 Water Zone Committees. Two dedicated staff to look after the 20 marae water zone representatives. Strategic Mātauranga Māori and mahinga kai programmes through the CWMS and science portfolios.</p> <p>ECan's Long Term Plan 2018 Significance and Engagement Policy specifically identifies the values and interests of Ngāi Tahu whānau, hapū and rūnanga, as mana whenua for the region, where proposals or decisions relate to land or a body of water, the implications for the relationships of Ngāi Tahu and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna and other taonga.</p> <p>This Engagement Policy is supported by ECan's Tuia Relationship Agreement which recognises the importance of face to face engagement with Te Rōpū Tuia, direct with Rūnganga, operational engagement and membership of ECan committees.</p>
Otago	MOU in place
Southland	Charter of understanding of Iwi and local government March 2016 (see question 9)

Table 3: Listed regional key commitments to work with iwi/Maori on CME (Question 8 and 9)

CME operations (Questions 16-17, 20-21, 28-40)

There are three key sources of workload in CME:

- incoming written or oral concerns from the public or other agencies ('complaints'),
- CME in relation to consented activities and
- CME in relation to the monitoring of permitted activities throughout council's jurisdiction.

All are important and deserve attention. However, they can represent competing demands on officer's time, and proportioning effort across the three workstreams is the key test for internal prioritisation approaches.

Making decisions on priorities (Questions 16, 17, 20-21, 28-29)

16. What basis is used for determining what notifications are physically attended and with what urgency or priority?
17. If your council uses a prioritisation model or compliance strategy, please upload file.
20. Describe how you determine which consents are monitored and how frequently?
If there is a prioritisation model or compliance strategy, add link
21. Upload file, if link not provided
28. Describe what basis was used for determining how these permitted activities are monitored.
If there is a prioritisation model or compliance strategy, add link
29. Upload file, if link not provided above

Questions 16 and 17 addressed how each council makes decisions on what notifications (i.e. complaints) to respond to and what not to, and in what ways. Questions 20-21 dealt with the same subject matter as 16-17 but related to how the council determined the priority of consent monitoring. Question 28-29 addressed the basis upon which council decided when and how to monitor permitted activities. No specific information was requested or offered by unitary authorities as to how their two suites of functions are prioritised in relative terms.⁵

⁵ In email communication, Nelson City Council advised that approximately 20% of consents were regional in nature and all were monitored, whereas only some district level consents were monitored.

Council	What basis is used for determining what notifications are physically attended and with what urgency or priority?	Describe how you determine which consents are monitored and how frequently?	Describe what basis was used for determining how these permitted activities are monitored.
REGIONAL			
Northland	Following factors taken into account: Adverse effects (actual & potential); nature of the incident; if activity is still happening or not; time elapsed to incident being reported to Council; relevant history (e.g. repeat non-compliance), staff availability & location of incident	Frequency for some activities decided on a whole (e.g. dairy = minimum 1 annual visit; coastal structures = once every 3 years); all other consents on case-by-case (e.g. some on-site systems once every 5 years if low risk and good history, others may be every year if high risk due to proximity of waterway etc).	All permitted activity dairy farms monitored at least once annually. NES-PF is monitored with a risk-based approach. All other activities case-by-case.
Waikato	Prioritisation model, please note also have individual compliance strategies for various industries and activities.	Compliance Strategies (have 7 compliance strategies but only able to upload one)	Compliance Strategy Managing Dairy Effluent is seen as a high-risk activity because of the number of Dairy Farms in the Waikato Region and its potential for effect on water quality. Farming activities are mostly permitted under the Waikato Regional Plan - unlike many other plans.
Bay of Plenty	Whether or not the matter for complaint is still occurring, nature of the issue and whether attending the site will change anything, and/or whether it is safe to visit. Note: some may not be attended if there are multiple complaints at any one time and resources need to be triaged according to risk.	BOPRC uses a risk-based approach to scheduling compliance according to different consented activities. This framework is reassessed annually and feeds into our Section 36 policy	Permitted activities are generally monitored on a reactive basis; currently in the process of developing a monitoring plan for permitted forestry under the NESPF
Hawkes Bay	Risk Based approach	Compliance Monitoring Strategy	NES Forestry, Annual Plan
Taranaki	All are attended as per Annual Plan.	Link provided to risk-based monitoring procedure	Availability of staff and priority activities

Council	What basis is used for determining what notifications are physically attended and with what urgency or priority?	Describe how you determine which consents are monitored and how frequently?	Describe what basis was used for determining how these permitted activities are monitored.
Gisborne	We attend all complaints and have performance standards to respond to all notifications within 30 minutes and attend within 60 minutes.	DNR	<p>There were new Permitted Activity requirements in our Freshwater Plan – these were targeted at significant environmental risks so as part of implementing the Plan we have developed a Permitted Activity monitoring programme. This is to ensure that farmers and growers are familiar with and complying with the new rules.</p> <p>Now the NES-PF has been in place we have identified the need to undertake Permitted Activity monitoring of forestry activities which previously would have required consent under our Plan. We have identified this as a high priority to ensure that there is a good level of understanding and compliance around the Permitted Activity standards.</p>
Manawatu-Whanganui	Council uses a prioritisation model that determines how and when it responds to incidents. this is outlined in the document attached to question 17.	This is based on a risk-based approach. this is consistent with the Strategic Compliance Framework. The compliance strategy is summarised in our LTP, at page 51. this outlines what the compliance team will deliver in relation to compliance monitoring based on site/consent prioritisation.	Strategy for NES-PF monitoring is still in a draft format and not yet finalised.
Wellington	Incident Response Protocols are based on specific factors which form a decision-making flow chart	GWRC has a Strategic Compliance Programme which prioritises what consents are monitored and how frequently	No response

Council	What basis is used for determining what notifications are physically attended and with what urgency or priority?	Describe how you determine which consents are monitored and how frequently?	Describe what basis was used for determining how these permitted activities are monitored.
West Coast	Determined by compliance officer in consultation with team leader or manager. Compliance policy requires attendance within 24 hours for urgent matters.	As per Council Long Term Plan targets, internal mining targets and undocumented risk-based assessment.	Permitted activity dairy farms are required under the Long Term Plan to be monitored at least every 2nd year depending on compliance history.
Canterbury	Currently an officer decision based on environmental effects and ability to attend. A project to create an incident response evaluation model is nearing completion, with a draft model currently being tested. This approach combines organisational priorities (both regional and sub-regional/zone) and environmental effects (risk) to determine whether an incident requires an elevated response or a standard response. The evaluation process is a yes/no decision against a list of predetermined triggers for elevated response. All incidents are standard unless they trigger an elevated response (when any trigger returns a 'yes' answer). Elevated response incidents will require a site visit within two working days, standard response incidents will require a desktop response within 5 working days.	Environment Canterbury's compliance monitoring programme has traditionally been risk based, i.e. monitor high risk consents and react to issues/incidents from lower risk consents. A risk-based methodology is still valid; however, the compliance monitoring programme also needs to deliver on Environment Canterbury's strategic priorities. For 2018/2019 Environment Canterbury has moved to a balance of risk and priority-based monitoring that is delivered through a campaign methodology. The campaign identifies the approach for delivery of priorities and allocates inspections for compliance monitoring. 2018/2019 Compliance Monitoring priorities were agreed by Environment Canterbury Council as: Regionally Significant Consents, Water Use Compliance, Good Management Practice, Fish Screens, consents with a history of significant non-compliance and Zone Priority Projects. The priorities are translated into priority inspections for monitoring. [abridged]	We have a compliance strategy based on environmental risk and organisational priority. Due to the reduced risk of the permitted activities, these do not form part of the prioritised monitoring programme unless significant non-compliance is detected. PA monitoring programmes are in place for domestic home heating, forestry and construction site run-off.
Otago	Is it happening now? What is happening?	Consent are monitored on a risk-based system	NES (Forestry)/ Risk based

Council	What basis is used for determining what notifications are physically attended and with what urgency or priority?	Describe how you determine which consents are monitored and how frequently?	Describe what basis was used for determining how these permitted activities are monitored.
Southland	Office based assessment in line with Environment Southland's current environmental focus.	We aim to complete a minimum of one inspection per consent annually except for our south coast structures/Stewart Island/Fiordland consents which are inspected every three years on rotation.	Compliance monitoring strategy - see question 20
UNITARY			
Auckland	An electronic risk-based triage form - cannot upload	Risk based matrix	Required by the Auckland Unitary Plan
Nelson	Risk based with priority on incidents that could adversely affect the health and safety of people or cause harm to sensitive environments	All consents requiring monitoring as determined through the resource consent process are monitored. Frequency depends on risk, compliance history, activity/industry type	The 3 dairy farms are monitored at least annually, same for all forestry operators
Tasman	Complaint priority matrix	We use a prioritisation matrix within a monitoring policy. Frequency depends on the conditions, type of activity and level of compliance	Consent & Permitted activity Monitoring prioritisation Strategy 2018-20. Not attached as it is yet to be ratified.
Marlborough	High, Medium, low priority given on receipt based on adverse effects and mitigation. Table of CRM categories identified and likely Priority.	Risk based strategy	Risk based strategy based on activity

Table 4: Prioritisation approaches across three key CME workstreams

Prioritising incoming complaints

Most councils referred to priority or risk-based approaches to determining whether to attend a complaint and with what urgency. One council (Taranaki) referred to an annual plan undertaking to address all complaints, which they did). Gisborne referred to a policy of responding to all complaints also, within a designated timeframe. Ten councils provided a document which set out their approach formally, within a policy, in a wall chart form or as an excerpt from a more widely focused document. Waikato referred to a total of seven compliance strategies, each focused on a different activity type.

Prioritising consent monitoring

Most councils again adopt a risk-based approach, although some activities are monitored at a set minimum frequency (for example, Northland carries out a minimum of one annual visit to each dairy farm) presumably also based on risk. The level of detail provided did vary, but overall most council responses reflected a relatively systematic approach to monitoring of consented activities being in place. Gisborne did not provide information on the basis for prioritising but were able to provide figures as to what consents were deemed to require monitoring (so it is assumed there is a framework of sorts in place, even if not articulated).

Prioritising the monitoring of permitted activities

Councils also generally appear to adopt a risk-based approach in this space, although overall it would seem less well codified than other workstreams. As with consented activities, some activity types automatically attract a minimum number of visits (e.g. in Nelson all forestry activities which are permitted are visited at least once). The National Environmental Standard: Plantation Forestry (NES-PF) has evidently acted as a significant catalyst for codifying approaches to permitted activity forestry.

Summary

Making the right choices about where to expend usually limited CME resources is critical to ensuring the greatest risks to the environment are managed first and most intensively. Councils must develop coherent and systematic approaches to making decisions on relative priority. The questions in this section requested councils provide an outline of how they make those choices and on what basis (Table 4). Naturally, it is difficult to know the extent to which the theory is reflected in practice.

The three main sources of CME workload represent competing demands on the resources available. Current best practice denotes that a **risk-based approach** is desirable, noting that resources in environmental management generally and CME specifically are generally expected to always be in short supply. A robust risk-based approach has several specific requirements as outlined in the Best Practice Guidelines (see pages 43-45). The survey does not provide scope to assess the integrity of the different approaches being described as 'risk-based'. It is important however that purportedly taking a risk-based approach is not used as a political shield against providing appropriate resourcing for the CME role.

Analyses to date have demonstrated that the first and second categories usually dominate the workload, with issues of risk, priority and weak cost recovery mechanisms impacting the level of permitted activity monitoring undertaken. This trend is reflected in the present survey. Council approaches to allocating resources to permitted activities appears overall less systematic, and more dependent upon residual resources left over from addressing the other two main sources of work. The extent to which this more ad hoc approach carries environmental risk is largely dependent upon the permissiveness of the regulatory regime. Where significant reliance is placed upon permitted activities being managed by way of standards, a systematic means of monitoring compliance should not be negotiable.

