OCEANS POLICY
Feedback from Stakeholders
March – April

OCEANS POLICY

Contents

Introduction

The Oceans Policy Secretariat released 11 draft working papers for comment to Oceans Policy stakeholders on 14 March 2003. Three meetings were held in Auckland and Wellington, on 24th, 25th and the 28th March and a hui was held in Wellington on 27th March. The Secretariat received written responses from 31 stakeholders on the papers. This document is a summary of those responses and of the feedback received at the stakeholder meetings.

This paper complements the 11 draft working papers and should be read in conjunction with them. The Secretariat has decided not to revise the papers; however the feedback summarised in this document is being used in the formulation of the draft Oceans Policy, which will be released prior to public consultation in October 2003.

Executive Summary

Summary of general comments on all of the working papers

- The current system is quite confusing. It may be difficult to explain what an Oceans Policy will do, without more explanation of the current oceans management system.
- There are many formal processes (such as rules that are enforced under the Maritime Safety Act) outside the territorial sea that the summary paper did not acknowledge.
- Some very important issues were not mentioned in the working paper summary, for example, issues around rights and responsibilities in the marine environment. Nor were some subjects discussed in the working papers, for example, the enforcement of policies and issues around commercial transport.
- To really engage with the issues, the working papers would have benefited from a greater level of detail.
- The language used is very important in order to prevent misconceptions.
- Sometimes the working papers seemed to reach conclusions without a full investigation of the options.
- There is general agreement that the coordination of agencies is very important, particularly between local and central government.

Summary of comments on Working Paper One: Information Issues

- Key information gaps need to be filled in a strategic way, by asking the right management questions. It is important to involve scientists in this process because they understand the practicalities of research. It is also important that decision-makers acknowledge that they know little about the marine environment.
- The information requirements of iwi as decision-makers are important. Information needs to be in an accessible form, and tangata whenua should be able to participate in the information-gathering. The legitimacy of Matauranga Maori should be respected.
- Key tools to promote information standardisation and sharing are already being developed. They need to be kept in mind when designing an Oceans Policy.
- Commercial intellectual property issues need to be resolved, particularly those that relate to Crown Research Institutes (CRIs).
- Good information must be available to all who participate in decision-making processes, not just the ultimate decision-makers.

Summary of comments on Working Paper Two: Ocean Use Rights

- Treaty issues were not discussed in the paper. They should be an important part of any discussion of interests in the marine environment.
- Some assumptions in the paper were not backed up by evidence.
- Consideration of conflicting uses is difficult. There are a variety of different views on how to set priorities in this area.
- There are conflicting views about whether recreational and commercial fishers should pay additional fees or not, and whether coastal occupation charges are a good idea.
- There is agreement that the definition of rights and responsibilities in the marine environment needs to be clearer.

Summary of comments on Working Paper Three: Maori and Oceans Policy

- The issues facing Maori were not covered well in the paper. The key issues are:
    - lack of resolution of ownership of seabed issues
    - Maori believe they should be controlling the resources, rather than being consulted about those controls.
- Maori are a treaty partner and not a stakeholder.
- Determining the nature and extent of the rights and responsibilities that the Crown and iwi hold pursuant to Articles I and II of the Treaty of Waitangi respectively is a necessary prerequisite to developing an Oceans Policy.

- The principles of the Treaty of Waitangi need to be defined.
- More acknowledgement is needed of the status of iwi as decision-makers.
- Maori should have better participation in the decision-making process and should be involved in working groups at the Ministerial and officials level.
- Local government is not accountable to tangata whenua. Oceans Policy needs to recognise that local government is a crown agent.
- Many Maori are very concerned by the lack of Treaty obligations on local and regional authorities.
- There are problems with some customary management tools. They are difficult to implement and are not holistic management tools.

Summary of comments on Working Paper Four: Environmental issues

- The focus of the paper was too utilitarian. Missing were issues such as exploration of different thresholds of human activity and natural resources.
- Some form of weighting is needed towards activities that generate value in the least extractive or exclusive manner.
- Taking a precautionary approach is very important.
- The Department of Conservation's (DoC) role in the Resource Management Act (RMA) decision-making process for the coastal area would appear to be at odds with the conservation philosophy that the department operates under.
- Views are polarised on the quota management system and more discussion is needed.

Summary of comments on Working Paper Five: The Land-Sea interface

- The paper seemed so focused on the Resource Management Act that it overlooked the Conservation Act or National Parks Act.
- There are many problems concerning the implementation of the Resource Management Act and the societal pressures that act upon the process. If the community wants to maintain the existing coastal environment, hard decisions will need to be made.
- It is critical that there is much stronger, timely, central direction to guide coastal management, particularly in relation to the identification and protection of significant natural coastal areas.

Summary of comments on Working Paper Six: Marine Biosecurity

- It is important that Oceans Policy and the Biosecurity Strategy work together. National coordination of biosecurity issues is critical.
- Recognition should be given to kaitiakitanga and its relevant contributions to current environmental management and biosecurity management.
- The current focus of biosecurity should move from protection of primary production to a better balance that includes tängata whenua values. Decision-making criteria should have taonga, including mahinga kai, as a major consideration.
- All New Zealanders need to be educated on marine biodiversity, kia ora tonu te mauri o nga moana. Kia ora tonu nga tamariki o Tangaroa. All sea users should report changes of flora and fauna to government agencies and iwi.
- It is unclear what roles different agencies play in protecting marine biosecurity, and whose responsibility it is.

Summary of comments on Working Paper Seven: Marine Cultural Heritage

- The Resource Management Act already allows for protection of Maori heritage as a matter of national importance. The problem is uptake of this by councils.
- The protection of marine cultural heritage by councils is uneven.
- More tools are needed to protect marine cultural heritage, and analysis is needed to see whether current tools such as marine reserves can be adapted.

- One of the most important issues is the lack of resources available to the Historic Places Trust to be involved in resource management processes.

Summary of comments on Working Paper Eight: Participation in Oceans Management

- There are more tools for enabling effective participation than the paper mentioned. For example, public participation at roundtable conferences, pre-hearing and on site meetings produce more immediate resolution than formal hearings.
- Information needs to be targeted at groups which pose particular threats to the sustainability of oceans.
- A clear distinction must be made between the interaction of iwi and the Crown as Treaty partners, and opportunities for public input. The paper did not make the distinction clear.
- Public participation in decision-making is important, however drawn-out consultation processes can lead to cost increases that cannot be justified.

Summary of comments on Working Paper Nine: Adapting to Future changes

- The paper did not mention Treaty issues and how they will be taken account of.
- Climate change may have unforeseen impacts. It is difficult to plan for them when information is uncertain.
- Tourism is an important component when looking at future issues. This needed more emphasis in the paper.
- The paper did not make it clear that more processes are needed in the exclusive economic zone (EEZ) at the moment.

Summary of comments on Working Paper Ten: Encouraging New Opportunities in the Oceans

- The working paper only focused on future *economic* opportunities.
- There should be a cultural component to impact assessment.
- Shipping issues were not properly explored in the paper.
- There are important economic uses in the ocean, such as energy generation, shipping and submarine [power and communication??] cables, that should not be compromised.

Summary of comments on Working Paper Eleven: International Oceans Issues

- The process for implementing international conventions within the territorial sea is unclear.
- There are issues around who can participate in international negotiations. At the moment Maori and non-governmental organisations are not able to do so effectively.
- Emphasis should be given to honouring the Treaty of Waitangi.
- There was inadequate analysis of the various international regimes and laws which apply to New Zealand, what effect they have on our domestic legislative and management regimes, and how they are given effect to.

General comments on the working papers

- There was no discussion about the enforcement of ocean rules in the working papers.
- The papers should have used the word 'value' as well as 'use', as the latter has meaning in an extractive as well as a consumer sense.
- The papers should have talked about 'allocative mechanisms', 'user rights' and 'stewardship', because these concepts are readily understood.
- The papers should have acknowledged aspects of the existing regime which work well and should be maintained and which could provide the platform for future management.
- The papers did not explain the policy principles behind the legislation. For example, the ocean was referred to as 'a commons', but some Maori believe otherwise.
- Commercial transport was not referred to. Was this because there are no issues around transport? Did ferry companies, cruise ships and charter boat companies provide input to the papers?
- The papers were so heavily summarised that it was difficult to usefully engage with the material. They also provided little indication of the significance or urgency of the problems identified and, therefore, did not indicate where resources might best be focused. The high level of discussion the papers are likely to generate may not be altogether helpful in progressing the formation of an Oceans Policy.
- Discussion on the policy should have a section on the overall context of what 'the ocean as a resource' comprises, and the 'natural capital' it provides (eg, biodiversity, space, water, and air).
- The public needs to be informed about how the current system works before any discussions about what an oceans policy could achieve.
- The policy needs to explain what current management solutions and strategies are. For example, strategies are already in place to deal with by-catch that were not described in the working paper on environment issues.
- The Oceans Policy Secretariat should have expanded the papers to include more substantive information on the problems, their significance and urgency, and possible ways of addressing them, as a more constructive basis for engaging stakeholders.
- The papers are useful because they condense what people already know into a manageable form. However, the level of the papers varied with some on a 'mezzanine' level and others on a much higher level. They also focused on the environmental elements of marine management rather than social or economic elements.
- The stocktake document had some serious flaws including misunderstandings, factual errors, and there was no discussion of some extremely important legislation, for example, the Submarine Cables & Pipelines Protection Act; and exclusion zone regulations for offshore installations under the Continental Shelf Act.
- Some phrases in the papers were unclear and needed to be better defined, for example, 'sustainable development' (as opposed to sustainable management) and 'public good'.

Exclusive economic zone

- Are conflict resolution processes for the exclusive economic zone necessary now or in the foreseeable future? The only major problem that might occur would be the passing into law of the new Marine Reserves Act in its current form.
- Clear principles for the allocation of space in the exclusive economic zone need to be established in case competition for space increases in the near future.

General Resource Management Act issues

- A comprehensive review of the Resource Management Act is considered necessary. Oceans Policy should be part of this process, and should not institute amendments relating specifically to resource management before the comprehensive review.
- The papers seemed to be adopting a 'marine Resource Management Act' approach, yet there was no discussion about the limitations and consequences of the 'first in first served' approach of the Resource Management Act. The papers should have

considered the 'best' allocation or use of a resource (where preservation, protection and rahui are also legitimate allocations) independent of the current system.