In this section we learned that the regional and unitary authorities are applying increasingly systematic approaches to determining the relative priority of incoming workstreams, most particularly in respect of consent monitoring and incident response. A sector-wide adoption of a risk-based approach has occurred, doubtless informed by the recent development of both the Regional Sector Strategic Compliance Framework and the even more recent Best Practice Guidelines. Ensuring these approaches are followed and enshrined in practice is likely to better utilise what resources are available in any given agency and to ensure the most serious issues are quickly and efficiently addressed.

It is acknowledged that the cost recovery mechanisms for both incident response and permitted activity monitoring are opaque and not fit for purpose. Providing councils with a more clear-cut statutory context for cost recovery would assist in addressing this matter. In addition, if significant non-compliance events are occurring from permitted activity standards, then it may – in the long term- be desirable for that council to reconsider its non-regulatory approach to that activity.

Staffing levels (Questions 30-33)

30. How many FTEs does your council have who carry out monitoring roles?

Include contractors.

31. How many FTEs does your council have who carry out environmental incident or pollution response roles?

Include contractors.

32. How many FTEs does your council have who carry out investigation or enforcement roles?

33. How many FTEs does your council have in CME support roles (e.g. administrative roles)?

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than one role then calculate what portion of their time generally is spent in each role. An example of an answer to each of the questions in this section might look like '24 FTE spread across 40 individuals. Exclude any in-house or contract lawyers

Resources available for CME vary considerably across different agencies, depending on funding levels, community expectations and internal priorities (including political priorities). Staff commonly carry CME responsibilities alongside other tasks related to council's wider functions. Having adequate resources to carry out CME in a comprehensive and systematic manner is a fundamental component of being a credible regulator.

Questions 30-33 asked councils to provide details of the resourcing available to the RMA CME function. The purpose of using FTEs compared with 'people' is to recognise that a mix of duties for the same person is commonplace, particularly in smaller councils. It is reasonable to assume that resourcing would differ substantially across the sector, given differences in population, area, development type and intensity and council funding base.

Unitary authorities carry out regional and territorial functions, and the two sets of functions themselves require somewhat different expertise at certain times and of course more relative resourcing. For instance, Tasman must undertake both the work of a regional council and one or more territorial local authorities within the same CME unit. However, the unitary authorities did not distinguish between the staffing levels for regional and territorial functions, hence they are separated in the table. Going forward, it may be advantageous for unitary authorities to either separate this information, or at least provide a sense of how resources are divided between the two tiers and how much overall time is attributed to each.

Council	How many FTEs does your council have who carry out monitoring roles? Include contractors.	How many FTEs does your council have who carry out environmental incident or pollution response roles? Include contractors.	How many FTEs does your council have who carry out investigation or enforcement roles?	How many FTEs does your council have in CME support roles (e.g. administrative roles)?	TOTAL FTEs
REGIONAL					
Northland	13.3	4	2.7	2.4	22.4
Waikato	22.5	9	6	9	46.5
Bay of Plenty	14	2	3	12	31
Hawke's Bay	6	3	0	1	10
Taranaki	27	3	4	2	36
Manawatu-Whanganui	4	4	1	1	10
Wellington	10	4	1	0.5	15.5
West Coast	1.5	1.5	1.5	1	5.5
Canterbury	28	10.5	3	2.2	43.7
Otago	9.7	6.3	1.7	5.5	23.2
Southland	7.5	1	2	2.6	13.1
UNITARY					
Auckland	54	31	35	26 ¹	146
Gisborne	6 ²	1	1	DNR	8
Nelson	1.33	1.33	1.34	0.5	4.5
Tasman	2	3	4	2	11
Marlborough	2.6	3.2	2.6	1	9.4
TOTAL	209.43	87.83	65.84	68.7	435.8

Table 5: FTEs for CME across regional sector (Questions 30-33)

1 Estimate only 2 Gisborne reported that of the 6 FTE, only 4 were currently filled and the remaining 2 were being recruited at the time of the survey. The figure of 6 was retained as it was not clear whether other councils had also included vacant positions.

Overall, the CME functions of regional councils and unitary authorities comprises 435.8 FTE, comprising 209.43 monitoring FTEs, 87.83 environmental incident and pollution response FTEs, 65.84 investigations positions, all supported by at least 68.7 support staff including non-regulatory education-based FTEs and administrative support (Table 5).

Councils are differently resourced for the CME function, with wide variation in resourcing not explained by differences in population, area and regional GDP. For instance, more than half of these (236.2 or 54%) are employed by just 3 of 16 councils – Auckland, Waikato, and Canterbury, so team size varies significantly. Other variables are likely material to determining the resourcing, and councils with limited resourcing are more likely to struggle to meet the minimum resource requirements referred to at the beginning of this section.

As expected, the resources available for CME differ significantly across the sector and between regional and unitary authorities. The best resourced regional council in terms of whole numbers is Waikato, closely followed by Canterbury. West Coast employs the least people in CME roles, with Hawkes Bay and Manawatu-Whanganui employing the same number of persons at the next lowest level.

Among the unitary authorities, Auckland Council's staff levels are so large as to be difficult to compare. However, the smaller unitaries all carried similar levels of resourcing even before population was considered. Enabling a more comparative approach is needed to understand the relative resourcing in more detail.

The split across the different workstreams of monitoring, incident response and investigation/enforcement differ between councils, although the predominant trend is that approximately half or more of total FTEs are occupied by consent monitoring, and the least proportional resourcing is allocated to investigations and enforcement (Tasman is a notable exception).

The degree of administrative support to the CME function also varies considerably and arguably may have been an area where calculations differed internally in preparing survey responses (e.g. where administration functions are pooled – as is common – the survey respondent may have not considered the full range of persons engaged in CME activities for a proportion of their time). For instance, Waikato has a total of 9 FTE administrative support within a staff of 46.5, whereas Canterbury have a similar number of staff but only 2.2 FTE for administration. Many functions of council are indirectly linked to CME (finance for example) and may or may not have been included.

CME resources compared with population of the jurisdiction

Determining the adequacy of resourcing is complex. There is no magic number. What is known is that good CME requires people and limited resources constrains a council from being a credible regulator. It is important that councils allocate enough resource to this crucial function to ensure they have enough people, and enough of the right people (well-trained etc) to do the job robustly.

FTEs per 1,000 head of population provides some broadly comparative metric for information's sake. The following data demonstrate the wide variability in resourcing between councils on this basis. This variability may in part be explained by contextual differences and in part be explained by other factors such as political priority. Certainly, the limitations of population as a metric are very much acknowledged, but in the absence of a clearly viable alternative, it provides at least some insight.

Council	TOTAL FTEs	Population	FTEs per 1,000
REGIONAL			
Northland	22.4	173,500	0.13
Waikato	46.5	455,000	0.10
Bay of Plenty	31	296,900	0.10
Hawke's Bay	10	162,900	0.06
Taranaki	36	117,400	0.31
Manawatu-Wanganui	10	238,800	0.04
Wellington	15.5	509,700	0.03
West Coast	5.5	32,500	0.17
Canterbury	43.7	607,000	0.07
Otago	23.2	221,900	0.10
Southland	13.1	98,200	0.13
UNITARY			
Auckland	146	1,637,000	0.09
Gisborne	8	43,653	0.19
Nelson	15.5*	101,700*	0.15*
Tasman			
Marlborough	9.4	45,900	0.20

Table 6: FTE resourcing for CME relative to population (Nelson/Tasman combined)

The average resourcing is 0.13 per 1,000, with a range of 0.03 to 0.31 across the entire sector (0.157 for unitary authorities and 0.11 for regional councils) (Table 6). The best-resourced regional council relative to population is Taranaki Regional Council (0.31 FTEs per 1,000 population). The least resourcing relative to population is in the Wellington Region (0.03, ten times less relative resourcing than Taranaki). Among the unitary authorities, Auckland has significantly less resourcing than other councils with dual functions on a relative basis, but unitary authorities overall carried usually higher levels of resourcing on a population basis (but were not able to demarcate the resources allocated for addressing regional functions alone as directed by the survey introduction).

Councils are differently resourced for the CME function, with wide variation in resourcing not explained by differences in population, area and regional GDP. Clearly other variables are material to determining the resourcing, and councils with more limited resourcing are more likely to struggle to meet the minimum resource requirements referred to at the beginning of this section. Comparisons with other variables (i.e. number of active consents, complaints etc) is confounded by differences in priority frameworks and the wider regulatory regime. Further work is needed on establishing a truly comparative metric (which is likely to need to be multi-dimensional).

CME Policies and procedures (Questions 34-38)

34. Does your council have an Enforcement Policy?
If yes, please upload copy
35. What is your process for making decisions on prosecutions?
36. Does your council have a Conflict of Interest Policy?
If yes, please upload copy
37. Does your council have any other CME policies? (not mentioned previously)
If yes, please list
38. If yes, please upload copies

Provision of a coherent policy context for CME within the council's overall operations is important to maintain the credibility of a regulator. Questions 34-38 addressed the ways in which policy informed councils CME operations, particularly with respect to making decisions on prosecutions and in managing conflicts of interest. There is of course no easy way to capture the degree to which policies are adhered to but having them in the first place is important.

None of the above policies are expressly required in statute, however the need for an active enforcement policy is set out in the newly promulgated Best Practice Guidelines. Note that for the purposes of the analysis, enforcement policies in draft were still counted (more than one council was, for example, in the process of amending their policy to align with the Best Practice Guidelines).

Council	Does your council have an Enforcement Policy?	Does your council have a Conflict of Interest Policy?	Does your council have any other CME policies? (not mentioned previously)	What is your process for making decisions on prosecutions?
Northland	Yes	Yes	Yes (Quality Manual)	EDG with minimum 3 staff (CEO is not involved in decision making for prosecutions)
Auckland	Yes	Contained within charter	Yes (see Charter)	Recommended by officers, approved by Manager Regulatory Compliance
Waikato	Yes	Yes	We refer to the CESIG Regional Sector Compliance Framework 2016-2018	Investigating officer reports to a panel of 3 senior managers with recommendation.
Bay of Plenty	Yes	Yes	No	Investigating officers present detailed report and recommendations to an EDG, which comprises Regulatory Compliance Management. The EDG makes a recommendation which is forwarded to counsel for legal advice, before being presented to the GM for Regulatory Services for decision.
Hawke's Bay	Yes	Yes	No	Enforcement Decision Group - approvals by Manager/ Group Manager/ CEO based on an Enforcement Action Checklist EDG
Taranaki	Yes	Yes	No	Decision delegated to Chief Executive and decision made in conjunction with the Director of Resource Management and Compliance Manager.

Council	Does your council have an Enforcement Policy?	Does your council have a Conflict of Interest Policy?	Does your council have any other CME policies? (not mentioned previously)	What is your process for making decisions on prosecutions?
Gisborne	Yes	Yes	Internal prosecutions policy	EDG has 2 managers, TL compliance and a senior compliance officer and investigator with voting rights. Lawyer and director do not vote. Once a recommendation has been made to prosecute by EDG. It is reviewed by Director, and they make the decision as to whether to proceed. If yes it then goes to the lawyers who will give legal peer review and advice. Based on legal advice the CME manager, investigator and Director will consider the legal advice and decide whether to proceed. The Director makes final decision.
Manawatu-Whanganui	Yes	Yes	No	Upon completing investigation, the OC prepares a report for both the Regulatory Manager and Group Manager recommending action to be taken. this is then provided to the CE for their consideration. the report is also accompanied by legal advice from the Crown solicitor on evidential sufficiency and public interest.
Wellington	Yes	Yes	Draft Prosecution Guideline	GWRC will generally take the following steps as part of its prosecution process under the Act: <ul style="list-style-type: none"> • Investigation of the incident • Correspondence with the person/s suspected of breaching the Act, during which an opportunity is provided to respond to the allegations • Incident presented to the Enforcement Decision Group • Obtaining external legal advice about the merits of prosecution • Final decision made by Prosecution Decision Group • Where appropriate, filing charges in the District Court.
Nelson	Yes	Yes	No	Recommendation report completed by officer, reviewed by all levels to the tier 2 manager who decides after receiving legal advice

Council	Does your council have an Enforcement Policy?	Does your council have a Conflict of Interest Policy?	Does your council have any other CME policies? (not mentioned previously)	What is your process for making decisions on prosecutions?
Tasman	Yes	Yes	No	Delegated authority with tier 2 manager. Recommendation to him from Team leader after consultation with O/C case and review of file.
Marlborough	Yes	Yes	No	Stage one QA peer review panel Stage two Enforcement and Prosecution Committee Stage three Legal Counsel review
West Coast	Yes	Yes	No	Recommendation made by compliance officer to enforcement decision group made up of CEO and manager.
Canterbury	Yes	Yes	Yes Incident response Unreasonable complaints	The case is initially presented to the Enforcement Decision Panel by the investigating officer, with a recommendation to prosecute. The Enforcement Decision Panel is comprised of three managers in the Compliance and Enforcement area. If the Enforcement Decision Panel endorse the recommendation then the file goes to Legal Section for assessment under the Solicitor General's Guidelines, i.e. evidential sufficiency and public interest. If it is assessed as suitable for prosecution the file goes to the CEO via two senior managers for final approval to lay charges.
Otago	No	No	Yes Diversions policy	EDG (Prosecutions policy in place)
Southland	Yes	No	Yes Diversions policy	Incident response – Investigation – Enforcement decision group meeting – legal opinion – CEO approval

Table 7: Policy for CME active in the regional sector – it is assumed that all councils also refer to both the Regional Sector Strategic Compliance Framework, the MfE Best Practice Guidelines and the Solicitor General's Prosecution Guidelines even where it is not explicitly stated.

Of the sixteen participating councils, 15 advise they have enforcement policies (Table 7). Otago does not, although notes it has a 'prosecutions' policy in the final column. Fourteen councils also have a conflicts of interest policy, while two do not. Several councils referred to additional compliance policies they had in operation, including Otago and Southland with active diversions policies.

Councils all provided a narrative description of how they approach the prospect of a prosecution. All approaches involved the participation of more than one staff member and a decision to be made by a more senior staff member. All reflect a formal process that is in place to guide decision-making whether or not it is captured by a written enforcement policy.

A key point of variation was whether the Chief Executive was involved in decision-making. The questions did not specifically ask for this information, but it was expressly addressed in several responses. At least five councils expressly provide for a role for the Chief Executive in case-by-case decision-making in enforcement. From a public policy perspective, it is reasonable to be concerned with this aspect of regional sector management and the appropriateness of these arrangements should remain a point of discussion going forward.

Providing a coherent policy framework for CME is particularly important, as decisions made in this space can have wide-ranging implications for the public's perception of the agency's effectiveness. The majority of councils have a relatively robust policy framework, including 15 of 16 with enforcement policies. Policies are important and relatively fundamental instruments in the CME toolbox – a credible and consistent means of guiding decision-making on enforcement matters. This does of course not automatically mean that all decisions that might arise from an ad hoc context are questionable but means there is no ability for the regulator to demonstrate the veracity of decisions that have been made.

Educating and engaging with the regulated community (Questions 39 and 40)

39. Education

Does your council have, or support, any education or enabling projects relating to compliance with the RMA or any of its derivative regulation? For example, an annual workshop for earthworks contractors around erosion and sediment controls. If so, briefly describe project(s)

40. Engagement

Does your council have, or support, any engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, wetland stakeholder group meetings to highlight emerging issues with the wetland.

If so, briefly describe project(s)

The 4 E's explained

Engage – consult with regulated parties, stakeholders and community on matters that may affect them. This will require maintaining relationships and communicating until final outcomes have been reached. This will facilitate greater understanding of challenges and constraints, engender support, and identify opportunities to work with others.

Educate – educate regulated parties about what is required to be compliant, and that the onus lies with them to maintain their compliance. Educate the community and stakeholders about what regulations are in place around them, so they will better understand what is compliant and what is not.

Enable – provide opportunities for regulated parties to be exposed to industry best practice and regulatory requirements. Link regulated parties with appropriate industry advisors and promote examples of best practice.

Enforce – when breaches of regulation, or non-compliance, are identified, a range of enforcement tools are available to bring about positive behaviour change. Enforcement outcomes should be proportional to the circumstances of the breach, and culpability of the party.

Virtually all councils carry out **education and engagement programmes** related to CME and there is a very wide range of forms that this takes. Again, the variations in approach are significant, evidently designed to address local needs and interpret regional and local requirements. Some initiatives mentioned could fall within either education or engagement, so they are treated together for the purposes of analysis. Councils that said they did not run any such programmes likely do as part of their day to day functions, they are just perhaps not targeted or named as such.

Examples of education and engagement approaches across sector

- Training workshops for consent holders on earthworks and sediment management, management of farm dairy effluent and other common resource management activities
- Participation in fora and working groups associated with specific industry groups (dairy, horticulture, forestry etc)

- Development and awarding of good practice awards for industry operators
- Proactive presentations to companies and sectors on compliance matters
- Development of engagement strategies where plan changes will introduce a new approach to managing an existing activity type.
- Ongoing provision of advice and information to consent holders and those undertaking permitted activities about the parameters in which they must work.

Councils appear to undertake a broad range of both engagement and educational programmes but provided varying levels of detail. Some councils have an extensive variety of approaches in this space. While there is no 'correct' number or range of ways to engage and educate the regulated community, investing in the information-based end of the spectrum gives important balance to a regime.

Section findings

- * Councils have relatively systematic approaches to determining priorities for incident response and consent monitoring, with less codification for permitted activity monitoring
- * Overall, the CME functions of regional councils and unitary authorities comprises 435.8 FTE, comprising 209.43 monitoring FTEs, 87.83 environmental incident and pollution response FTEs, 65.84 investigations positions, all supported by at least 68.7 support staff including non-regulatory education-based FTEs and administrative support.
- * Resourcing is highly variable, and that variation is not easily explained - councils require adequate resourcing to be credible regulators and shortfalls in capacity must be addressed. It is, however, difficult to determine what constitutes 'adequate' in each context, but the minimum resource requirements in the MfE Guidelines are referred to as a basic indicator.
- * Most councils have well developed internal policy frameworks, however where they are lacking, they make the council and staff vulnerable to criticism - deficiencies should be addressed.
- * The sector expends often significant resources in engaging with regulated communities, an important aspect of managing CME operations

Managing the workload

Dealing with complaints (Questions 13-15, 18)

13. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?

This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties, but excludes information from council monitoring activity

14. How many of these notifications were responded to by council?

This response may be in any form – e.g. phone call, site visit, desktop audit

Total number responded to

Percentage of the number received

15. How many of these notifications were physically attended by council staff?

Total number

Percentage of the number received

18. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?

Questions 13-15 and 18 develop a contiguous dataset that helps to demonstrate the level of response council is undertaking to expressions of concern, and the final figure helps to reflect the level of risk to the environment from the complaints. Not all complaints relate to a matter that is within council's jurisdiction, nor do they necessarily relate to any unlawful activity. Many complainants complain frequently about matters that may not be of any relevance to the council, which is a significant drain on resources.

Attending to a complaint physically is the most resource-intensive response possible to an incoming query. There are ways to reduce the need to respond in person to a complaint that may seem like it does not constitute an enforcement matter such as a phone call, desktop search etc. Measuring the number of complaints that link to genuine determinations of wrong-doing helps reflect the level of legitimacy of complaints as a whole.

Council	How many notifications (complaints) were received from members of the public (or other sources)	How many of these notifications were responded to by council?	Percentage of the number received	How many of these notifications were physically attended by council staff?	Percentage of the number received	How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?
REGIONAL						
Northland	1052	1052	100%	705	67%	DNA
Waikato	1543	1543	100%	313	20.30%	370 (24%)
Bay of Plenty	2834	2834	100%	DNA	DNA	DNA
Hawke's Bay	1095	1095	100%	DNA	DNA	DNA
Taranaki	414	414	100%	414	100%	153 (37%)
Manawatu-Whanganui	792	792	100%	180	23%	DNA
Wellington	1308	1085	83%	548	42%	223 (17%)
West Coast	102 ²	102	100%	DNA	DNA	51 (50%)
Canterbury	4735	3111	80%	1,500	38%	1099 (23%)
Otago	1913	DNA	DNA	DNA	DNA	DNA
Southland	742	673	90%	380	51%	128 (17.2%)
UNITARY						
Auckland	9022	9022	100%	3840	42.50%	DNA
Gisborne	147	147	100%	147	100%	DNR
Nelson	472 ¹	472	100%	330	70%	DNA (est. 70%)
Tasman	2562	2562	100%	DNA	DNA	DNA
Marlborough	557	557	100%	267	48%	189 (33.9%)

Table 8: Responding to complaints and complaint verification (Question 13-15 and 18)

¹ Data include excessive noise complaints.

² Actual number likely to be a lot higher due to limitations of recording system.

Councils across New Zealand receive a highly variable number of complaints, however that variation would seem generally in line with their population base in most instances (Table 8). Almost all councils that held data on response levels reported that all complaints were attended to in some form or other (phone call, site visit etc). Many councils were unable to provide a continuous dataset that followed complaints through to resolution – identifying an area of improvement for the future. The proportion that were attended physically by staff was highly variable, ranging from slightly over 20% in the Waikato Region to 100% in Taranaki and Gisborne. Five councils did not have any data on this aspect.

The final point of analysis in this table is the proportion of notifications confirmed as breaches of the RMA or subsidiary instruments. Nine of the sixteen councils did not provide this data, although Nelson did provide an estimate. Nelson's estimate placed it highest of the proportion confirmed as legitimate breaches, followed by the West Coast at 50%.

Unfortunately, many councils were unable to provide the full suite of data, and some were unable to provide an accurate number of the complaints that had been received. Councils are required, like all public agencies, to accurately record complaints and guidance on doing so has been available for many years from the Office of the Ombudsman. It is reasonable to expect that councils would hold accurate records of incoming complaints and strive to maintain that accuracy through to the resolution of those complaints. This requirement is also reflected in the RMA.

A further interesting outcome from this section of the survey was the relatively low proportion of complaints that were reported to be verified – including a rate that was as low as 17% verification in Wellington.⁶ Many of these figures seemed extremely low. Potential drivers could include low public knowledge of the role of agencies, poor internal management of complaints leading to frequent misdirection to incorrect departments, difficulty in verifying legitimacy or inaccurate systems for recording legitimacy.

The majority of complaints not relating to an incident of a CME nature could represent a very significant drain on resources, and councils (particularly those with mandated 100% response policies) may stand to divert significant human resources away from more legitimate concerns where most are not legitimate. Further information would be required to understand this trend better.

⁶ Notwithstanding that, even in the absence of a breach responding to a complaint may provide an opportunity to educate a member of the regulated community or avert a future compliance matter.

Monitoring consent activity (Questions 19 and 22-23)

19. How many active resource consents exist in your region?

In totals exclude Land use consents where the activity is completed. E.g. Land use-Subdivisions where the subdivision is complete and certificates issued or Land Use-Building where the building has been constructed

22. How many consents required monitoring during this period, in accordance with your monitoring prioritization model/strategy?

23. How many of those consents have been monitored (including by desktop audit) in this period?

Number monitored

Percentage monitored of the number requiring monitoring this period

The level of consented development activity in a given region can vary across the sector and over time. Understanding the number of consents and the degree of consent monitoring gives insight into the relative workload of each council.

Question 19 asked for the number of 'active' resource consents. Implicit within the question was that 'inactive' consents did not form part of the workload, and these were noted to include '*land use consents where the activity is completed. E.g. Land use-Subdivisions where the subdivision is complete and certificates issued or Land Use-Building where the building has been constructed*'.

Question 22 determined the proportion of those total active consents that were considered by the council to 'require' monitoring, noting that this determination varies across sector. Finally, question 23 asked for the actual proportion that was subject to monitoring (including by desktop audit) to provide an insight in the extent to which council's efforts were keeping pace with its intentions.