- There is no guidance from central government to local government about how to value public space. Councils are taking an ad hoc approach to this issue across the country, but it is a national issue.
- The 'national interest' is often difficult to judge. An Oceans Policy needs to acknowledge that local interests are often given greater weight than national interests when local authorities make decisions.
- There needs to be better integration between stakeholders, international law and domestic policies, within the Resource Management Act framework.

Sustainable development

- Both economic and environmental issues need to be carefully examined in order to achieve sustainable management outcomes.
- Oceans Policy is about sustainable development, however, there was no real sense in the working papers that future needs are being taken into account.

Comments on the working paper summary

General comments on the paper

- The current uncertainty about rights and responsibilities in the marine environment is a central issue that warranted mention in the working paper summary. This can only be addressed, by an examination of the Treaty basis of all rights and responsibilities.
- At the local level, some of the hard decisions cannot be made because politicians are often unwilling to make them for political reasons. For example, politicians do not like to prevent the building of seawalls (which increase erosion).
- There are many formal processes outside the territorial sea. The Maritime Transport Act sets out requirements for marine dumping, discharges from shipping and offshore installations. These require far greater recognition among stakeholders to prevent misunderstandings.

Coordination of agencies

- Lack of coordination seems to be the main issue in oceans management. This is due to devolving responsibility to local government where local politics can detract from achieving a consistent outcome.
- There is not enough evidence that there are statutory gaps that need to be addressed, however, there is a need to coordinate existing oceans management (particularly beyond the territorial sea).
- There needs to be far greater coordination between central and local government. The Oceans Policy needs to clarify what the roles of both central and local government are. Decision-making processes need to be transparent and statutory gaps closed.

Comments on Working Paper One: Information Issues

General comments on the paper

- Information requirements need to be pragmatic and reasonable, known issues should not be relitigated.
- All users of ocean resources should be monitored. The cost and difficulties of achieving this in some circumstances will be high, however, the cost (or risk) to the long-term sustainability of our oceans of not monitoring is also high. Monitoring costs should be recovered from the resource users who benefit directly from the use of those resources.

Key information gaps

- No particular agency is responsible for maintaining first order benchmarks. In a tectonically active country such as New Zealand, regular re-surveys are needed, so that practitioners can manage coastal hazards and inundation effectively.
- The Foundation of Research Science and Technology has given limited support for the collection, interpretation, and application of remotely sensed data. This has made the issue of ownership of the information difficult. This aspect of NIWA's (National Institute of Water and Atmospheric Research) activities is verging on being unviable.
- Paragraph 23 made clear statements about gaps in existing information. It is considered regrettable that the strategic portfolio development process has to take so much additional time when gaps have been flagged for some years. Although the issues about weighing competing priorities (discussed in paragraph 42) are important, there is concern that the development of a priority-setting process and bureaucratic processes will add to the delays. There seems to be no sense of urgency in addressing information shortfalls, yet throughout the working papers, information needs were emphasised repeatedly.
- There needs to be a better exchange of information between management agencies and industry sectors so that the former can be in a better position to plan for 'gold rushes' on coastal resources. The sharing of information can be compromised because of the competitive nature of the industry.
- When paying for marine research, decision-makers often do not start with the right questions. Scientists need to be involved early in defining the management questions and what is 'know-able', and setting priorities for data collection. Often decision-makers ask for information without thinking through how it will be used.
- The priority-setting process for scientific research is currently conducted at a ministerial or departmental level. Scientists need input in the priority-setting process early so that priorities are set correctly. This could be the biggest issue that Oceans Policy needs to tackle.
- Government research funding seems to be politically rather than logically driven to the severe detriment of any robust management regime for our oceans.
- There is a Marine Science and Technology Plan within the framework of the Australian Oceans Policy. New Zealand should follow suit and form a similar policy to address this serious information issue.

Information for iwi

- The paper espoused the importance of good information to make good decisions while stating that it is acceptable to provide for iwi rights and interests in the oceans in the absence of good information about the nature and extent of such rights and interests.
- Information needs, priorities and expectations of iwi as decision-makers were not covered in the paper, and should have been.
- Information is often available through technologies that are not generally accessible to iwi (eg, the internet). This excludes iwi from participation in the system and from the benefits of the information.
- Data must be accessible to tängata whenua to enable more effective participation in decision-making processes. The data should also be available in more accessible

forms (eg, less technical or academic language, and in a range of mediums, not just websites).

- Reference to 'indicators' needs to acknowledge that there is no standardised approach to iwi indicators. The monitoring capability of each iwi will vary.
- Tängata whenua should be able to participate in determining future research topics and participating in the research itself wherever possible. Specific funding for Mätauranga Mäori research and procedures and policies should be developed to ensure this information is incorporated into decision-making processes whilst protecting intellectual property.

Legitimacy of Matauranga Maori

- Matauranga Maori should be acknowledged as more than an informal source of knowledge.
- Information outcomes presume the primacy of western science knowledge, and relegate Matauranga Maori to the status of 'informal observations'.
- The paper makes passing reference to "Matauranga Maori" but does not explore the real value of information gathered through generations of interaction with resources. Iwi resource managers continue to gather information that should be considered in this discussion, including, for example, records collected by tangata tiaki/kaitiaki in their administration of customary fishing.

Environmental education

- The impact of commercial fishing on target species is a big issue. In particular, iwi and recreational fishers both blame the degradation of local fish stocks on a perceived increase in commercial fishing. The more information available to community groups and stakeholders, the fewer misunderstandings will be held.
- Environmental education is imperative to creating trust in sharing data.

Key information tools

- The development of a meta-database for coastal and oceans information would assist data and information-sharing and go some way to prevent duplication. A freshwater information directory has already been developed by the New Zealand Hydrological Society with sustainable management funding. A similar database could be developed for coastal and oceans areas. The ongoing maintenance of these databases should rest with central government. Good access to information is needed to develop sound policy at national and local level.
- Indicators will require improved capacity and resources among agencies responsible for implementing them. Perhaps universities and polytechnics do not have a strong enough focus on marine-coastal issues, given the apparent shortage of marine trained scientists.
- Key roles for the Oceans Policy should be:
    - to promote the establishment of monitoring regimes for marine environment indicators
    - the supply of indicators information for use at a national level
    - the promotion of data quality standards
    - the negotiation of information-sharing protocols for marine information.
- There is misinformation from the fishing industry on by-catch when human observers are unable to be present because of lack of room on boats. Electronic observers could collect data (eg, by using digital cameras or an electronic set counter).
- The development of the Ministry for the Environment's (MfE) Environmental Metadata Framework would seem to be the ideal vehicle through which to promote the sharing of information about the oceans.

Intellectual property issues

- Commercial intellectual property issues need to be resolved, particularly those relating to Crown Research Institutes.
- The corporatisation of government science providers who inevitably wish to protect data information in order to protect their funding and financial performance is a huge issue. This may be resolved by amending the objectives of the CRIs and/or amending the funding model used by central government science policy and funding agencies.

Managing in the face of uncertainty

- It is difficult to imagine how much we don't know about the marine environment. About 70 percent of species under the sea have not yet been identified. How can we try to manage human impacts on the environment in the face of such uncertainty? We end up only trying to manage problems that we think might exist. The more information we have about the marine environment, the better we can try to manage human impacts on it.
- The crayfish population at Leigh Marine Reserve has increased 27 times since the reserve was opened, and 200,000 people visit the reserve a year. These are both quite phenomenal and unexpected figures which illustrate how much we don't know about the marine environment.
- Too much weight is put on 'information' and 'databases' especially when their absence or inadequacy are the reasons given for not implementing timely policies based on existing knowledge.

Use of information in decision-making

- The paper's conclusion that 'accurate, well-framed questions that incorporate how the information (new or existing) is to be used in management decision making, is the cornerstone of good decision-making', should have been emphasised.
- A problem with focusing on data is that this may be 'undigested' and policy analysts may not know what to make of it – interpretation is the key. Many decisions concerning management of the marine environment can be made now, if scientists are actively engaged in the policy process to interpret existing data so that it can support decision-making.
- If certain 'information' is deemed to be too little, before a decision is made to collect more, a number of questions should be asked and answered: How is this information to be used? Who physically will use it? Will a better decision be made because of the acquisition of this information?
- Is it data sets that are needed or a level of integrated analysis and understanding of a particular issue? Scientists should be engaged to decide how a good policy outcome might be achieved. For example, using a habitat mapping exercise:
    - use multi-beam data alongside a sampling programme to check whether or not each habitat type has a particular assemblage of animals
    - extrapolate, on a statistical basis, the distributions of the fauna
    - decide what is required to protect particular types of habitat because they are limited in extent and under threat.

Access issues

- Good information must be available to all who participate in decision-making processes, not just the ultimate decision-makers. However, much of the discussion in the paper appeared to focus on the information needs of decision-makers in central and local government.
- It can be very hard to get vital information, and the only data that can be found are usually in a very raw and incomplete form. Interpretations can vary significantly depending on how the data have been manipulated and modelled. There is a need for all stakeholders to compare the same information, and not at a price that will exclude some parties.
- Some information can also be very hard to get hold of, for example, trying to locate customary fishing boundaries from information that is apparently held by the Maori Land Court. Maori in particular find it difficult to access and benefit from current information sources.
- Full and genuine commitment to developing effective information is needed to prevent 'walling off' of activities and information.
- Insufficient attention has been paid to bringing the New Zealand public along with the developments and changes in legislation and decision-making processes so that we can all take better care of oceans as a community.

- Better collaboration is needed between science and information providers, for example, between Crown Research Institutes, universities and other research agencies.

Information sources

- The relative effects of different protection tools, for example, taiapure, mataitai and marine reserves on the marine environment are not known.
- The paper should have referred to biodiversity databases and biological specimen collections housed in Crown Research Institutes and museums. These information collections are the fundamental libraries of data for recognition and inventory of native and introduced organisms.
- There are serious public good issues associated with the Crown Research Institutes. Where there is a scarce skill held exclusively within a single CRI, there are problems with access for the general public. There are also serious questions about whether the best advice is being made available to government. Crown Research Institutes are obligated to act competitively and within a business model, yet this is not an appropriate operating model when dealing with organisations that are the sole repositories of particular information or skill sets. Two issues are intertwined here:
    - the capability or capacity of the country (the sheer numbers of individuals who have the required skills)
    - the competitive business model for information-gathering versus a public good model.
- NABIS (National Aquatic Biodiversity Information System) is still at a very preliminary stage. The paper made it sound as if development is progressing well, yet so far very little has been done and it is certainly not yet available for decision-makers.
- All knowledge about the marine environment is valuable.

Information and research needs

- Important areas for future research are:
    - the land/sea interface
    - impacts of land-based activities on this ecosystem
    - accelerating impacts of climate change on the wider marine environment.
- Government needs the best knowledge possible for decision-making. Recognition is needed of the difference between the short-term research required to meet information needs for operational management and the long-term research projects and underpinning science which provide information on which sound decisions will ultimately need to be based.
- Research projects need to be careful about their impacts and that the research-gathering is not limited by foregone conclusions.
- More research is needed into coastal marine hazards.

Monitoring and indicators

- The environmental indicators programme is an essential tool in the monitoring of the marine environment.
- The investigation of ‘indicators’ of environmental states is endorsed (the use of the word ‘performance’ is difficult to interpret) although they must be rigorously evaluated before any monitoring begins. It is considered slightly disturbing that the set has already been agreed, but based on what? How will these ‘indicators’ be used and who will use them?
- The environmental indicators programme is a very preliminary tool, with many inherent weaknesses. Databases are only as good as the data entered, significant developments and new knowledge need to be acquired and added. Care is needed not to overstate competencies and capacities. The indicators programme is at a very early stage.

Funding and capacity

- The ability to fill data gaps is shrinking by the year. The Foundation for Research Science and Technology funds NIWA programmes on marine biodiversity and ecological processes. The government will lose about 18 percent of its purchasing power between 1995/96 and 2004/05 unless new funds are put into this area. The

erosion of purchasing power has occurred because the programmes and objectives have been last in the queue to be 'advanced' at the Foundation of Research, Science and Technology.

- If the emphasis goes on 'understanding' rather than the large and increasing costs of data collection and management, the whole issue of information does not loom so large.

Other suggestions

- Explain who the 'Marine Biodiversity Coordination Group' is.

Comments on Working Paper Two: Ocean Use Rights

General comments on the paper

- Coastal uses are varied and in many cases can be predicted. The erosion of public amenity values could be described as a failure in effects-based planning.
- Territorial authorities usually provide services such as boat ramps, not regional councils.
- The paper talked about 'the absolute protection of marine mammals, which delivers on a social value not to harvest marine mammals'. When and by whom was this set of values debated and adopted? Oceans Policy provides a timely opportunity to test assumptions such as these.
- Decisions on the use of our oceans and coastal marine areas should, as far as possible, come under the umbrella of one body which is required to balance local and national interests and to ensure consistent decision-making.
- The paper discussed the public and stakeholders, but it did not refer to Maori.
- The rights paper mentions zoning under the Resource Management Act but bylaws are more likely to be used.

Treaty issues

- The paper considered use rights of the public and stakeholders but excluded any consideration of rights afforded to iwi under Article II of the Treaty, this is of serious concern.
- This paper considered the resolution of conflicts between competing user groups. The Crown's priority should instead be the active protection of the use and ownership rights of tangata whenua. The only exception to this is where the Crown can justify, for environmental sustainability reasons, exercising its Article I obligations, and then the Crown should provide compensation.
- Use rights should be specified, to protect tangata whenua values and rights as well as for wealth creation and environmental stewardship.
- The paper highlighted the need for a comprehensive framework to provide for both the rights and responsibilities protected by the Treaty (Article II) and those conferred as a result of the Treaty (Articles I and III). The paper's cross-reference to *Working Paper Three: Maori and Oceans* is inadequate, because that paper made no reference to such rights.

Conflicting uses

- Recreation conflict on the water can be managed by local bylaws and proper enforcement.
- It is unclear why the reference to increasing numbers of tourists is listed under 'Conflict among existing uses', because it is not clear from the statement what other public use increasing numbers of tourists conflicts with. The issue is management of tourist numbers, their impacts on the marine environment, and tools to address perceptions of overcrowding and devaluing of the experience. If not managed appropriately, these issues could lead to conflict between visitors and residents in an area. Visitor numbers are increasing (an extra 33 million visitor nights are forecast by 2008), however, it is important to note that this includes both domestic and international visitors, with domestic visitors making up the majority of nights.
- The need for any process to reconcile potential conflicts between activities, should encompass some form of weighting towards activities that have least impact on the marine environment and on other users.
- The problem is not just 'conflicts between competing users' but also 'lack of clear frameworks and processes to resolve such conflicts.'
- It is important to recognise the potential conflicts between existing or new uses of the coastal environmental and existing or new use on land. One example is the potential conflict between marine farming and terrestrial activities that cause deterioration in water quality.
- There are some examples of exclusive rights that, in the public interest, should be retained. An example is the cables across Cook Strait that are essential for the

secure operation of the national grid. These exclusive rights should not be traded off against any other competing interests.

- There is little or no integration between the statutory regimes and no way of reconciling competing uses. There is no provision for a strategic approach to determining where various uses should occur. It is worth noting that, for all its faults, the proposed law reform in relation to aquaculture attempts to establish such a strategic approach to determining where aquaculture can and cannot occur.

Setting priorities for use

- A missing attribute that could enhance wealth creation is the lack of means to identify and prioritise activities that maximise wealth creation over those that are less profitable.
- Paragraph 33 stated that existing processes are not fair because they provide no mitigation to existing users when a new use is introduced. This is precisely what the Marine Reserves Bill will do unless it provides compensation.

Charging

- Recreational fishers should pay a licence fee like fresh water fishers to help finance inspections.
- The cost recovery levies and employment the fishing industry provides are public returns.
- Coastal occupation charges are one method, to improve the efficiency of coastal allocation. One of the major issues that we consider in preventing the implementation of occupation charges is the lack of central government guidance.
- The paper needed a discussion of charging in the coastal area. There is currently some cost recovery in place in fisheries management, but there are questions about whether the fisheries companies adequately compensate the public. The cost of administering the fisheries management system is recovered, but the companies do not pay for the use of the public resource.
- The oceans are always referred to as a commons, but where is this written down? It reflects international law, but is not stated in New Zealand law anywhere. How do we charge for the use of the public commons? There should be a common agreement about how to compensate the public for the loss of public space across different activities.
- Fisheries companies do have to pay for quota, this did not seem clear in the rights paper.
- What, if any, distinction is intended between the absence of public return for exclusive uses that are extractive and those that are non-extractive? The paper seemed to assume a public return will only be considered for exclusive private uses, but if this is the case, it needed to be made clear. A number of public or not for profit recreational uses can also be exclusive to some extent, for example, jet skiing, yacht racing, recreational fishing. The impact on the marine environment or the degree of exclusion of other uses may need to be considered. For example, a marine farm will permanently exclude all public uses, whereas a ferry lane only excludes other uses at specific times of day.

Definition of rights

- Rights need to be defined more clearly as use of the oceans increase. Not only what rights enable, but the limits to rights. Rights that are given need to avoid pre-empting opportunities for other activities. The fisheries versus aquaculture debate is about rights: what rights are conveyed by individual transferable quota and what rights are not.
- Where non-governmental organisations are involved in defending public rights, or are seeking to preserve qualities that legislation appears to guarantee (eg, the Resource Management Act and the references to matters of national importance), transaction costs can be a barrier to their involvement, particularly where parties resort to court processes.

Comments on Working Paper Three: Maori and Oceans Policy

General comments on the paper

- For the most part, Maori participants in Stage One cannot see any evidence of their perspectives in the vision statement.
- In this stage of policy development, it is imperative that the Crown commit to a longer process. It is not possible to determine the nature and extent of rights by June 2003.
- The issues facing Maori were not covered well in the paper. The main issues preventing Maorifrom successfully engaging in consultation are:
    - lack of resolution of ownership of seabed issues
    - Maori belief that they should be controlling the resources, rather than being consulted about those controls.
    - the role of Regional Councils in the management of the coast.
- The papers should have addressed kaitiakitanga and its relevance to the environment, the land-sea interface and biosecurity.
- Oceans Policy must take into account all the different reviews currently underway, for example, aquaculture, marine reserves and Oceans Policy. Many issues are generic among the different reviews.
- The paper focused on process rather than outcomes.
- Kaimoana is one of the last resources for Maori.
- In the territorial sea:
    - kaitiaki can extend to 200 nautical miles
    - some settlement obligations extend beyond the territorial sea.
- Marine reserves may not always be in the best interests of tangata whenua groups.
- Maori culture and values should be reflected in the management of our oceans. Maori culture is a unique aspect of New Zealand, recognised when marketing New Zealand as an international destination. Visitors to New Zealand value the inclusion of Maori cultural interpretations and experiences in tourism activities.
- How can agencies carry out their statutory obligations when many officials are not familiar with the Treaty of Waitangi principles?
- The stocktake report should have assessed how responsive current management tools are to Maori.
- The papers were more focused on the means rather than the ends and on the needs of central and local technocrats rather than the needs of Treaty partners.
- Responses to the issues outlined in other working papers should make explicit provision to the needs, priorities and expectations of iwi.

Fisheries issues

- The objectives set out in the draft MFish (Ministry of Fisheries) Treaty Strategy are admirable, in particular, the commitments to working in partnership with tangata whenua to meet the purpose of the Fisheries Act, and to ensure tangata whenua have full responsibility for managing customary fishing within their rohe moana. However, MFish has not fully consulted with iwi. It has stated that it will not recognise and provide for the input and participation of tangata whenua into the broader fisheries management processes in accordance with section 12(1) of the Fisheries Act until it has finalised its Treaty strategy. Decisions are currently being made without Maori input.

Participation in Oceans Policy development

- The issue of indigenous rights is extremely important to all Maori and all attempts to rush the process are unjustified transgressions of indigenous rights. Maori have an acknowledged right to participation, as Maori, in the formulation of all laws that affect them. The oceans are no exception.
- The Treaty should be the basis of any Oceans Policy. Article II means that ‘stakeholders’ should not be given rights ahead of Maori. (Stakeholders are represented by the Crown). Stakeholders should not be involved when Maori claims have not been settled.

- Information gathered during discussion with Maori needs to be relayed to the Minister of Local Government, as it is local government that implements most policies that impact on Maori.
- Ministers need to hear the concerns of Maori kanohi ki te kanohi rather than having to go through officials.
- Maori should have better participation and be involved in working groups at the Ministerial and officials level.
- A reference group with representation from iwi is needed. This must have more than an advisory capacity. It must have governance, managerial and operational control.

Resource Management Act issues

- Local government is not accountable to tangata whenua. Oceans Policy needs to emphasise that local government is a crown agent.
- The New Zealand Coastal Policy Statement (NZCPS) needs to reflect Maori concerns.
- Transfers of powers under Section 33 of the RMA have not happened because there are too many 'hoops' for iwi to go through.
- It is too easy for people with money to get consents and then they do not necessarily respect the concerns of Maori.
- There should be compensation for the community for loss of resources and space.