Council	How many active resource consents exist in your region? In totals exclude Land use consents where the activity is completed.	How many consents required monitoring during this period, in accordance with your monitoring prioritization model/strategy?	How many of those consents have been monitored (including by desktop audit) in this period?	Percentage monitored of the number requiring monitoring this period
REGIONAL				
Northland	3812	3724	3512	94%
Waikato ¹	4500*	1500*	1159*	77%*
Bay of Plenty ²	5500	1900	1303	68.60%
Hawke's Bay	3144	3144	2943	93%
Taranaki	4837	2930	2930	100%
Manawatu-Whanganui	4700	1700	1400	82%
Wellington ³	6375 ¹	1544	1457	94.40%
West Coast	DNA	DNA	1309	DNA
Canterbury	20,417	DNA	5,754	28%
Otago	5984	3827	2526	66%
Southland	5376	3188	3188	100%
UNITARY				
Auckland	103,690	17,759	12,642	70%
Gisborne ⁴	1250	699	238	34%
Nelson	1200	550	550	100%
Tasman	15,764	4250	1940	46%
Marlborough	20802	2686	2219	83%
TOTAL	207,351	49,401	45070	91%

Table 9: Consent monitoring data (Questions 19 and 22-23)

¹ Waikato RC establishes monitoring priority on a site basis, not a consent basis. Some sites may have many consents associated with them. The figures relate to sites, not consents.

² BOP provided 2016/2017 figures in lieu of 2017/2018 as the information was not available at the time of survey which also does not include performance monitoring (e.g. returns)

³ Wellington includes telemetry readings (unable to be excluded)

⁴ Gisborne was the only unitary council able to provide this data on a regional basis, enabling comparability with the regional councils. All other unitaries provided aggregated data across the breadth of their dual functions.

Grey = estimate only

Councils administered a total of more than 200,000 active resource consents for the reporting year, of which nearly a quarter (49,491) were deemed to require monitoring (at least). Of these, more than 91% (45,070) were monitored at a sector level. Three councils were unable to provide definitive figures on the number of consents requiring monitoring (relying on officer estimates) and one council (West Coast) was unable to provide three of the four pieces of information relevant to this section (Table 9).

All councils were able to provide data on the number of consents monitored, perhaps enabled by the cost recovery capacity of the consent monitoring function demanding more accurate recording than for the other activities in the CME space. Taranaki, Nelson and Southland all monitored 100% of the consents requiring monitoring, with Northland and Wellington both in the nineties. The lowest proportion of consents monitored was Canterbury, followed by Gisborne.

Councils also evidently have very different ways of calculating the monitoring workload. For instance, Canterbury considers all consents should be monitored, therefore the percentage monitored may seem disproportionately low (28%) compared with some councils that sought to monitor more conservative proportions. Waikato also address monitoring on a site basis, and each site may include many consents, which means – other than the percentage of those monitored – the balance of the data is not comparable.

A failure to monitor a consented activity at an appropriate frequency removes the ability for the regulator (absent a complaint) to detect non-compliance and therefore address environmental harm. Councils routinely set goals for proportions of consents to monitor and appear to meet these goals most of the time. Current best practice suggests that consents should be monitored in a way that reflects the level of risk the subject activity (risk-based approach) may pose to the environment and/or the wider community and given the relatively robust basis for cost recovery of consent monitoring, there is no good reason why councils should fall significantly short of fulfilling this expectation. For some, resourcing may simply be inadequate for the task, which places undue stress on staff and management and should be addressed at a council level.

Classifying compliance levels (Question 24)

24. What grades do you apply to non-compliance? (e.g. technical non-compliance, significant non-compliance)

- Fully Compliant
- Technical/Low Non-Compliance
- Moderate Non-Compliance
- Significant Non-Compliance
- Other (please specify)

Taxonomies that classify compliance levels observed on a site or in respect of a consent help to direct resources and priority and identify where strategies to promote compliance may be less effective than they need to be. There is no national framework for these classifications, meaning that the thresholds for what constitutes each level (e.g. what is 'significant' non-compliance) differ between councils. All councils had a system for classifying compliance status of an activity, ranging from a binary approach (Nelson with 'satisfactory' or 'unsatisfactory') through to more detailed taxonomies, including some targeted at certain sectors (usually dairy). Councils vary in the extent to which these categories are integrated into their overall information management system.

Having different categories (and presumably different thresholds within categories) makes the councils very difficult to compare. A possible future area of improvement would be the nationwide standardisation of such thresholds. A standard taxonomy is proposed within the Best Practice Guidelines released in 2018 (see below – from Table 4 of guidelines). A nationally consistent taxonomy would enable councils to more easily demonstrate that the allocation of resources sensibly follows environmental risk.

	Compliance grade
	FULL COMPLIANCE with all relevant consent conditions, plan rules, regulations and national environmental standards.
	LOW RISK NON-COMPLIANCE. Compliance with most of the relevant consent conditions, plan rules, regulations and national environmental standards. Non-compliance carries a low risk of adverse environmental effects or is technical in nature (eg, failure to submit a monitoring report).
	MODERATE NON-COMPLIANCE. Non-compliance with some of the relevant consent conditions, plan rules, regulations and national environmental standards, where there are some environmental consequences and/or there is a moderate risk of adverse environmental effects.
	SIGNIFICANT NON-COMPLIANCE. Non-compliance with many of the relevant consent conditions, plan rules, regulations and national environmental standards, where there are significant environmental consequences and/or a high risk of adverse environmental effects.

Figure 3: Compliance grades suggested by best practice guidelines for councils

Compliance of consented activities (Question 25)

25. What were the levels of compliance with consents according to the grades you use?

Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g. a consent may be monitored 4 times in the year on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add 3 to the total of Fully Compliant and one to the total for Technical Non-compliance.

Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g. a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance.

Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Full Compliance

Low Risk/Technical Non-Compliance

Moderate Non-Compliance

Significant Non-Compliance

Other

Councils were asked for Question 25 to shoehorn their data on non-compliance into a general taxonomy. The question included several important caveats and clarifications pertaining to how to calculate the level of non-compliance and that they should exclude water telemetry readings so as not to skew results.

As discussed earlier, the lack of standardised categories makes true comparability impossible. Some councils may assess a given activity as compliant, where others would assess it as technically or even more seriously non-compliant depending on their taxonomy. As a result, the inference possible from the dataset is quite muted. In addition, the total consents monitored in the previous section rarely equated with the cumulative total of the consents set out in Table 10, but this was purposely overlooked as the proportion falling into the different compliance categories was the focal point.

Council	Full compliance	Low Risk/Technical Non-Compliance	Moderate Non-Compliance	Significant Non-Compliance	Other	TOTAL
REGIONAL						
Northland	2764 (72.7)		746 (19.6)	293 (7.7)	0	3803
Waikato	479 (44.4)	237 (22)	333 (30.9)	29 (2.7)	0	1078
Bay of Plenty	1407 (76.4)	266 (14.4)	134 (7.3)	35 (1.9)	0	1842
Hawke's Bay	2730 (92.8)	0	203 (6.9)	10 (0.3)	0	2943
Taranaki	3879 (94.2)	0	0	32 (0.8)	208 (5)	4119
Manawatu-Whanganui	950 (84)		92 (8.1)	89 (7.9)		1131
Wellington	1112 (76.3)	255 (17.5)	0	0	90 (6.2)	1457
West Coast	1261 (96.3)	0	0	0	48 (3.7)	1309
Canterbury	4598 (63)	375 (5.2)	606 (8.3)	105 (1.4)	1590 (21.8)	7274
Otago	4181 (59.5)	675 (9.6)	549 (7.8)	112 (1.6)	1508 (21.5)	7025
Southland	2252 (70.6)	0	0	0	936 (29.4)	3188
UNITARY						
Auckland	4134 (22.1)	3984 (21.3)	569 (3)	220 (1.2)	9825 (52.4)	18732
Gisborne	DNA	DNA	DNA	DNA	DNA	DNA
Nelson	475 (86.4)	0	0	0	75 (13.6)	550
Tasman	1223 (63)	138 (7.1)	102 (5.2)	29 (1.5)	448 (23.1)	1940
Marlborough	1442 (65)	44 (2)	688 (31)	0	44 (2)	2219

Table 10: Table of compliance levels (Question 25)

¹ Marlborough provided percentage figures only, so figures here are based on the total number of consents reported to be monitored, although this will create error with multiple visits (however percentages are as reported) (2219)

All councils but one (Gisborne) provided these data (Table 10). Five councils reported that no consents within their jurisdiction were found to be significantly non-compliant, while the highest proportion considered to fall within this category was in Manawatu-Whanganui (7.9%). Full compliance rates range from just 22.1% in Auckland, through to 96.3% on the West Coast. Taranaki and Hawkes Bay also report high levels of full compliance, whereas next lowest to Auckland is the Waikato with consents exhibiting a compliance rate of 44%.

For councils with simple taxonomies, there were simply fewer categories over which their consents could be spread however, so the proportions should be carefully considered before they are used as a basis for decision-making on relative effectiveness of compliance regimes.

The category of 'other' gave councils flexibility in adhering to their own taxonomy but made the data difficult to compare. This is particularly notable with Auckland, where almost half of all inspected consented activities were 'other' with no clear sense of what 'other' might mean (e.g. inactive, a separate category of compliance etc – no details were provided). Unitary councils were more likely to have a significant number of consents fall within 'other'.

A key goal of any CME regime should be to secure behaviours that are desirable within the given statutory framework. Therefore, the compliance levels being achieved by the regulated community are a critical reflection of the effectiveness of the regime. Consistently poor levels of compliance usually denote a regime ineffective in marshalling appropriate behaviours and/or short on resourcing and signal that approaches to CME must be reviewed.

Notwithstanding that, a degree of non-compliance is typical and 'perfect' regimes are rare. In a typical regime it would be expected that there is a spread of compliance status along a spectrum, each part demanding a different approach from the regulator. In the table on compliance levels, this expectation would translate into much of the regulated community occupying the left-hand columns with a gradual attrition in proportions as one moves to the right, which is exactly what is present.

Monitoring permitted activities (Questions 26-27)

26. Are there any significant industries or activities in your region that are permitted activities rather than consented activities (or both)? If so, what are they?
27. Which permitted activities do you have a monitoring programme for?

Permissiveness of regulatory regime for certain activities (Question 26)

Monitoring of the compliance of permitted activities is commonly acknowledged to be an area in which councils allocate limited resources. A contributing factor is that it is difficult for councils to cost recover for resourcing spent in this area unless a bespoke arrangement is in place (e.g. Waikato has a targeted rate for permitted activity dairy monitoring). Notwithstanding the clear resourcing challenge, monitoring permitted activities is a crucial aspect of council functions, particularly where the level of regulatory controls on potentially hazardous/environmentally risky sectors is relatively low.

It was difficult to compare councils for 'permissiveness' as per question 26 because not all activity types occur in all regions. In addition, some activities are partly permitted but consented over certain trigger points (e.g. mining exploration may be permitted, but any extraction requires a consent). As such, the responses to Question 26 have not been presented. Unpacking the influence of the permissiveness of the regulatory regime

would doubtless be helpful context but may need to be conducted externally to the survey because it is not a reflection of CME performance and is outside the compliance staff and management’s control.

Permitted activity monitoring programmes (Question 27)

Council	Permitted activity monitoring programmes
Northland	Dairy, forestry
Auckland	Dairy, forestry
Waikato	Dairy, forestry
Bay of Plenty	Forestry
Hawke's Bay	Forestry
Taranaki	Forestry, construction
Gisborne	Agriculture, horticulture, forestry (under development)
Manawatu-Whanganui	Forestry
Wellington	No programmes
Nelson	Dairy, forestry
Tasman	Dairy, forestry
Marlborough	Dairy, forestry and wineries
West Coast	Dairy
Canterbury	Forestry, domestic home-heating, construction site run-off
Otago	Dairy, forestry
Southland	Agriculture (exc. Dairy)

Table 11: Permitted activity monitoring programmes (Question 27)

Permitted activity monitoring programmes are relatively rare outside of forestry and dairy and in one region they are entirely absent (Wellington) (Table 11). The need for them of course depends on the regulatory regime. The robustness of the CME regime is underpinned by whether it is appropriate in the first place for the activity in question to be approached in a non-regulatory way. If activities that potentially constitute significant environmental risk are permitted, then they may cause an unreasonable burden on the CME unit, particularly considering opaque cost recovery mechanisms.