Governance issues

- The paper's conclusion that:

  > *'historical Treaty settlements' and 'incorporation of the principles of the Treaty of Waitangi in natural resource management policy and/or legislation' along with 'practical tools that have been developed to involve Maori and incorporate their views … provide the building blocks for constructing an Oceans Policy that takes careful account of the interests of Maori at all levels'.*

  is not a valid conclusion, because current tools are inadequate.
- The Treaty of Waitangi guaranteed tangata whenua full, exclusive and undisturbed possession of all their taonga, including fisheries and other resources in the rohe moana in relation to which they held manawhenua, manamoana. Those rights endure today, except to the extent that they have been extinguished or modified with the consent of the owners. The Crown has an obligation under the Treaty actively to protect those rights and provide for their enjoyment to the fullest extent possible.
- While Treaty-guaranteed rights of Mäori in relation to fisheries were conclusively settled in 1992, such rights and responsibilities in relation to the marine environment extend well beyond fisheries. In recent years, iwi of the Marlborough Sounds have sought recognition of their ownership of the foreshore and seabed through the Mäori Land Court. (The case has ben held up by a jurisdictional dispute and is currently awaiting a decision by the Court of Appeal.) They have also sought recognition of their particular interests in the activity of marine farming in the Environment Court (also awaiting a final decision). Other iwi, including Hauraki iwi and Ngäti Kahungunu, have argued their interests in oil, gas, gold and other minerals found in marine environments before the Waitangi Tribunal.
- Determining the nature and extent of the rights and responsibilities that the Crown and iwi hold pursuant to Articles I and II of the Treaty of Waitangi respectively is a necessary prerequisite to developing an Oceans Policy. Attempting to build an Oceans Policy without establishing this solid foundation will inevitably produce an imperfect outcome that will not only be in breach of the Treaty, but will not serve the nation well. In particular, future development of marine resources will continue to be hampered by challenge and uncertainty if basic questions of ownership are not resolved once and for all.
- From the Maori perspective, it is simply not possible to divorce the discussion of 'ownership' and 'rights' from that of 'management' and 'responsibilities'. In this, the idea that Maori did not have a concept of ownership has been misunderstood and misused. It would be more correct to say that there is no traditional conception of ownership independent of kaitiakitanga. Kaitiakitanga encompasses a broad range (or bundle) of rights and responsibilities to people and resources, of which

'ownership' is one facet. Moreover, it denotes an active relationship, one which cannot be theorised, only lived.

- Maori rights are not synonymous with Treaty of Waitangi rights. Such thinking is incorrect and unhelpful. Maori also have indigenous rights under English common law, fully applicable in New Zealand and it is now established that such rights can only be extinguished by specific statutes of Parliament and with the specific consent of the indigenous rights holders, the Maori people.
- The treaty was, and still is, for the benefit of all people and not exclusive to Maori.
- All discussion of the futility of trying to ignore or gloss over fundamental Treaty-guaranteed rights and responsibilities in favour of Maori 'interests', 'issues', 'values' and 'perspectives' came to a head in the paper. Simply put, there can be no consideration of 'Treaty issues' and 'Maori interests' without consideration of the whole raft of rights and responsibilities of the Treaty partners in relation to the marine environment. Unless the working paper is rewritten on that basis, it will continue to represent the marginalisation of Maori issues.
- The Oceans Policy needs to reflect local differences. Ministers must acknowledge that each ropu is managed differently.
- Tikanga gives iwi the authority and control to make decisions.
- Management of the oceans should be by hapu.
- Maori have katiakitanga through birthright. The Oceans Policy devalues Maori because it turns ownership into government policy. Maori want to have a say in their birthright. Maori must be able to exercise kaitiakitanga.
- Tikanga predates the Treaty.
- The final policy must give Maori parity at the highest level of decision-making. Possibly this could be through a fairly elected board of Maori decision-makers to sit on a commission.
- The paper should have defined what is meant by 'appropriate consideration of Maori interest', 'Treaty of Waitangi responsibilities', 'a Treaty perspective' and 'the principles of the Treaty of Waitangi'. Oceans Policy should promote clarity of Treaty principles for decision-makers.
- It is essential that there are consistent Treaty clauses (and therefore partnerships) within Acts and other documents that relate to the ocean environment. It is not sufficient to rely on protocols.
- The statement 'Treaty settlements settle all the claims of a claimant group, including claim to the oceans' is disputed. Locking the provision for iwi interest into settlement of historical grievance is flawed as it fails to recognise that the rights exercised in terms of the oceans continue today as living and breathing relationships.
- The Treaty is a contract, but because the New Zealand Government only recently started to comply with its Treaty obligations, it cannot claim to be in partnership with Maori.
- The Treaty clauses should refer to 'tängata whenua' not 'Mäori' as the rights in question are Article II Treaty rights which reside with the iwi and hapü that hold manawhenua manamoana. Inconsistencies currently exist within legislation, for example section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act refers to the making of regulations that recognise and provide for the special relationship between tängata whenua and those places which are of customary food gathering importance, whereas, section 6(e) of the RMA refers to the relationship of Mäori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

Involvement in oceans management

- Acknowledgement of the status of iwi as decision-makers was absent from the stage two policy papers. Reference to the Maori world view and associated values is empty when the necessary authority to make decisions that flow from such values and responsibilities is missing from the Oceans Policy framework.
- As stated in paragraph 15 of the Mäori and Oceans Policy paper, a suitable method of developing relationships and partnerships between tängata whenua and Crown entities is through incorporating the Treaty principles into strategies and planning documents. An excellent example of this is in the DoC publication 'Te Kete Taonga

Whakakotahi – A Conservation Partnerships Toolbox'. This partnership continuum should be applied to the Oceans Policy as a whole.

- Government and its agencies have to work out how they will work alongside Maori groups who have the capacity and capability to participate. Members' time and energy is often voluntary and this should be recognised.
- The working papers consistently referred to tängata whenua participation as either part of the broader stakeholder groups or the public in decision-making. Working with tängata whenua is an integral component for the success of the Oceans Policy. Crown partnership obligations should be explicit throughout the document. The Crown should consistently operate a two-tier decision-making process as set out below. An example of this process can be found in section 12(1) of the Fisheries Act 1996. Under this legislation the Minister of Fisheries must provide tängata whenua with input and participation and have particular regard for kaitiakitanga, whereas fisheries stakeholders, environmental NGOs and Mäori are to be consulted.

Traditional knowledge

- Incorporating traditional knowledge and customary fishing information into the wider fisheries management processes will be a key component in ensuring the success of the regional management forums. The Ministry of Fisheries will have to alter their decision-making processes to accommodate this information.
- It is essential that mätauranga is incorporated into fisheries management decision-making. Fisheries management decisions are currently exclusively western science-based. Information is seen as anecdotal evidence despite MFish being required to provide for the use and management practices of tängata whenua.

Current relationships

- Some councils have failed to establish protocols, or a Memorandum of Understanding so that agencies can could work cooperatively and collaboratively to manage the seas in a sustainable manner.
- Many tangata whenua are very concerned by the lack of Treaty obligations on local and regional authorities.
- Tangata whenua express concerns about the lack of capacity and expertise of local and regional authorities to have any further input into the management of the ocean.

Mechanisms

- The third bullet point in paragraph 21 of the Mäori and Oceans Policy paper is not a tool; it is a legislative requirement under section 12(1) of the Fisheries Act. How is this meaningful input to be facilitated? Through the regional forums?
- The redress packages within the Treaty settlements that were referred to in the paper contain a number of mechanisms that attempt to recognise and provide for tino rangatiratanga and kaitiakitanga. However, there are several concerns with these mechanisms including:
    - the tools are not holistic. Tängata whenua may only manage fishing and fishing activities under mätaitai and Tangata Tiaki/Kaitiaki are not able to enforce fisheries rules 'on the beach' unless they are also Honorary Fishery Officers). Tängata whenua are bound by the particular agency's jurisdiction. A lack of truly empowering provisions for tängata whenua to exercise tino rangatiratanga leads to tängata whenua feeling disenfranchised from their whakapapa, and feeling that they can not be true kaitiaki as these tools are only half measures.
    - Regulation 38 of the Fisheries (South Island Customary Fishing) Regulations requires the Ministry of Fisheries to provide information and assistance to Tangata Tiaki/Kaitiaki for the proper administration of the regulations. The Ministry of Fisheries sometimes have no staff and sometimes commit no funding to support Tangata Tiaki/Kaitiaki.
    - The establishment process for taiapure is long, bureaucratic and an impediment to the effective use of this tool. A review of these provisions was promised but still has not happened. Another problem with this tool is the lack of funding support for the management committee.

  - There are often insufficient funds to administer the customary fishing authorisations process let alone implement tools like mataitai and taiapure. A proportion of the marine biodiversity funds should be made available as a customary pütea to implement customary protection tools. In particular, this pütea will be required to develop mätaitai/taiäpure applications and to resource the management committees.
- Paragraph 28 of the paper included a statement about the lack of knowledge concerning the tools provided through Treaty settlements in terms of how and when they should be used. This may be so for some tools but it is not so for mätaitai, taiäpure and 186B temporary closures in Te Waipounamu.

Education

- All groups with decision-making responsibilities have to be sufficiently educated to give real input mo nga kaupapa o te Ao Maori.

Fisheries

- The relevant article from the Treaty of Waitangi on fisheries should be clearly written word for word in the Oceans Policy
- The commercial components of the fisheries settlements remain unfulfilled until Article II taonga are returned to tängata whenua. The lack of access to these assets further exacerbates the capacity issues mentioned above and capacity to develop (or in many cases reaffirm) economic opportunities with other Article II taonga.
- There should be a Maori customary model which could be modelled on pre-European Maori catch. It is the most sensible method to introduce, since as a particular fish stock becomes scarce, a rahui is placed instantly on the species. During schooling season, October to January snapper should not be touched.

Council issues

- Customary Coastal Plans can work.
- Some councils and agencies are yet to realise that they are a Treaty Partner.
- The Crown has in effect disclaimed its Treaty obligations to tängata whenua by devolving its management responsibilities to local authorities. This is clearly a breach of the Treaty principles.
- The Crown, through its departments, repeatedly advises that ownership issues and grievances are not regional council issues. While that may be the case, the issues constitute a major barrier to regional councils' successful management of the coast. Section 4 of the new Local Government Act (2002) sets out that it is the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi. It is up to the Crown to establish an oceans management regime that actively protects Maori interests while itself exercising kawanatanga.

Comments on Working Paper Four: Environmental issues

General comments on the paper

- It is unclear why it is presumed that restoration would be primarily passive rather than active.
- Dredge spoil should go back to the land it came from originally.
- Applying a blanket approach to the removal of redundant structures in the coastal marine area is not necessarily a good idea, because there are some special cases, (such as submarine cables) where a flexible approach should be taken. Such an approach would assess each case on its merits.
- The working papers should have reflected the idea of accepting different thresholds of human impact in different areas.
- The interaction of climate and other environmental variability with human actions should be mentioned.
- The paper was too utilitarian in approach.
- There were some good statements of values in the paper.
- Although the biosecurity issue warrants its own paper, there needed to be better integration of this issue through the other papers. This is because biosecurity is not independent of commercial activities, international trade, internal trade and activity patterns within New Zealand.
- It is important to remember that no one may have 'ownership' of the ecosystem.
- Land-based and sea-borne pollution are huge concerns for Maori.
- Look at international agreements to stop Australia sending their pollution over to New Zealand.
- Oceans Policy should develop initiatives that benefit the environment rather than exploit it.
- The primary focus in the papers was on the use of the marine environment. There should have been an acknowledgement that the oceans have intrinsic value, they are not solely for use by this generation, and we need to protect them not just for present or future economic returns but for a wider range of reasons.
- Oceans Policy needs to ensure a balance between the use and protection of the marine environment, especially in the exclusive economic zone where the Resource Management Act does not apply.
- There may be disagreement about appropriate protection mechanisms in different areas. For this reason, tools are needed that can have effect over freshwater springs (where shrimp live).
- Restoration needs to be provided for where appropriate.
- Oceans Policy needs to differentiate between management tools and protection tools. The differences between land-based and sea-based protection mechanisms also need to be reflected. On page 5 of the Environment Issues Paper, some protection mechanisms listed were in fact management tools (eg, marine pollution rules).
- Discussion of natural resources was missing (ie, fish, oil, minerals) and who participates in decision-making about natural resource allocation. There needs to be an overarching component that deals with the legal/political arrangements for the development of natural resources, then have the fisheries debate.
- The policies should identify some form of weighting towards activities that generate value in the least extractive or exclusive manner, for example, dive tours could be just as valuable as scallop dredging, while not excluding other users and not extracting resources.
- A problem with current management of the marine environment that was not clearly spelt out, is the lack of guidelines for decision-making in terms of preferring extractive or non-extractive uses, high impact or low impact uses and exclusive or non-exclusive uses.

Precautionary approach

- A precautionary approach is very necessary to allow economic growth. Integrated management is essential as sewage discharge, saltation and road runoff are some of our biggest inshore pollutants.
- Compared to our knowledge of land-based ecosystems and the consequences of activities and interventions, our knowledge of the ocean's environment and the interactions within it is very limited. It could be desirable to strengthen the reference to a precautionary approach for the oceans. To take 'a precautionary approach when making decisions that may cause serious or irreversible damage' is only effective in situations where it is known that damage may be serious or irreversible. With regard to the oceans, we often do not have even this level of information.

Ecosystem-based approach

- Better to use the term 'ecosystem-based management' as opposed to ecosystem management
- There is an urgent need for a holistic approach with consistent vision to management of the purity of sea water.
- Marine resources need to be appropriately designed and of sufficient size to ensure they achieve their purpose, not just be representative of ecosystems.
- In adopting an ecosystem-based model of marine management, ecosystem indicators appear to be the most important. Therefore, if we can resolve the interface differences between the Fisheries Act 1966 and the Resource Management Act 1991, our knowledge of marine ecosystems and the establishment of environmental limits as benchmarks/indicators would be easier. Determining limits on an ecosystem basis, not a stock basis, would require more research and monitoring. Continued monitoring is needed to enable the flexibility of use of such indicators.
- There are tools in the Fisheries Act for taking an ecosystem-based approach to managing the environmental effects of fishing, but the main issue is a lack of commitment to implement them.

Marine protected areas

- Iwi have acknowledged that the Cook Strait Cable Protection Zone has a role as a quasi-marine reserve.
- With regard to the Marine Protected Areas strategy, the selection of the protection tool should, in most cases, be made after a risk analysis to biodiversity in the area has been conducted, to ensure the 'best tool for the job' is chosen.
- DoC has developed a public awareness strategy for marine reserves but there is currently no such government-funded strategy being developed for the customary protection tools.

Land /fresh water

- There should be a consideration of the cumulative effects of terrestrial and freshwater effects on the coastal/marine environment, not just the marine–related activities.
- Integrated management of the coastal interface and the territorial sea boundaries by all administrating authorities is needed.

Resource Management Act issues

- The Department of Conservation's role in the Resource Management Act decision-making process for the coastal area would appear to be at odds with the conservation philosophy that the department operates under and also the setting of the New Zealand Coastal Policy Statement.
- Should the setting of the New Zealand Coastal Policy Statement be the role of the Ministry for the Environment? Even though the Department of Conservation's involvement may provide some balance to the NZCPS and decision-making process, there is some conflict in ideology.
- The problem of sewage from recreational craft and small commercial craft is small at the moment. However, it will become more of a problem and legislation may be required to ensure that all vessels over a certain size are built with suitable treatment plants, etc. The current rules will have to be revisited in the not too distant future as will the problem of compliance.

- In contrast to resource consents for terrestrial activities, coastal permits entitle the holder to have specified effects in the coastal environment, including exclusive 'occupation' of the space necessary for the purposes of that activity. This and limiting the maximum term of a permit to 35 years, reflects and supports the marine 'commons' concept.

Missing from the paper

- There was no discussion of the indirect impacts of commercial activity, for example, the biosecurity threat of translocation of pests from one part of New Zealand to another through aquaculture equipment.
- There was no discussion of the natural environment and intrinsic values.
- There were relatively few references to the New Zealand Biodiversity Strategy, and no reference to Conservation or National Parks Acts.
- The Environment paper also needed to indicate (in paragraph 18) that there should be a permanent legislative basis for protection.
- There was no discussion of systems to deal with competing interests, particularly no discussion of the impacts of the 'first in first served' effects of the Resource Management Act.
- Serious information gaps are present in this area, but there was no guidance on how to act in the absence of good information.
- There is concern about the limited approach of the Marine Reserves Act and its narrow focus. The broader approach to marine protection for a wider range of values would be addressed in the Oceans Policy but our expectation in this regard was not met in the paper.
- Insufficient regard was given to cumulative impacts with respect to visitors (numbers, timing, activities), recreational activities, commercial users/traders, boaties/transportation.
- There was insufficient reference to the serious impact of illegal activities on the oceans and ocean management in the papers. There were also assumptions about the effectiveness of the quota management system which is based (for many species) on a very fragile information base (with respect to biological or ecological knowledge for single species, much less the interactions between species).

Issues around fisheries management

- The further involvement of regional councils in fisheries management raises capacity and expertise issues.
- Forty stocks are currently below sustainable levels, which points to the need for better evaluation of stock levels.
- Oceans Policy could influence the setting of quota for new and existing fish species, to help avoid quota being set below sustainable levels. In many cases, this will depend on better information. At the moment, we often don't know what the stock levels are, and some stocks have been significantly reduced as a result.
- Many whales have been hit and killed on the Northland coast recently. Shipping companies need to be educated on more vigilance during migratory seasons. By-catch should be brought ashore for inspection and either used or returned to the sea.
- Customary and recreational fishing resources could be managed solely by a local statutory authority for example a runanga with local knowledge. It could administer enforcement.
- The quota management system and management of customary harvesting by Tangata Tiaki/Kaitiaki are marine protection tools in their own right, over fishing is an environmental effect.
- There are concerns with the reference to customary harvesting in paragraph 46. The management of customary fishing, including the cumulative effects, is the role of Tangata Tiaki/Kaitiaki.
- What is the rationale for treating marine mammals differently from other marine species?
- The environmental effects of fishing are not managed well, the Oceans Policy should provide a framework to address this.
- Decisions about managing the environmental effects of fishing require an understanding of how the whole marine system (both the ecosystem and

management system) works, including how the rights-based regime for stock use works.

- The tools and regulations are already available to deal with all aspects of fishing (including environmental effects), but there is no framework or overarching mechanism to guide decisions across the range of values and interests related to fishing. (The Fisheries Act fails to do this, as it goes straight from principles to identifying levels for fish stocks.) This leads to ad hoc decision-making.
- Other values apart from fish extraction need to be considered in the fisheries management system
- The definition of 'sustainable' yield should take account of wider ecosystem levels, not just the sustainability of the stock.
- The working papers' assessment of the quota management system is flawed because they assumed that the current framework is adequate or sufficient. The quota management system has not been successful in managing either fish stocks or environmental impacts. The problems are not caused by the system itself, but as a result of its implementation. The implementation needs to be independent from commercial interests.
- It is important to separate discussions about the quota management system and government decisions about catch levels.
- There are mixed opinions on the effectiveness of the quota management system. Some think the system is good and others don't. Yet others think that it is a good tool in theory but that the system is too difficult to work. Most problems identified with the quota management system relate to it being based on single stock management. Even people who think that the quota management system is the best available tool to manage fisheries, admit the environmental effects of fishing are not managed well. It seems that Oceans Policy is a good place to address this problem. Ecosystem-based monitoring needs to be included in fisheries management, but on the other hand the quota management system becomes difficult to work when you try and manage ecosystems.
- More thought needs to be given to how the quota management system relates to oceans management as a whole: what is the system driving and what issues is it creating? (For example, technical mistakes, philosophy, incentives in the system.)
- The Resource Management Act has the tools to deal with the environmental effects of fishing, but councils do not usually use the tools because they are difficult to implement (and prone to being challenged in court).
- The status of many species currently described as 'by-catch' will change when new quota management programmes come into effect. These species will also have to be managed inside the quota management system.
- It does not seem like a good idea to devolve fisheries management plans to the people who benefit from exploiting the resource. Fisheries management should instead be under the control of government.
- Fishers should be held responsible for damaging the environment and should assume the burden of proof.
- Marine reserves are necessary to manage the effects of fishing and for replenishment.
- The oceans should not be considered to be a convenient dump for waste material.
- Environment Court judges or independent commissioners should have some marine knowledge. They should have a working knowledge of fisheries management and the like. There should also be independent Maori commissioners.
- It is not as difficult as people seem to think to start assessing the interaction of fisheries extraction with the rest of the system, especially from a trophic point of view. There is a piece of work that is going to be published shortly entitled 'Pilot trophic model for subantarctic water over the Southern Plateau, New Zealand: a low biomass, high transfer efficiency system' which should help. An approach such as this could be the basis for independent investigations of the reliability of the conclusions in order to weigh up its value in decision-making.
- Oceans Policy needs to be very careful not to displace fishing pressures into smaller and smaller areas.