Section findings

- * Councils collectively receive nearly 30,000 (29,290) complaints, of which 25,461 are responded to; less than 9,000 in person, however.
- * Councils report relatively low rates of complaint verification (as low as 17%) which may be driven by a range of reasons
- * Councils administered a total of more than 200,000 active resource consents for the reporting year, of which nearly a quarter (49,491) were deemed to require monitoring (at least), Of these, more than 91% (45,070) were monitored at a sector level. Councils have varying approaches to classifying levels of compliance, making comparisons across sector impossible.
- * Councils detect varying levels of compliance in their regulated communities, ranging from only 22.1% considered to be in full compliance (Auckland) through to 96.3% (West Coast)

Acting on non-compliance

Formal enforcement actions (formal warnings, abatements, infringements and enforcement orders – Questions 41-44)

41. Formal warnings issued
42. Abatement notices issued
43. Infringement fines issued
44. Enforcement orders applied for

Under the following categories:

Section 9 Use of land, Section 12 Coastal marine area, Section 13 Beds of lakes and rivers, Section 14 Water, Section 15 Discharges of contaminants, Section 17 Duty to avoid, remedy & mitigate
Other breach e.g. Section 22

Total actions (Questions 41-44)

Council	TOTAL Formal warnings ⁷	TOTAL Abatement notices	TOTAL Infringement fines	TOTAL Enforcement orders	TOTAL FORMAL ACTIONS	TOTAL FORMAL ACTIONS (exc. warnings)
REGIONAL						
Northland	6	373	253	0	632	626
Waikato	198	89	100	0	387	189
Bay of Plenty	DNA	106	29	2	137	137
Hawke's Bay	14	46	91	0	151	137
Taranaki	0	200	67	1	268	268
Manawatu-Whanganui	46	41	23	0	110	64
Wellington	57	11	25	0	93	36
West Coast	50	24	10	0	84	34
Canterbury	415	72	127	1	615	200
Otago	5	12	22	0	39	34
Southland	19	80	35	3	137	118
UNITARY						
Auckland	DNA	648	456	10	1114	1114
Gisborne ¹	50*	19	4	1	74	24
Nelson	41	28	13	1	83	42
Tasman	DNA	33	23	0	56	56
Marlborough	4	45	11	2	62	58
TOTAL	905	1827	1289	21	4042	3137

Table 12: Formal enforcement actions taken (Questions 41-44)

¹ Gisborne provided an estimate only as the information was not easily able to be extracted.

Some councils issue relatively few formal actions, and some figures are similar even where there is significant disparity in population size (e.g. Otago, West Coast and Wellington undertook a similar number of actions at this level when warnings were excluded). Among the regions, Northland issued the most actions whether or not warnings were included (Table 12).

Some councils appear to rely heavily on warnings, such as Canterbury in which non-statutory letters constitute two thirds of the actions taken. Formal warnings feature heavily (nearly a quarter of all actions). Twelve of the 16 councils use a warning tool of some sort and they have been legitimised via jurisprudence as an important tool in establishing a history of non-compliance. However, they are not expressly provided for in the Act and there is limited guidance as to what they must contain.

The inclusion by unitaries of their TA functions make comparison across the whole regional sector difficult and potentially misleading, most particularly in relation to section 9 offences. The figures do not fully equate between tables 12 and 13, but as proportion is the main point of interest, they are set out as reported. The 'total' figures are relied upon for the balance of the report (with the addition of Gisborne's estimate).

Total actions and types of offences (Question 44)

Notice type	Section 9 Use of land	Section 12 Coastal marine area	Section 13 Beds of lakes and rivers	Section 14 Water	Section 15 Discharges of contaminants	Section 17 Duty to avoid, remedy & mitigate	Other breach e.g. Section 22	TOTAL (exc. warnings)
Formal warnings	86	49	47	168	488	0	17	855
Abatement notices	605	66	31	76	1052	7	7	1844
Infringement fines	147	13	34	43	791	0	261	1289
Enforcement orders	12	0	0	1	6	1	1	21
	850	128	112	288	2337	8	286	4009

Table 13: Table showing predominant offence categories for issuing lower level actions

NB Gisborne provided an overall estimate of formal warnings issued, but not a breakdown of the relevant sections, so their figures for the top line are excluded.

Across the entire sector, councils issued (in the 2017/2018 year) at least 905 formal warnings⁸, 1844 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (total 4042 formal actions) (Table 13).

The most commonly used notice by councils is an abatement notice, followed by infringement fines. This spread is to be expected given the graduated nature of the RMA enforcement regime. Enforcement orders are used relatively rarely, in line with previous surveys of this nature. Overall, discharges of contaminants dominated as a reason for councils acting (even considering the inclusion of all section 9 infringements by unitaries).

⁸ Three councils do not record formal warnings in a way that allow aggregated reporting, so figures reported are minimums, there are likely many more formal warnings issued in practice.

Some councils are demonstrably less active in enforcement than others. These differences are not explained by population etc but appear to be related to more opaque variables such as the council's individual approach to the CME function. A balanced approach across the spectrum of education and engagement through to taking formal and punitive actions when necessary is a vital component of being a credible regulator. A more long-term dataset will enable the trends in the activity levels of council to transcend year-on-year variability and should be carefully monitored.

Discharges of contaminants was the driver behind more than half of all notices under the Act and sends a clear message that more work is needed. It is also possible that discharges are more readily recognised by the public than other actions and therefore have a greater chance of being notified to council or being detected in routine monitoring. Whatever the reason, work is required in this space by both regulators and the regulated community to better stay within the boundaries of the law.

Prosecutorial actions (Questions 45-50)

45. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?
46. For all of these (person) defendants what is the total number of convictions entered against them? *For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.*
47. What is the total number of corporate (e.g. Crown, company, body corporate etc) defendants convicted as a result of RMA prosecutions concluded in this period?
48. For all of these (corporate) defendants what is the total number of convictions entered against them? *For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.*
49. **Total number of convictions against an individual**
Section 9 Use of land, Section 12 Coastal marine area, Section 13 Beds of lakes and rivers, Section 14 Water, Section 15 Discharges of contaminants, Other breach e.g. Section 22, TOTAL
Total fine potential (Total x \$300,000)
50. **Total number of convictions against a corporate entity**
Categories as above
Total fine potential (Total x \$600,000)

Prosecution is the most serious action to take against a person or company that have been found to be in breach of the RMA. Questions 45-48 addressed the total number of defendants and convictions, while questions 49 and 50 delved deeper into that information to determine what sections of the Act were most commonly breached in respect of those prosecutions.

Total convictions (Questions 45-48)

Council	What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?	For all of these (person) defendants what is the total number of convictions entered against them? For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.	What is the total number of corporate (e.g. Crown, company, body corporate etc) defendants convicted as a result of RMA prosecutions concluded in this period?	For all of these (corporate) defendants what is the total number of convictions entered against them? For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.
REGIONAL				
Northland	1	1	0	0
Waikato	3	4	8	18
Bay of Plenty	6	6	2	2
Hawke's Bay	1	2	3	5
Taranaki	3	3	1	2
Manawatu-Whanganui	0	0	0	0
Wellington	0	0	0	0
West Coast	0	0	1	1
Canterbury	1	2	4	8
Otago	10	12	10	13
Southland	11	41	11	25
UNITARY				
Auckland	11	35	16	18
Gisborne	0	0	0	0
Nelson	0	0	1	3
Tasman	2	8	2	5
Marlborough	0	0	1	2

Table 14: Total convictions against individual and corporate defendants (Questions 45-48)

Unitary councils were separated out for analysis- noting that they had included all prosecution actions, not just those relating to regional functions. Auckland secured 35 convictions against a total of 11 individual defendants and 18 convictions against 16 corporate defendants across their entire range of functions. Of the regional councils, Southland secured the most convictions - 41 convictions against 11 individuals and 25 convictions against 11 corporate defendants (Table 14).

The other unitary authorities could not easily be distinguished from the remainder of the regional sector, suggesting that their levels of activity in the prosecution space may be relatively lower. Greater transparency would assist in better understanding these trends. Overall, the sector secured 114 convictions against 49 individuals, and 102 convictions against 60 corporate defendants (216 convictions against 109 defendants in total).

Among the regional councils, Southland Otago and Waikato dominated successful convictions overall. Manawatu-Wanganui and Wellington Regions secured no prosecutions against either an individual or a corporate entity for the reporting year.

These data clearly demonstrate that prosecution is both (a) relatively rarely used compared with other tools under the Act and (b) its use is predominantly clustered in a small number of agencies for the reporting year. It is possible that these trends in activity levels could vary significantly year on year as prosecutions and the investigations leading up to them can take many years.

Types of offences (Questions 49-50)

Different sections of the Act relate to different types of possible offences. Understanding where in the regime most breaches are occurring can help to focus resourcing in areas where compliance is poorer and demonstrate the key compliance challenges of the different agencies. It should be noted that the data do not totally match with the figures in Questions 45-48 (some are missing), however the figures for this question have been taken as read because it is the proportion that is of interest, rather than the absolute number.

Individual offences

Council	Section 9 Use of land	Section 12 Coastal marine area	Section 13 Beds of lakes and rivers	Section 14 Water	Section 15 Discharges of contaminants	Other breach e.g. Section 22	TOTAL	Total fine potential (Total x \$300,000)
Northland	1	0	0	0	0	0	1	300,000
Waikato	0	0	0	0	2	2	4	1,200,000
Bay of Plenty	0	1	0	0	2	3	6	1,800,000
Hawke's Bay	0	0	0	0	2	0	2	600,000
Taranaki	0	0	0	0	3	0	3	900,000
Manawatu- Whanganui	0	0	0	0	0	0	0	0
Wellington	0	0	0	0	0	0	0	0
West Coast	0	0	0	0	0	0	0	0
Canterbury	0	0	1	0	1	0	2	600,000
Otago	0	0	11	0	1	0	0	0
Southland	4	0	0	0	26	11	41	12,300,000
Sub total	5	1	12	0	37	16	59	17,700,000
Auckland	14	0	0	0	7	15	35	10,500,000
Gisborne	0	0	0	0	0	0	0	0
Nelson	0	0	0	0	0	0	0	0
Tasman	0	0	0	0	2	0	8	2,400,000
Marlborough	0	0	0	0	0	0	0	0
Sub total	14	0	0	0	9	15	43	12,900,000

Table 15: Sections relevant to convictions secured against an individual (Question 49)

Of 102 total convictions against an individual defendant, nearly half related to breaches of section 15 (discharges of contaminants). The next most common category was 'other' which includes breaches of section 22 ('Duty to give certain information'). The third most common category were breaches of section 9, relating to the use of land (more than a third of which were from Auckland) (Table 15).

Collectively those three categories accounted for a significant proportion of all offences, with the only other notable category being 12 convictions pertaining to section 13 matters ('beds of lakes and rivers'). Among the regions and indeed overall, Southland performed strongly in this area.

Corporate offences

The trends of the types of offences are relatively common across corporate and individual defendants (Table 15). Section 15 (discharges of contaminants) remains predominant in the corporate space, comprising 60% of total convictions. The category of 'other' however is much less common, with the second most common category being section 13 (beds of lakes and rivers) followed again by section 9 (Table 16).

It should be noted that the data do not totally match with the figures in Questions 45-48 (some are missing), however the figures for this question have been taken as read because it is the proportion that is of interest, rather than the absolute number.

The possible fines that the individual convictions could yield (based on maximum penalty) was \$30.6 million. The total potential fine value of corporates was exactly \$60 million, roughly double the individual quantum. This reflects that the maximum fine level is double also, illustrating that individuals and corporates have been convicted in relatively equal amounts under the Act for the reporting year.

Certain activities appear to lend themselves to higher visibility in enforcement statistics and without a doubt, the discharge of contaminants is one. It consistently tops the list of offences and managing these infractions evidently occupies a significant proportion of the regional sector's resourcing and energy. This may also reflect that the regulated communities may not be getting the message that unlawful discharges are unacceptable or that compliance regimes in respect of this matter are being less effective than they need to be in driving behaviour change.