Feedback from stakeholders – not Government policy

Use of words

- Some stakeholders think that 'protection' is a difficult concept, particularly when it is unclear what is being protected. Even when areas are protected from extractive human uses, there are still impacts on the areas from the people who visit them. We need some controlled experiments to try to find out what the effects of different tools are.
- 'Natural hazards' is not a good term to use because the hazards are not natural, they are human-induced. For example the Timaru port has had a huge environmental impact. Coastal hazards are not threats to the actual system, they are natural coastal processes.
- Para 3, second bullet: '*decoupling economic growth from pressures on the environment.'* What does this mean in practice?
- What is being referred to by a 'Government Sustainable Development Programme'? Is this apolitical or a development of this particular Government?
- The word 'monitoring' is often used too lightly. It should only be used in the context of there being rigorous analysis of the ecosystem state in relation to parameters that are indicative of this state. Only then should any monitoring be proposed. In such a context, monitoring need not be expensive.

Comments on Working Paper Five: The Land-Sea interface

General comments on the paper

- Greater promotion, encouragement and support for industry and landowner initiatives to promote sustainable land management would have significant benefits for oceans management.
- The Whangamata example in the paper is probably more about mangroves than sedimentation directly, though the two things are linked.
- Identify more fragile components of estuarine ecosystems, to provide a more balanced perspective to this issue.
- There is a perception that the 'big projects' will go through even when the public/community don't want an activity in their area.
- Development of good practice tools for decision-making, and sharing of information will assist when there is a lack of information.
- Wider and more up-to-date information sources than the 1997 NZ SOE report should have been used when writing this paper.
- Many of the issues identified have been a problem for a long time, being identified as problematic in 1924.
- The paper seemed so focused on the Resource Management Act that it overlooked the possibility of using the Conservation Act or the National Parks Act. There is potential for these pieces of legislation to be modified to enable better interface management. Some of the National Parks have considerable sea coasts and there is potential for strong gains in parts of the country where there are few human impacts. There was almost no reference to areas with low human impact/modification.
- The land-sea interface is definitely an issue, but the problems are not insurmountable. It seems to be an attitude problem as it is quite possible to develop rules to manage the process and enable decisions to be made (a socio-political issue).
- The paper was much too simplistic. The quote, '*conserve the land and you will conserve the sea. Make a link between the two',* is alarming. Conservation of terrestrial features will not solve overfishing, inappropriate coastal developments and dumping of sewage, for example.
- There needs to be more discussion of 'reverse sensitivity'. This may become important in the aquaculture area because established marine farmers need clean water to be able to farm. Marine farmers may ask for compensation if the water in their area becomes polluted.
- The hydrological cycle – the very significant role of water passing through the land and freshwater systems to the sea – seems to have been forgotten.

Resource Management Act issues

- Fresh Water plans under the RMA address improvements in water quality, which ultimately affects the quality of water discharged by rivers into the coastal marine area.
- More collaboration between district and regional councils would be helpful. It would be good if more coastal environmental plans were formed (for the whole coastal area), because councils collaborate with each other to form them which promotes good working relationships.
- Provisions exist for the transfer of powers. Jurisdictional boundaries can be overcome in a manner that suits the local dynamics. For example, noise control within the confines of Tauranga Harbour has been transferred to Territorial Authorities. These provisions have not been used as extensively as they could be.
- District plans cannot regulate against existing use rights but regional plans can.
- There are many problems concerning the implementation of the RMA and the societal pressures that act upon the process. If the community wants to maintain the existing coastal environment, hard decisions will need to be made.

- The objectives of the RMA with respect to natural hazard management are not particularly clear.
- The benefits of flood management schemes need to be recognised.
- Lower tier statutory documents under the RMA have been developed and implemented in a random way. There has not been adequate guidance from central government on how matters of national importance should be provided for. It is critical that institutions and agencies implementing and enforcing policy decisions are clear about their respective roles, are given appropriate incentives, and are adequately funded.
- Paragraph 13 describes the loss of natural character and amenity values as being a result of council difficulty in making the trade off between coastal development and natural character. This over-simplified the issue and failed to grapple with many of the more systemic underlying problems including:
    - the lack of any national definition of what natural character or outstanding landscapes are and what councils should be trying to protect
    - the lack of any nationally consistent system to identify areas of significant natural character or outstanding landscapes
    - the difficulty councils are having in protecting these areas under the RMA once they have been identified and the council has decided to provide protection (as demonstrated in the *Arrigato* Case in relation to Pakiri Beach).
    - the inability of regional and district plans prepared under the RMA to effectively address cumulative effects given the relative ease with which consent can be obtained for non-complying activities.
    - the lack of a workable framework to protect nationally significant areas of natural character and outstanding landscapes on privately owned land. This requires stronger planning protection than is currently provided under the RMA as demonstrated in many other countries around the world. The current statutory framework fails to provide adequate tools to effectively protect these areas.
- The last sentence in the working paper states,'In some cases, the human and financial capacity of agencies may not be sufficient to deal with problems effectively'. The use of the word 'effective' in this section of the paper ha stet a subjective connotation. Smaller councils must prioritise how they allocate limited resources, which involves, among other things, assessing how serious a problem is or may be and what is an appropriate level of action to take. In regions with smaller populations, there is less pressure on the coastal environment, and so the scale of problems may be smaller than in more highly populated areas. Instead of using the term 'effective', it would have been more appropriate to state that some agencies may not be able to (or need to) deal with some issues as quickly or comprehensively as larger-resourced councils.
- The Resource Management Act is not fundamentally flawed, rather it is not implemented well. There is a need for all mechanisms, including national policy statements and provision for national environmental standards, to be better implemented. There is also a need for more time to allow the full raft of first generation statutory documents to become operative.
- Improvements are required in the implementation of the RMA, particularly in relation to the coastal marine area (para 23). Paras 24 and 25 correctly identified the problem of councils not wanting to take unpopular decisions. That problem is exacerbated where the required action will not only be unpopular, but costly.

National guidance

- There can be a problem with stormwater/catchment plans, local government and central government should work together on this problem.
- The paper indicated that land-sea problems should be assessed on a case-by-case basis, that local authorities are best placed to deal with them, and that it is hard to identify any national priority for ranking issues. However, many of the issues related to the management of the coast are systemic (as indicated above), in that the same underlying issues are affecting numerous local authorities, and local authorities struggle to address these issues individually. A case-by-case approach is unlikely to generate any significant change in a timely fashion. A more strategic approach,

driven at a national level, is required for a substantive change in current practice and outcomes. There are also clearly issues of national importance associated with coastal management, which require national direction, and one of the mechanisms for this is national policy statements.

- The paper referred to 'some scope' for central government to take a more proactive role. It is imperative that there is much stronger central direction to guide coastal management, particularly in relation to the identification and protection of significant natural areas of the coast. It is neither effective nor practicable to leave the protection of nationally significant resources solely to the limited resources and expertise pool of individual local governments without significant national direction and support.
- Land-sea interface problems do need to be assessed on a case-by-case basis, however, matters identified in section 6 and 7 of the Resource Management Act need to be given national priority. There will be aspects of these matters that will not change much from region to region. Where this is the case, direction and guidance from central government is important, and these matters must be given priority.
- There needs to be more guidance on matters of national significance, so that when 'big projects' arise, there are consistent provisions in statutory documents and guidelines for politicians.
- While lack of guidance is an issue, possibly a more important issue is the lack of timely guidance. There seems to be a large lag time between issues arising and solutions to deal with them. Overall a far more responsive central government would improve oceans management.

Hazards

- While an increase in the danger of hazards is important, equally important is the overall increase in the number/value of assets at risk as a result of ongoing inappropriate development. Sea level rise, increased storminess and erosion are foreseeable today yet many Territorial Authorities are failing to manage the problem properly. The use of s 36(2) of the Building Act may absolve those councils of liability for damage to the assets but it does little for good sensible planning. The problems are being deferred to future generations to tackle when large-scale damage becomes an issue.
- Increased development on the coastal fringe and human responses such as sea walls are putting significant pressure on the environment. Such responses may harm the environment and also be prone to failure.

Missing from the paper

- The paper did not specifically identify public health concerns, which do arise from sewage disposal, or the direct link between marine pollution and economic costs, whether through cleanup costs, closure of fisheries, public health impacts or negative impacts on tourism numbers.
- Small population centres, such as those in the Coromandel or Bay of Islands, regularly experience huge temporary population peaks due to high visitor numbers in the summer months. This has implications for public amenity values (overcrowding, access), leads to increased pressure on marine ecosystems and to risks regarding waste management and disposal. For example, the local sewerage system may not be able to process waste efficiently or larger quantities of waste will be pumped out to sea.
- The paper failed to address the protection of outstanding natural features and landscapes in the coastal area. This is a critical issue in terms of New Zealanders' connection with the coast and sense of identity, as well as having economic implications in terms of our tourism industry and branding of New Zealand goods overseas.
- The conclusions in the paper appeared very weak and failed to adequately grapple with the significance of the issues.
- The conclusion made no reference to the protection of significant landscapes and areas of natural character being issues of particular relevance to the Oceans Policy. These are critical issues and should have been explicitly referred to.

Cumulative impacts

- Regional Councils often have to deal with a number of Territorial Authorities which have different approaches to non-point source discharges. This makes the problem of cumulative effects even more difficult.
- It takes time for chemicals that run from the land to the sea to be diluted by the oceans and in the meantime the chemicals may be having adverse impacts on the marine environment.
- Time is a factor in the land/sea interface. The effects of a build up of chemicals takes a while to be noticed, and even longer for the effects to die away.
- There was no reference to nutrient cycles and the role of human modification through the addition of nitrogen to New Zealand terrestrial systems and the downstream impacts was not discussed.
- The use of the term 'sedimentation' perhaps obscured the fact that much of the discussion was referring to soil erosion.