Council	Section 9 Use of land	Section 12 Coastal marine area	Section 13 Beds of lakes and rivers	Section 14 Water	Section 15 Discharges of contaminants	Other breach e.g. Section 22	TOTAL	Total fine potential (Total x 600,000)
Northland	0	0	0	0	0	0	0	0
Waikato	0	0	2	0	16	0	18	10800000
Bay of Plenty	0	0	0	0	2	0	2	1200000
Hawke's Bay	0	0	0	0	5	0	5	3000000
Taranaki	0	0	0	0	2	0	2	1200000
Manawatu- Whanganui	0	0	0	0	0	0	0	0
Wellington	0	0	0	0	0	0	0	0
West Coast	0	0	1	0	0	0	1	600000
Canterbury	0	0	2	1	3	0	6	3600000
Otago	0	0	9	0	4	0	13	7800000
Southland	2	0	0	0	21	2	25	15000000
	2	0	14	1	53	2	72	43200000
Auckland	9	0	0	0	2	7	18	10800000
Gisborne	0	0	0	0	0	0	0	0
Nelson	0	0	0	0	3	0	3	1800000
Tasman	0	0	0	0	2	0	5	3000000
Marlborough	0	0	1	1	0	0	2	1200000
	9	0	1	1	7	7	28	16800000

Table 16: Sections relevant to convictions secured against corporate defendants (Question 50)

Section findings

- * Across the entire sector, councils issued (in the 2017/2018 year) 905 formal warnings, 1844 abatement notices, 1289 infringement fines and applied for 21 enforcement orders (total 4000+ formal actions).
- * Overall, the sector secured 114 convictions against 49 individuals, and 102 convictions against 60 corporate defendants.
- * The dominant type of offence is the discharge of contaminants

Sanctions and outcomes (Questions 51-54)

51. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?

Individual fines

Corporate fines

52. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?

Prison sentence

Enforcement order

Reparation

Community Service

Other

53. How many prosecutions involved restorative justice, diversion or other alternative justice process?

Restorative justice

Diversion

Alternative justice

54. Describe any outcomes relating to these processes.

Questions 51-54 related to what sanctions were imposed as a result of the successful convictions secured by the councils. Question 54 provided a narrative opportunity for councils to describe the outcomes that were achieved in relation to these processes.

Fines imposed (Question 51)

Question 51 asked councils what the total fine quantum was that was imposed over the full suite of RMA prosecutions for the reporting period. Question 49-50 showed that the total potential fines (based on maximum penalty) was \$30.6 million for individual prosecutions and \$60 million for corporate prosecutions. There can be no reasonable expectation that the total quantum of fines would come near to the maximum possible penalties, but it does assist in defining the outside perimeter of sanctions that could be expected.



Council	Individual	Corporate	Total
REGIONAL			
Northland	0	0	0
Waikato	\$60,500	\$273,950	\$334,450
Bay of Plenty	\$82,000	\$60,000	\$142,000
Hawke's Bay	\$5,000	\$37,600	\$42,600
Taranaki	\$80,000	\$54,000	\$134,000
Manawatu-Whanganui	0	0	0
Wellington	0	0	0
West Coast	0	\$17,000	\$17,000
Canterbury	\$11,000	\$87,000	\$98,000
Otago	\$75,894	\$157,156	\$233,050
Southland	\$162,298	\$305,675	\$467,973
Sub total	\$476,692	\$992,381	\$1,469,073
UNITARY			
Auckland	\$96,300	\$42,937	\$139,237
Gisborne	0	0	0
Nelson	0	\$90,000	\$90,000
Tasman	\$36,718	\$270,000	\$306,718
Marlborough	0	\$39,000	\$39,000
Sub total	\$133,018	\$441,937	\$574,955
TOTAL	\$609,710	\$1,434,318	\$2,044,028

Table 17: Total fines imposed as a result of convictions of individuals and corporates (Question 51)

More than two million dollars in fines were handed down to individual and corporate defendants combined in the reporting year (Table 17). However, it was not clear whether some councils were reporting the full quantum of fine, or the 90% allocation they receive so the figures may not exactly reflect what the sector received.⁹

Environment Southland secured the greatest quantum of fines (\$467,973) followed next by Waikato Regional Council and Tasman District. Four councils secured no fines in that same period, Northland, Gisborne, Manawatu-Whanganui and Wellington. Of interest is that while Waikato and Tasman did not carry out a large proportion of the total prosecutions, they secured a significant proportion of the total fines across the sector.

What can also be demonstrated from these data is that the total quantum of fines is approximately 2% of the total possible fines for the entire suite of convictions (\$90 million). It is possible that the proportion of fines issued compared with those possible to have been issued would seem low to some commentators; although this could also be seen as a crude analysis.

At issue is whether such a small proportion of the total potential quantum being issued reflects any view of the judiciary that potential penalties are not justified, and what variables affect that assessment. The quantum of a fine reflects not only the seriousness of the incident/s that led to the prosecution, but also the quality of the information put before the Courts, precedence and judicial discretion. The degree of sanction is also an important element for whether it constitutes enough deterrent to would-be offenders.

⁹ The recovery of fines is a vexed issue in CME, with many fines issued not ever being collected for a range of reasons (see Brown 2017 for a fuller discussion).

Other sanctions imposed (Question 52)

The sentencing judge can choose to impose sanctions other than fines, with options including reparation, community service, an enforcement order and a prison sentence among others. Question 52 asked councils what sanctions had been imposed on convicted defendants.

Council	Prison sentence	Enforcement order	Reparation	Community service	Other
REGIONAL					
Northland	0	1	2	0	0
Waikato	0	0	1	0	0
Bay of Plenty	0	2	0	0	0
Hawke's Bay	0	0	0	0	0
Taranaki	0	0	0	0	0
Manawatu-Wanganui	0	0	0	0	0
Wellington	0	0	0	0	0
West Coast	0	0	0	0	0
Canterbury	0	0	0	0	0
Otago	0	0	0	0	0
Southland	0	3	0	0	0
UNITARY					
Auckland	2	0	3	1	0
Gisborne	0	0	0	0	0
Nelson	0	0	0	0	0
Tasman	0	0	0	0	0
Marlborough	0	0	1	0	0
Total	2	6	7	1	0

Table 18: Other sanctions imposed (Question 52)

Other sanctions appear to be used relatively rarely, with reparation being the most common, followed by the issuance of an enforcement order (Table 18). Reparation appeared to be primarily the awarding of costs to council to help address the financial burden of the enforcement action. Auckland Council secured two prison sentences (one being the largest ever issued under the Act) and the only community service sentence for the reporting year.

The survey also asked whether councils had engaged in alternative sanction approaches such as diversion (Table 19). Alternative justice solutions featured to only a minor degree across the total suite of prosecutions, with the most common tool being diversion, followed closely by restorative justice. Alternative justice (although it is unclear how this might differ from restorative justice) numbered just one instance.

Council	Restorative justice	Diversion	Alternative justice
REGIONAL			
Northland	0	0	0
Waikato	1	0	0
Bay of Plenty	1	0	0
Hawke's Bay	0	0	0
Taranaki	0	0	0
Manawatu-Whanganui	0	0	0
Wellington	0	0	0
West Coast	0	0	0
Canterbury	0	0	1
Otago	0	2	0
Southland	2	3	0
UNITARY			
Auckland	0	0	0
Gisborne	0	0	0
Nelson	0	0	0
Tasman	0	0	0
Marlborough	0	0	0
TOTAL	4	5	1

Table 19: Alternative sanctions imposed (Question 53)

Outcomes relating to these processes (Question 54)

Responses to question 54 varied considerably and sent a signal that the purpose of the question was perhaps not clear. Some responses were generic acknowledgements of the wider benefits of taking enforcement action, while others were specific discussions of cases mentioned. A series of examples are included below for reference. Eight of the councils provided no response at all.

"Improved compliance rates and contributed to improved environmental quality"

"Contribution to environmental agencies: Contribution to council costs: Creation of a wetland"

"Apologies made, practice in business changed, flyer issued to neighbouring community with information and contact details in case of discharge, new equipment installed, \$5000 donation to nominated charity, media release."

Section findings

- * The total fines issued for regional sector convictions was more than two million dollars (\$2,044,028)
- * Outside of fines, there are relatively few examples of restorative justice across the sector

CME reporting (Question 55)

55. What mechanisms do your council use to report CME data to the public? (e.g. annual reports, reports to Councillors)

Provide links or examples.

- Annual Report
- Report to Councillors
- Snapshot
- Report(s) to Council committee meetings (open to public)
- Other (please specify)

Except for the contribution of data to the National Monitoring System, councils are responsible for determining the scope and content of the reporting on their RMA CME functions. Question 55 addressed the ways in which this operational function was carried out, providing a range of 'standard' options and giving council respondents space to describe alternate approaches.

The most common type of reporting is a report to committees of councillors (open to the public) about CME activities and outcomes (Table 20), followed closely by reports to council and the inclusion of CME information in an annual report.

Three councils undertake all four standard forms of reporting (Canterbury, Bay of Plenty and Marlborough) with Canterbury also carrying out additional reporting types. Of the participating councils, only one does no reporting of any kind on their CME function (Auckland). Waikato also reports that it releases details of successful prosecutions to the press in addition to providing report/s to council committees.

Overall, there is a significant amount of variation in the scale and nature of reporting on the CME function between councils. Some operate with limited genuine public visibility while others appear to allocate significant resources to documenting their activities for the consumption of observers (e.g. Canterbury). This is in addition of course to participation in National Monitoring System surveys, this survey and other more ad hoc reporting efforts (e.g. Brown, 2017).

Council	Annual Report	Report to Councillors	Snapshot	Report(s) to Council committee meetings (open to public)	Other (please specify)
REGIONAL					
Northland	1	1	0	1	
Waikato	0	0	0	1	<i>Press releases upon completion of prosecutions.</i>
Bay of Plenty	1	1	1	1	
Hawke's Bay	0	1	0	0	
Taranaki	1	0	0	1	
Manawatu-Whanganui	0	0	0	1	
Wellington	1	1	0	1	
West Coast	0	1	0	1	
Canterbury	1	1	1	1	<i>Annual zone CME reports, PCC portfolio monthly reports, Zone Committee monthly meetings and quarterly reports.</i>
Otago	1	1	0	1	
Southland	1	1	0	1	
UNITARY					
Auckland	1	1	0	1	<i>Media strategy</i>
Gisborne	0	0	0	1	
Nelson	0	0	0	1	
Tasman	1	1	0	0	<i>Half Yearly summary report</i>
Marlborough	1	1	1	1	
Total	10	11	3	14	

Table 20: CME reporting modes (Question 55)

State of the environment reporting (Q11-12)

All participating councils provided a link or reference to their most recent state of the environment report. The reports were briefly scanned but did not form part of the formal reporting and evaluation. Some councils produce a comprehensive SOE report annually, while others report less frequently or in different formats.

What is striking is that none of the SOE reports detail to any degree the importance or impact of the council's approach to CME as being material to environmental outcomes. While some reference the CME function in relation to specific matters (see for example Northland's SOE report in relation to wetland damage for swamp kauri extraction and associated compliance issues), there is a lack of comprehensive discussion of the linkage between CME operations and environmental outcomes. This is an area that councils may wish to consider expanding on in the future.

Section findings

- * All councils undertake some form of external reporting on CME functions via the National Monitoring System, but reporting besides that is highly variable
- * SOE reporting is typically only weakly linked to CME activities, and highlighting the important connections between these two forms of assessment could strengthen the internal priority for CME

PART 3 - REGIONAL SNAPSHOTS

The following section sets out the most striking aspects of the survey at a regional level, highlighting areas in which each council performed very well or indeed their responses reflected clear room for improvement. Councils can note their performance relative to the rest of the sector in each part of the report, but a short overview of key take home messages for each region is included here for quick reference. It is not exhaustive and should not be relied upon to give the full picture of the council in question. Activity levels and other variables are also very likely to vary considerably year on year, and the following snapshots are solely based on the data within this survey.

Northland

The Northland region is vast and approximately half the population are located rurally, one of the largest proportionally rural populations in the country. Northland Regional Council has a relatively systematic approach to determining priorities and a well-regarded monitoring programme for Farm Dairy Effluent (FDE) compliance.