Boundary issues

- Boundary issues (particularly those that relate to the mean high water mark) need to be clarified urgently.
- Councils have many small problems with boundaries over the interface between the land and the sea. These problems all take a lot of time to deal with. Small councils should not have to sort out some of these problems themselves, especially if they are just re-inventing solutions that other councils have worked out. Examples of problems are: horses on beaches, jet-skis (the noise for people on the beach), natural character, privacy issues, dogs and vehicles.
- The North Shore District Council has a boundary down to the low water mark. This change was made because it was under pressure to deal with dogs on beaches. This 'buffer zone' could be made rateable. Often councils are not aware of how to do this. If a buffer zone is under the jurisdiction of two councils, people who want to build may have to go through two consent processes. This 'double dipping' would discourage investment.
- Boundaries become more difficult to identify in coastal areas with low gradients (where cliffs don't drop vertically to the sea). In addition, in the coastal marine area there are different assumptions about the use of land on either side of the land/sea boundary making management more difficult.

Capacity issues

- Regional councils often do not manage the land/sea interface well because they lack the knowledge to do so. Examples of problems include:
    - regional councils remove weeds in spring, when many fresh water species eat the weed, the shrimps that live in the weeds or spawn in areas of native water rushes.
    - the straightening of the rivers and streams is increasing the velocity of water movement, washing away more of the banks downstream.
    - the hidden damages of pine forests on the marine environment
    - the lack of protection or definition of intertidal areas.

Access to the coast

- Lack of access to the beach for recreational purposes is a major problem now and will get worse in future.

Comments on Working Paper Six: Marine Biosecurity

General comments on the paper

- We should apply the same strict vigilance to landed imports to all kind of marine vessels and their activities within our economic zone.
- It is important that Oceans Policy and the Biosecurity Strategy work together.
- The statistics that are quoted for the seafood and tourist industries present a kind of comparison, but the parameters given are not directly comparable. The mismatch needs to be rectified.
- The section on hull cleaning/fouling in the appendix needs to be updated.
- Capability and research/information needs to be highlighted again. The conservation sector does not have an industry sector that is in a position to fund research or biosecurity developments.
- No recognition or provision was given to kaitiakitanga and its relevant contributions to current environmental management and biosecurity management.
- There is a need for a tool for surveillance and control/eradication if necessary/appropriate.
- A Reserves Act for the sea is needed, extending to the outer boundary of the EEZ. Also needed is indepth consultation with local iwi in the resource consent application process. Applicants and local bodies should visit local marae, not just send letters.
- National coordination of biosecurity issues is critical.
- Current commercial fishing practices do not meet the Maori world view.
- It is interesting that the Department of Conservation's recently released draft Nga Akiakitanga Nuku Maori was mentioned. Some groups have presented DOC with proposals for management but have been turned down.
- The Biosecurity Act should be amended to include a Treaty of Waitangi clause to meet the need for consistency in Crown agencies working with tängata whenua; and require recognition and provision for tängata whenua input into decision-making and management processes.
- There are concerns with the way MFish and the Ministry of Agriculture and Forestry (MAF) (both designated lead biosecurity agencies) will work with tängata whenua. MAF do not currently have a strong record of working with tangata whenua.
- The current focus of biosecurity should move from protection of primary production to a better balance that includes tängata whenua values. Decision-making criteria should have taonga, including mahinga kai as a major consideration.
- A biosecurity management framework exists on land but not in the oceans, meaning that the cost of incursions in the sea spreads to those who do not exacerbate the problem. Consideration is needed of means to overcome the 'affected party pays' syndrome.
- There also needs to be a discussion about translocation of pests within New Zealand (the paper focused on international translocation).

Public awareness

- All New Zealanders need to be educated on marine biodiversity, kia ora tonu te mauri o nga moana. Kia ora tonu nga tamariki o Tangaroa. The meaning of these expressions for Maori is about the sustainable use of the sea. MFish, MfE and DoC cannot be expected to manage all introductions of new marine organisms. All sea users should report changes to government agencies and iwi.
- Not only do New Zealanders need to be educated regarding marine biosecurity, but so do international visitors. Overseas fishing boats, cruise ships, yachts and individual visitors who may use the marine environment all need to be educated about the importance of marine biosecurity and steps they should take to assist.
- Public participation in biosecurity decisions and management needs to be examined closely. Members of the public often spot biosecurity incursions before officials do.

Roles and responsibilities

- It is unclear what roles different agencies play in protecting marine bio-security and whose responsibility it is.

Feedback from stakeholders – not Government policy

- MAF and MFish are too involved in the area to be objective about biosecurity. Because MAF has the central role in biosecurity (even though MFish is also listed as a lead agency) insufficient attention will be paid to the marine environment. Also, the marine issues MFish will focus on will primarily concern impacts on the productive sectors (namely fishing and aquaculture) and not give sufficient regard to intrinsic or conservation values and the indigenous flora and fauna.
- Will the development by MFish of its own marine biosecurity strategy achieve the desired outcomes for other interest areas (DoC, Ministry of Health etc) and provide the understanding of their needs/information requirements ?

Comments on Working Paper Seven: Marine Cultural Heritage

General comments on the paper

- A Reserves Act for the sea is needed, extending to the outer boundary of the EEZ.
- The reference in para 31 to tools under the Fisheries Act should, again, have been coupled with an acknowledgement of their unworkability.
- The potential tourism values of marine cultural heritage provide an additional incentive for protection. For example, the Rainbow Warrior wreck is a tourist attraction in itself and there are opportunities for tours of sites of significance such as the anchorages of Abel Tasman and Captain Cook.
- This paper focused on historical sites and faileds to address the wider New Zealand cultural context of the coasts and oceans.
- The application by regional councils of rules to protect heritage in the coastal marine area has been uneven. The upgrading of heritage to a matter of national importance proposed by the present Resource Management Act Amendment Bill may assist in this. However, the National Coastal Policy Statement is weak on heritage and needs to be upgraded to ensure a better and more even outcome.
- The ability to create marine reserves on heritage grounds could be of value. However, such reserves would probably only protect the outstanding sites rather than the ordinary. The greater part of the sum of marine cultural heritage might in fact be concentrated on the ordinary
- There is an issue about protecting heritage from effects of people's activities, and from effects of the marine environment. The environment itself is hostile, both to structures and to sites on soft shorelines. The qualification 'where practicable' is relevant to marine cultural heritage protection, although it should be applied more in relation to the difficulties of providing protection from natural conditions and processes, and less to issues relating to people's activities.
- The working paper stated that a strong theme emerging from the public consultation is the 'strong connection of New Zealanders with the oceans'. Whilst this is the case, this attitude has a detrimental outcome for maritime historic heritage. It tends to manifest itself in an attitude of open availability and participation – we have the right to access all parts of our seashore and everything that is on it, to pick up shells and so on. The attitude carries over to shipwrecks. Because they are in the ocean, they are available to all, and anyone has the right to take artefacts or items off them.
- The statement in the paper that '*Any activity in the coastal marine area must be authorised by a rule in a regional coastal plan',* is not correct.
- Regional councils have responsibility for historic heritage in the ocean. One council in particular, the Auckland Regional Council, is providing an excellent model of recording, protecting and advocating. Few others are giving much attention to this area of responsibility. The application by regional councils of rules to protect heritage in the coastal marine area has been uneven. The upgrading of heritage to a matter of national importance proposed by the present Resource Management Amendment Bill may assist in this. The National Coastal Policy Statement is weak on heritage. Without upgrading that as well, a better and more even outcome will be compromised.
- There is a need to provide resources for research and protection.

Historic Places Trust

- One important issue is the lack of resources available to the Historic Places Trust to be involved in resource management processes or, in fact, in compliance processes of their own.
- The limited resources of the Historic Places Trust constrain the Historic Places Act registration process. It is unlikely that the Trust will be able to adequately reflect local historic significance because of its national concentration and its limited resources. Better use of the RMA in protecting heritage sites would allow local views on significance to be taken up.

Maori cultural heritage

- The RMA already allows for protection of Maori heritage as a matter of national importance. The problem is with uptake by councils. Maori should be the decision-makers.
- Much iwi heritage is at the land-sea interface. This raises the following points:
    - the need to make sure that the definition of cultural heritage includes what Maori consider valuable
    - the need to look to the Treaty
    - the need to incorporate traditional protection tools
    - the Historic Places Trust has a narrow focus on land and often neglects wahi tapu.
- The paper did not consider that much of the cultural heritage of iwi is located at the interface of land and sea.
- The best means to manage and protect Maori cultural heritage is by enabling iwi to be the decision–makers.
- No reference is made to the Mataatua Declaration, nor to the relevance of the Treaty of Waitangi in respect to cultural heritage protection.
- Comments on terms in the Marine Reserves Act were not entirely accurate. Non-extractive uses such as those carried out in a marine resource can and do have negative impacts on Maori cultural heritage.
- It is impossible to discuss the means of protecting marine cultural heritage without reference to the Treaty. The assertion that 'land in the coastal marine area is held by the Crown' is a clear denial of kaitiakitanga. If Maori 'ownership' of the marine area were acknowledged in law, and appropriate statutory mechanisms put in place as a result, rights and responsibilities in relation to protection of marine cultural heritage would be crystal clear.

Protection tools

- There is a need to make sure that the definition of cultural heritage includes what Maori consider valuable. The Historic Places Trust has a narrow focus on land and often neglects wahi tapu.
- The fate of some items in the sea is to be lost to corrosion or decay. Recovery of some of these may be justified. However, it is never justified if the conservation facilities are not available to deal with them. New Zealand is poorly equipped to deal with the conservation of iron and steel artefacts recovered from the sea and cannot deal with larger timber objects. Without greater capacity, particularly for iron objects, the full range of heritage protection options will not be open to us.
- It is important to note that the archaeological authority process in the Historic Places Act applies to events, not vessels. It applies only to wrecks where the event of that wreck occurred before 1900. In other words an 1872 vessel wrecked in 1901 would not be included in the authority process. The archaeological provisions of the Historic Places Act were not designed for the permanent protection of sites. This is because of private ownership rights on land. It is not realistic to expect to change the nature of the provisions for land-based sites. However, more permanent protection for marine sites away from private land title might be possible.
- With regard to developing protection tools outside territorial waters, major capacity and expertise issues would arise with regional and local authorities having any jurisdiction outside their current boundaries.
- The ability to create marine reserves on heritage grounds could be of value. However, it would only be likely to protect the outstanding rather than the ordinary. The greater part of the sum of marine cultural heritage might be concentrated on the latter.

Information and education

- More resources should be provided for research and protection.
- There is an issue around the lack of education on the value and significance of maritime historic heritage. Until a resource is understood it will not be valued, and thus will not be protected. The common perception is that maritime archaeology is

shipwrecks, however, New Zealand coastal waters contain a considerable range of other heritage sites of both Maori and European origin. These include military sites and features dating from the 1880s, wharves, landing sites, and Maori sites such as landing sites and fishtraps.