A robust policy framework guides CME decision-making and the council administers a range of education and engagement programmes. Northland has average levels of resourcing, is relatively active in the use of lower level enforcement tools and reports regularly on CME activities in a variety of ways.

Auckland

The scale of the CME operation of Auckland Council dwarfs all other councils in numerical terms, but resourcing for CME on a population basis is below average. Internal prioritisation approaches appear sound although, like all unitary authorities, there is no way to understand (from the survey questions) how the competing demands of regional and territorial local authority functions are juggled. Information management appears to be an area where improvement is needed, although it is recognised that the efforts to integrate the legacy approaches of the amalgamated councils are ongoing.

Waikato

Waikato Regional Council operates a comprehensive CME regime, with a well-developed policy framework, prioritisation protocols and relatively good information management. Bespoke approaches to managing compliance approaches sometimes constrain the council from being able to contribute to nationally comparative datasets, however. Resourcing is slightly below average, but the regime overall appears generally balanced and well-documented.

Education and engagement programmes and formal relationships with iwi and hapū on CME matters all appear comprehensively managed. Waikato appears to utilise the full range of tools in the CME toolbox. It does not (at least for the reporting year) carry out high numbers of prosecutions but did secure significant fines for convictions that were secured.

Bay of Plenty

Bay of Plenty Regional Councils approach to CME appears comprehensive with respect to the data gathered. The policy framework and internal prioritisation approaches appear sound, although the monitoring of permitted activities could benefit from greater codification. A balanced approach to CME appears to exist with the council appearing to use a wide range of tools, and reporting is comprehensive.

Hawkes Bay

The Hawkes Bay Regional Council has some of the lowest levels of resourcing across the sector relative to population. Like Taranaki, express provision for the CEO to participate in decision-making on prosecutions is an area of potential reputational risk. Information management, particularly regarding the outcomes of incident response demonstrates room for improvement.

Taranaki

The CME approach of Taranaki Regional Council appears both well codified and well captured in their information management system. The council has the greatest number of FTEs of all councils relative to population and has a well-developed policy framework. The monitoring of permitted activities is generally reactive however and would benefit from greater codification. Taranaki administers a relatively balanced enforcement regime, although the express delegation to the Chief Executive on prosecutorial matters is of concern.

Gisborne

Gisborne has a developing approach to CME, with internal policies and procedures having been subject to significant review in recent times, a process that is still ongoing. Resourcing levels are typical of the smaller unitary authorities (noting existing vacancies). Information management is an area of improvement, as the council was not able to provide some important data for the reporting year. However, Gisborne was the only unitary authority able to provide its consent monitoring data for regional consents only, enabling comparison with sector colleagues.

Manawatu-Whanganui (Horizons)

Manawatu-Whanganui Regional Council has a well-developed policy framework (noting that there is limited codification for prioritising permitted activity monitoring) but has some of the lowest resourcing in the sector on a population basis. Information management is an area for improvement, as some datapoints were not able to be provided via council's systems. Manawatu-Whanganui used relatively few formal tools overall and recorded no prosecutions for the reporting year.

Wellington

Wellington Regional Council appears to have a comprehensive CME policy approach internally, with all expected policies and prioritisation procedures intact. Despite this, resourcing is the lowest of the entire sector, and the relatively scant use of formal tools (except non-statutory warnings) potentially reflects this. The council administers no permitted activity monitoring programmes.

Reporting appears comprehensive. Information management appears relatively sound. The relative sophistication of the internal framework for CME contrasts with the relatively low activity levels in the CME space, suggesting that the council has perhaps pulled back from this role for the at least the reporting year.

Tasman

Tasman District Council administers a large area and when combined with Nelson has slightly above average resourcing levels. However, less than half of consents that required monitoring were monitored in the reporting year and information management – like many councils – would benefit from some improvements.

Tasman has a relatively well-developed internal policy context for CME and is making progress in developing a prioritisation approach for permitted activity monitoring. The council appears to use the full range of tools

in the RMA enforcement toolbox and netted some significant fines from the few prosecutions they did undertake.

Nelson

Nelson City is the smallest jurisdiction of the sector and operates a slightly different CME model to most councils, relying on external contractors for much of the monitoring work. The resourcing appears reasonably adequate and the basic policy requirements are in place. For the reporting year, formal enforcement tool use favoured the softer end of the spectrum.

Marlborough

Marlborough District Council has a well-developed internal policy framework for CME and has above average resourcing for the CME function. Information management appears sound, with few gaps in the information provided, indicating that the council keeps good records of CME activities relative to the rest of the sector. Reporting seems comprehensive across a range of fronts.

Canterbury

Canterbury is New Zealand's largest region with the second largest population after Auckland, with significant resource management issues and a high level of public interest in council's approach to CME. Canterbury provided a significant level of detail on its CME activities in all instances and is evidently highly concerned with considering the CME function within its wider operations. The orientation of the council appears strongly focused on relationships with the regulated community and while this has many positive benefits, it can be a brake on punitive enforcement action where it is necessary. Canterbury relies heavily on non-statutory warnings notices and for the reporting year undertook very few prosecutions.

West Coast

The remote West Coast covers a large area, although much of it is public conservation land. CME resourcing for the West Coast Regional Council appears sound, although there are significant improvements likely required to the internal policy framework and information management – both appear lacking. The Council is relatively active at the lower end of the enforcement spectrum, mainly issuing non-statutory warnings, but carried out limited prosecutions.

Otago

Otago's narrative responses to questions were very brief, so it was difficult to discern how comprehensive their approach to some aspects of the role was. The categorical responses however generally showed that although there is room for improvement in information management, reporting is relatively comprehensive. Resourcing is below average, and council does appear to have struggled to meet its monitoring goals. The internal policy framework appears weak; it is one of the few councils to report that it does not have an enforcement policy for example. Notwithstanding the opaque internal context, Otago is one of the most active councils in high level enforcement proceedings

Southland

Southland has a well-codified approach to CME. The internal policy framework appears relatively sound, although like many of the southern councils, provision for CE involvement in day to day decision-making is an area of reputational risk. Notwithstanding that however, Southland was the strongest performer in prosecutions of offenders, securing a quarter of the fines for the entire sector over the greatest number of prosecutions of individuals and corporates. Information management and reporting appear generally sound.

PART 4 - SUMMARY AND ANALYSIS

This section presents a summary and analysis of the survey outcomes, focusing on the national picture, including the comparison and contrasts between regional councils and unitary authorities. In discussing the outcomes of the survey, specific reference is made to the list of minimum requirements set down in the Ministry for the Environment issued Best Practice Guidance on CME. While not all matters in the list are addressed, and the list itself is only newly promulgated, it does encapsulate some basic expectations to assess the sector's progress against over this and coming years. This is the inaugural benchmarking exercise.

Minimum resource requirements

There are certain CME functions councils should, at a minimum, support with sufficient resources. The list has been drafted so that it applies to all types and sizes of councils. For a well-functioning and effective CME programme, there are many other functions councils should consider resourcing.

As a minimum requirement, all councils should have sufficient access to resources to support:

- development and regular review of a compliance strategy, which includes an approach for addressing different behaviours, as set out in
- trained and qualified staff to undertake the CME role, including a combination of scientific, planning, regulatory, investigative and legal skills
- proactive programmes (eg, education and engagement) to achieve national, regional and local environmental objectives
- monitoring high-risk resource consents, and most medium-risk resource consents
- responses to and investigation of significant incidents, including appropriately trained investigation staff
- public reporting on CME at least once a year, fulfilling the minimum information requirements set out in the Best Practices Guidelines
- internal systems to support monitoring and reporting, including hardware/software to support the record-keeping requirements set out in the Best Practice Guidelines
- enforcement action (including taking a prosecution), ensuring staff are appropriately trained and qualified to do so
- access to legal representation and expertise in enforcement and prosecution
- administrative support for the CME function, for example to support financial matters such as charging for compliance monitoring.

What did the survey results tell us about alignment with minimum requirements?

The survey was instructive as to how the regional sector is meeting part of the minimum requirements but does not yet address all elements. Further additions to the survey or other forms of reporting to address the other matters would be advantageous and are considered in the next section. Overall, the sector has an evolving approach to CME with different councils leading in different areas.

First and foremost, the minimum requirements make references to the need for a **compliance strategy** to guide operations. Virtually all councils take a strategic approach to managing the different CME workstreams, developing internal prioritisation approaches. The effort appears largely concentrated in the areas of incident response and consent monitoring however, and further attention is needed in most councils on the management of permitted activity compliance. Many regimes across the country rely heavily on permitted activities (e.g. dairy farming in the Waikato), and systematic responses to ensuring the relevant standards are complied with are vital to manage environmental risk. The survey questions did not provide much opportunity to assess whether the relevant frameworks were being observed in practice however, so there is a degree of trust involved in the absence of those data.

Most councils recognise the importance of **education and engagement programmes**, and significant time and resources sector-wide are expended on helping the regulated community understand requirements. Most such programmes are heavily focused upon agricultural activities. It would be useful if the sector could capture – or were asked to capture – the effectiveness of such programmes, noting whether or not there had been an observed improvement in compliance levels from using these approaches.

Prioritising the **monitoring of consents** and developing systematic approaches to doing so is an evolving area for the sector, with most councils having a relatively well codified approach to doing so. Councils appear to generally manage to monitor all or most of the consents that require monitoring in any one year. However, given that triage systems vary so considerably, relative measures of effectiveness are limited. Where possible, the sector should consider standardising taxonomies such as compliance risk level. Like consenting, most councils have a codified approach to **incident response** within resource constraints. Again, differences in prioritisation frameworks make comparison and sector-level conclusions difficult.

Reporting on CME is patchy – being absent or very limited in some councils through to surprisingly comprehensive and evidently very time-consuming in others. The lack of strong drivers for comprehensive reporting in the past is reflected in the often-poor information management systems of councils. It will take time to improve these, but they should be a priority, given the overarching statutory duty of councils to maintain good records. When the general public are in receipt of CME information, it is helpful for them to understand how their council is performing relative to the rest of the sector, further driving home the importance of procedural standardisation where practicable.

Information management improvements to better support CME is doubtless an area where most councils could improve. Many councils were unable to provide some of the relatively basic information in this survey. In the absence of robust data, it is practically impossible for a regulator to demonstrate its credibility. Another area of variability which is related is in the level of **administrative support** available for CME. While some councils provide a significant support base for monitoring and investigating officers (e.g. Waikato), other councils provide only a limited amount meaning officers time is consumed with generic paperwork that would be perhaps better passed on to maximise CME-focused time. Given that the Guidelines are only newly released, it will take time for councils to align with them and for the questions to capture the elements of operations that reflect that alignment.

What improvements could be made to the survey in the future?

Designing metrics that reflect fully and fairly the state of a regulatory regime is inherently difficult. It is useful to consider the areas of inquiry future surveys could cover and consider what questions perhaps could be excluded or altered in the future as they have only limited explanatory power.

Observers and stakeholders have different perceptions of 'success', statute and policy are often ambiguous on its definition also, and public knowledge of the technical dimensions of CME can be poor. Against this background, metrics need to be technically sound and capable of reflecting performance at an appropriate scale and doing so on a continual basis to show trends over time.

It is important to also consider the burden on agencies of providing this information. Information management and reporting can be costly and cumbersome and divert often scant resources from the job at hand. On the other hand, it is critical that regulators maintain reasonable levels of transparency to enable accountability to the wider public. It is a difficult balance but one that must always be kept in mind. It points to the need to carefully consider the need for new metrics, but at the same time not use the difficulty of providing the data as a reason to not ask for it (where there is a clear need for it).

Improving current questions

The suite of questions posed to councils in this survey was doubtless comprehensive, more than any previous iteration of CME reporting in New Zealand for regional and unitary authorities. However, several suggestions are offered to enhance the current survey's utility and accuracy.

- Clearer caveats and clarifications in the survey questions would potentially improve data quality and reduce analysis time.
- As with any suite of largely numerical data, the units the information are expressed in is very important. The quality of some of the data were undermined by inaccurate reporting and miscalculations. Limiting the need for calculations within survey answers would help to limit error.
- Standardisation of approaches to CME would go a long way to enhancing the value of the dataset. At present, many aspects are difficult to compare meaning that the ability to genuinely rank performance is undermined.
- At present, unitary authorities are not required to separate the CME data related to their regional functions from their territorial local authority functions. This is problematic because it is not possible to compare them with either their regional or territorial colleagues, which results in uneven transparency across the CME sector. While it may take time to usher in this change, it is one that is essential.

Where specific suggestions for individual questions are available, they have been tabulated in Appendix 2.

Adding new questions

Adding questions to the survey to capture the outstanding aspects of the minimum requirements would mean the survey would play an important role in tracking the sector's implementation of those requirements over time. This would require questions to be included relating to the matters such as staff capability and access to legal expertise. Other suggested additions include the following:

- More comprehensive questions on the nature and permissiveness of council's regulatory regime (to determine the influence of different statutory contexts)
- Questions that reflect the adherence to the prioritisation strategies outlined in this survey to ensure that practice reflects theory.

- Questions relating to tracking the outcomes of statutory and non-statutory interventions to achieve compliance (validation tactics)
- Further questions could be considered on the following matters: notice period for inspections; explicit questions on delegations for decision-making; and the environmental outcomes of CME activities.

Councils could also consider implementing alternative ways of assessing and benchmarking performance in a more detailed manner (such as formalising the visiting audit programme already in operation).

PART 5 - CONCLUSIONS AND RECOMMENDATIONS

The inaugural regional sector CME metrics project has demonstrated a wide range of valuable learnings for the sector itself and the wider community. This section summarises the key findings and recommendations. Some improvements may not be within the scope of the CME team's control but are recorded for broader interest. The source of the observations is solely that dataset provided by the councils and may conflict with commentary from other sources.

Fundamentally, the value of the questions – old and new – are constrained by the sheer variation in approach to the CME role. There is nothing inherently wrong with variation – councils demonstrably operate in very different settings – but **standardisation** of some procedural aspects would be very desirable for reporting purposes. There are several opportunities where councils could adopt similar approaches and make the data much easier to compare.

Fundamentally, a robust CME programme relies on people. Many councils are **poorly resourced** for what is a technical, difficult and often highly contentious function. Resourcing sector wide is uneven and is likely to be undermining the ability of most councils to operate as functionally competent regulators. Councils that performed strongly in any area all had average or greater levels of FTEs. Councils must focus on ensuring a reasonable number of FTEs is available to carry out this function as a minimum.

People require good internal systems for **information management** to coordinate the CME function, including hardware and software solutions that streamline the role where possible and ensure appropriate record keeping standards are maintained. Virtually all councils would benefit from greater investment in this space, although it is noted that many improvements have already occurred. With changing technology, there will always be a demand for enhanced information management and councils must be able to keep up.

Maintaining a reputation as a credible regulator is vital to protect the people that work in CME and those that support them. The regulated community has a rightful expectation that council will execute its functions in a way that is fair, reasonable and within the law. To guide the many decisions that are made daily in the CME space, **a robust internal policy framework** is a necessity. Unlike most public prosecuting agencies in New Zealand, councils are not subject to the mandatory oversight of the Solicitor-General and are wholly responsible for their own efforts in this space. It is strongly recommended that policy gaps are filled and that councils with existing policies ensure they are subject to regular review and revision to ensure they are in line with best practice.

The current and potential content of this survey provides a unique opportunity to capture efforts and illustrate improvements over time and the sector is strongly encouraged to continue it on an annual basis. Questions should provide ample opportunity for councils to detail examples of both success and failure in approaches, maintaining a primary focus on transparency over 'looking good'. The results should also be subject to analysis and reporting by a suitably qualified expert and potentially be subject to audit and review following submission to ensure accuracy. The value of the data is evident from a single year and will only increase with subsequent iterations.

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APPENDIX 1

1. Which council are you completing this survey on behalf of?
2. What is your name and contact details?
3. What is the population of your region?
4. What is the geographic size of your region?
5. What is the percentage split of urban and rural population in your region?
6. What is your regional GDP percentage of national GDP?
7. What is the regional % of GDP for each of the following industries? *e.g. forestry 25%*
8. Describe your regional key commitments to work with iwi/Maori on CME (e.g. commitments in Joint Management Agreements or other co-management agreements)
9. Upload copies of any agreements related to this work with iwi/Maori.
10. Are you a Unitary or Regional Authority?
11. Provide link to your council's latest state of the environment report.
12. Alternatively, upload the report (if less than 16MB)
13. How many notifications (complaints) were received from members of the public (or other sources, but excluding information from council monitoring activity) relating to environmental incidents or potential breaches of environmental regulation?
This might include information from, for example, emergency services attending an incident or perhaps a council staff member observing something while on other duties, but excludes information from council monitoring activity
14. How many of these notifications were responded to by council?
This response may be in any form – e.g. phone call, site visit, desktop audit
Total number responded to
Percentage of the number received
15. How many of these notifications were physically attended by council staff?
Total number
Percentage of the number received
16. What basis is used for determining what notifications are physically attended and with what urgency or priority?
17. If your council uses a prioritisation model or compliance strategy, please upload file.
18. How many of these notifications were confirmed as breaches of the RMA or subsidiary instruments?
19. How many active resource consents exist in your region?
In totals exclude Land use consents where the activity is completed. E.g. Land use-Subdivisions where the subdivision is complete and certificates issued or Land Use-Building where the building has been constructed

- 20. Describe how you determine which consents are monitored and how frequently?
If there is a prioritisation model or compliance strategy, add link
- 21. Upload file, if link not provided
- 22. How many consents required monitoring during this period, in accordance with your monitoring prioritization model/strategy?
- 23. How many of those consents have been monitored (including by desktop audit) in this period?
Number monitored
Percentage monitored of the number requiring monitoring this period
- 24. What grades do you apply to non-compliance? (e.g. technical non-compliance, significant non-compliance)
Fully Compliant; Technical/Low Non-Compliance; Moderate Non-Compliance; Significant Non-Compliance; Other (please specify)
- 25. What were the levels of compliance with consents according to the grades you use?
Note 1: Numbers provided under each grade is per monitoring event not per consent. E.g. a consent may be monitored 4 times in the year on one occasion it may be Technically Non-Compliance and on three occasions it may be Fully Compliant, this would add 3 to the total of Fully Compliant and one to the total for Technical Non-compliance.
Note 2: The compliance grade is based on the condition with the worst compliance grade. (e.g. a consent with five conditions Fully Compliant and one condition Moderate Non-Compliance has an overall compliance grade of Minor Non-Compliance
Note 3: Daily telemetry water readings where compliance with water take limits is continuously monitored are to be excluded from compliance grade totals.

Full Compliance; Low Risk/Technical Non-Compliance; Moderate Non-Compliance; Significant Non-Compliance; Other

26. Are there any significant industries or activities in your region that are permitted activities rather than consented activities (or both)? If so, what are they?

Activity	Permitted	Consented	Activity	Permitted	Consented
Agriculture (excl dairy)			Mining		
Aquaculture			Oil and gas		
Construction			Tourism		
Dairy			Viticulture		
Forestry			Other		
Horticulture					

- 27. Which permitted activities do you have a monitoring programme for?
Agriculture (excl Dairy), Aquaculture, Construction, Dairy, Forestry, Horticulture, Mining, Oil and gas, Tourism, Viticulture, Other
- 28. Describe what basis was used for determining how these permitted activities are monitored.
If there is a prioritisation model or compliance strategy, add link
- 29. Upload file, if link not provided above

Note: FTEs should only be counted once under each of these categories. However, if a team member has more than one role then calculate what portion of their time generally is spent in each role. An example of an answer to each of the questions in this section might look like '24 FTE spread across 40 individuals'. Exclude any in-house or contract lawyers

30. How many FTEs does your council have who carry out monitoring roles?
Include contractors.
31. How many FTEs does your council have who carry out environmental incident or pollution response roles?
32. How many FTEs does your council have who carry out investigation or enforcement roles?
33. How many FTEs does your council have in CME support roles (e.g. administrative roles)?
34. Does your council have an Enforcement Policy?
35. What is your process for making decisions on prosecutions?
36. Does your council have a Conflict of Interest Policy?
37. Does your council have any other CME policies?
38. If yes, please upload copies

39. Education

Does your council have, or support, any education or enabling projects relating to compliance with the RMA or any of its derivative regulation? For example, an annual workshop for earthworks contractors around erosion and sediment controls.

40. Engagement

Does your council have, or support, any engagement projects relating to compliance with the RMA or any of its derivative regulation? For example, wetland stakeholder group meetings to highlight emerging issues with the wetland.

Please populate the table with the number of actions taken during the period.

41. Formal warnings issued

Section 9: Use of land

Section 12: Coastal marine area

Section 13 : Beds of lakes and rivers

Section 14 : Water

Section 15 : Discharges of contaminants

Section 17: Duty to avoid, remedy & mitigate

Other breach: e.g. Section 22

42. Abatement notices issued

43. Infringement notices issued

44. Enforcement orders applied for

45. What is the total number of individual (person) defendants convicted as a result of RMA prosecutions concluded in this period?

46. For all of these (person) defendants what is the total number of convictions entered against them?
For example, there may be a total of 27 separate convictions entered against a total of nine 'individual' defendants.
47. What is the total number of corporate (e.g. Crown, company, body corporate etc.) defendants convicted as a result of RMA prosecutions concluded in this period?
48. For all of these (corporate) defendants what is the total number of convictions entered against them?
For example, there may be a total of 30 separate convictions entered against a total of 12 corporate defendants.
49. Total number of convictions against an individual
Total fine potential
(Total x \$300,000)
50. Total number of convictions against a corporate entity
Total fine potential
(Total x 600,000)
51. What is the total amount of fines imposed by the courts as a result of RMA prosecutions concluded in this period?
Individual fines/Corporate fines
52. What other sanctions, if any, have been imposed by the courts as a result of RMA prosecutions concluded in this period?
Prison sentence/Enforcement order/Reparation/Community Service/Other
53. How many prosecutions involved restorative justice, diversion or other alternative justice process?
Restorative justice/Diversion/Alternative justice
54. Describe any outcomes relating to these processes.
55. What mechanisms do your council use to report CME data to the public? (e.g. annual reports, reports to Councillors) Annual Report/Report to Councillors/snapshot/report to council committee meetings (open to public)/Other (please specify)

APPENDIX 2

Question/group	Suggestion
Regional context data	<p>An overarching comment on such questions is that it may not be appropriate to source all the information asked for from each council, but to instead draw from a definitive and common source to ensure accuracy and comparability.</p> <p>The information on regional GDP was patchy. Councils could consider, for example, asking for a ranking of major industries that occupy the focus of the CME department/s</p>
Council CME Operations – priorities (questions 16-17, 20-21 and 28-29)	These questions all required the upload of a prioritisation strategy to reflect how the council addresses complaints, consent monitoring and permitted activity monitoring. It may be possible to streamline this request – providing an opportunity to upload one strategy and point out any differences in approach between the three workstreams.
Question 19 Active consents	Clarify meaning of 'active' as interpretations differ.
Question 26 – Permitted activities	The responses to this question were difficult to analyse in any depth, particularly as many activity types were only permitted up to certain thresholds. In the future, it may be useful to use 'sample activities' to demonstrate differences in permissiveness of the regimes. Alternatively, subject that aspect to more intensive scrutiny in parallel to the current metrics as a policy-based project because it does not explicitly relate to performance in CME.
Question 30-33 – staffing levels	Clarify in future surveys what counts as CME 'support' and also make clear how to treat existing vacancies.
Question 39-40	Either consider combining the question or clearly defining each term as most responses demonstrated the distinction is not necessarily well understood.
Question 53	Clarify the difference between alternative justice and restorative justice or combine them.
Question 55	Consider expanding this question to drill into what information is contained in that reporting (keeping in mind the reporting requirements in both statute and in the guidelines).



THE CATALYST GROUP

planning and environment

p. +64 6 358 6300

e. enquiries@thecatalystgroup.co.nz

a Level 3, 31 George Street,
PO Box 362, Palmerston North

www.thecatalystgroup.co.nz