- An important research tool not noted in the paper is the New Zealand Archaeological Association Site Recording Scheme. It currently contains 90 shipwreck sites, and over 100 other items in a maritime context, such as wharves and jetties, Maori fish traps and landing sites, military use sites and others. The site recording scheme is not comprehensive.

Salvage rights

- The persistence of salvage rights to wrecks was not covered. It appears these persist sufficiently long that the salvage becomes more a matter of artefact recovery for vicarious pleasure or commercial gain as marine antiques rather than commercial salvage. Some earlier expiry of these rights is desirable to protect the heritage values of wrecks.

International instruments

- In addition to the three key international instruments cited in the paper there should have been a fourth: UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris 1970). New Zealand is not a signatory, but we should be. The convention aims to restrict trade in antiquities, including artefacts from shipwrecks.
- The Treaty of Waitangi and the Mataatua Declaration are relevant international documents.

Comments on Working Paper Eight: Participation in Oceans Management

General comments on the paper

- The Marine Mammals Protection Act has been missed out of the appendix and it warrants inclusion.
- Public participation at roundtable conferences, pre-hearing and on site meetings have more immediate resolution than formal hearings.
- It is important to manage expectations (ie, clearly specify the extent to which the public can be involved and the extent to which they can influence outcomes).
- Decision-making criteria should be made known to the public and clear reasons given when decisions are made.
- The degree of technical information involved in consent and planning decision-making makes it difficult for the public to be involved in decision-making.
- Oceans Policy needs to recognise that muchknowledge exists already within the public domain. There is, however, a need to target information at groups that pose particular threats to the sustainability of oceans.
- There is support for increased clarity and public involvement in oceans management. Increased clarity in terms of rights and responsibilities is considered extremely important for tourism operators who require certainty around their business operations.

Iwi participation

- Public participation should come at a lower level than tangata whenua participation in decision-making.
- Maori need to participate in decision-making. Consultation with Maori cannot replace Maori management of the oceans.
- A clear distinction must be made between the interaction of iwi and the Crown (including Crown delegates, such as local authorities) as Treaty partners, and opportunities for public input. The paper did not make that distinction clear.
- The dearth of time, human and financial resources available to be applied to these tools is a significant issue. They are the reasons for poor take up of customary management tools such as taiapure and mätaitai. However, the poor design of statutory/regulatory processes for implementation of the mechanisms has posed the greater problem.
- As well as reasons of resources and time, the lack of iwi participation in planning is also due to:
    - the Maori belief that they own the seabed and should control the resources, not just be participants in the process
    - lack of trust of organisations that Maori believe to be Crown agencies, based on past grievances.
- There is a lack of awareness in government, of Maori concerns and role in management, and of existing iwi management provisions.

Resource Management Act consultation issues

- People who are not affected by a decision should not submit on it. At the moment environmental groups get their members to make submissions on projects even if they live at the other end of the country.
- At resource consent hearings there is a reluctance to accept the views of people who are not university educated.
- Extreme, unreasonable, commercially driven or vexatious objections or appeals frustrate the decision-making process.
- Public participation in decision-making is important, however, drawn-out consultation processes can lead to cost increases that cannot be justified.
- At a local level, councillors/commissioners often fail to take into account views of submitters. There is also a lack of opportunity for public participation in decision-making.

Comments on Working Paper Nine: Adapting to Future changes

General comments on the paper

- There was disappointment at the rather limited views expressed.
- It would be prudent to be proactive by lowering recreational bag limits now for all species important to recreational fishers. This also highlights the importance of good fisheries compliance.
- The greatest contribution this generation could make to the future is to resolve the question of Treaty rights and responsibilities.
- The increasing number of coastal subdivisions may result in an increased demand for coastal structures that landowners perceive will protect their capital investments (eg, houses) against coastal hazards.
- One future scenario that should be considered is that the oceans are held in customary title and managed in accord with customary authority. Exploration of this scenario may help iwi, the Crown and the public understand the kind of changes that will be required. It may also help to inform current changes taking place under the Oceans Policy framework.
- Population concentration is the biggest current threat to our inshore oceans.
- It is more important for Oceans Policy to deal with challenges that currently exist, rather than putting too much emphasis on trying to determine and provide for possible future challenges. Good information is crucial for good decision-making, where information is not sufficient, a precautionary approach should be taken.

Climate change

- Planning for the impacts of global warming where information is uncertain is difficult. This leads to difficulties for councils in planning, particularly in presenting defendable standpoints in the face of societal pressures.
- Climate change may mean that people have to rely more on ocean resources, this point was not raised in the paper.

Tourism

- There is an apparent lack of awareness of the impacts of tourism such as: numbers and timing of visits, types of activities, expectations, carrying capacity and cumulative impacts (and the commercial drivers that influence subsequent decision-making once expectations have been raised).
- It is important to note that visitor numbers throughout New Zealand are forecast to increase at a much faster rate than the general population. Many of these visitors will spend some time in a coastal area or areas. The latest tourism forecasts predict that New Zealand will receive an additional 33 million visitor nights by 2008. This will have substantial implications for New Zealand's infrastructure, environment and oceans which need to be planned for.
- As well as overcrowding, recreational values will be challenged by new and conflicting uses. This already occurs, for example, jet skiing versus kayaking versus water skiing versus diving.

Resource Management Act issues

- Where uses clash, priority should be given to uses that clearly have national benefit. Priority should be articulated by central government.
- The RMA is not a reactive system and is not well suited for future planning. The definition of effects in the RMA includes future and cumulative effects. The issue is more a lack of information on impacts from activities. A precautionary approach is therefore important. There are some activities where past and present effects are sufficiently known to be able to predict likely future effects. Central government can provide guidance on management of these effects through instruments such as national environmental standards.

Competition for space

- There is an issue with how clearly rights are specified and especially their limitations. How many new opportunities may be constrained by previous permissions that convey more rights than are needed for the particular activity?
- Competition for space rarely, if ever, occurs within the EEZ at the moment, so do we need to have new processes to resolve potential conflicts in the EEZ at this stage or in the foreseeable future? The only major competitive problems that might arise will be if the new Marine Reserves Act is passed into law in its current form. This is unlikely, but still there will be a need to resolve conflicting interests if large reserves to protect the common and widespread [what?] within the EEZ are promoted. Clear principles do need to be established in the event that such issues do arise in future, in particular with likely increasing competition for exclusive occupancy of space within the territorial sea.

Comments on Working Paper Ten: Encouraging New Opportunities in the Oceans

General comments on the paper

- Discussions about future opportunities focus on future *economic* opportunities. There needs to be a discussion of environmental and other services that the ocean provides, such as non-consumerist, instrumental and intrinsic value.
- The marine management system needs to be adaptive to be able to deal with future uses.
- The section in the paper that discusses the 'allocation of space and conflict between activities' could have been expanded to include: rights to space, rights to resources, and rights that pre-empt new opportunities.
- A precautionary approach must be applied where uncertainty of impacts of uses exists, but not in a way that frustrates decision-making.
- New economic development should be encouraged to obtain environmental information.
- The nature and extent of iwi rights in oceans must be addressed as a prerequisite to encouraging new opportunities in the oceans. Without this knowledge there is no certainty for investors, and future development of marine resources will continue to be hampered by 'adversarial or claimant behaviour'.
- Opportunities or uses must be assessed against cultural criteria (protecting tängata whenua values and rights) as well as environmental, social and economic criteria. Economic opportunities should not impede whakapapa or wahi tapu

Fishing

- Deep sea fish farming should contain the fish natural to that area without artificial feeding. Perhaps they could be moved seasonally.
- Offshore fishing could be viewed as seasonal.This would mean fishing when fish are fattest and not spawning.

Resource Management Act issues

- The 'first come, first served' basis of the current consent process means there is no agreed means of prioritising to choose uses with minimum effects or minimum impingement on other uses.
- A key role of Oceans Policy is to articulate where uses need to be prioritised, and to ensure processes are developed where conflicts need to be resolved.
- There are tools in the RMA that can be used to determine best value use of the ocean. National Policy Statements, National Environmental Standards, and provision of sections 6 and 7 could help.
- Where uses clash priority should be given to uses that clearly have national benefit. Priority should be articulated by central government.
- Obtaining best value would be assisted by the use of occupation charges. Central government assistance with this was needed five years ago. There has been none and therefore charges have not been implemented yet.

Shipping

- Many problems arise from the management of shipping. Tensions are created by the needs of shipping for port developments, channel dredgings, operational discharges, and occasional accidents and spills and the transfer of organisms by fouling and ballast water.
- There are difficulties in extracting money from shipping to pay for externalities.
- The international nature of shipping means it is controlled primarily by international regulation, and domestic requirements such as the RMA rules are not applied to shipping, although RMA regulations under the Marine Pollution Regulations attempt to apply MARPOL Convention requirements within the territorial sea.
- It is difficult to enforce RMA regulations on shipping which is better controlled through flag states agreements to ensure vessels adhere to port state requirements. If the

difficulty could be overcome, however, biosecurity concerns such as ballast water discharges in ports could be addressed using the Resource Management Act.

Energy issues

- Renewable energy uses are likely to be controversial areas in management and development of the ocean resources. The importance of renewable energy as signalled by the Government needs to be factored into prioritisation of use of ocean resources.
- Future power generation possibilities should definitely be brought into the equation.
- Other previouslyunrealised opportunities also need to be provided for. A pertinent example would be the possibility of deriving energy from gas hydrates offshore from the eastern coast of the North and upper South Islands. Any policy should establish clear parameters to enable such a development subject to take appropriate risk management measures.
- Petroleum exploration activities, whilst capital and technology intensive, range from initial 'minimum impact' remote-sensing activities, followed by drilling which is both short duration and localised. Where successful, follow-on developments impact on very small 'footprints' and can be completely restored after a few decades at most. Right of tenure is exclusive among competitors in the petroleum exploration and production industry, but is of finite term and does not exclude other uses– stet in the immediate vicinity. (Exclusion is generally for safety reasons, evidenced by exclusion zones around offshore installations and petroleum pipelines.)
- The first 10 years of any new Oceans Policy will coincide with the need to find and develop more gas if a reliable, economically beneficial and 'climate change friendly' electricity supply can be maintained and indeed increased to meet forecast demand. The efficient discovery and development of further oil resources offNew Zealand's shores would also provide significant economic and social benefits and opportunities.
- The competition for space between competing users is not currently significant with regard to petroleum exploration and mining. However, the introduction of the Marine Reserves Act may mean more conflict, althoughpetroleum permits are only held for very localised areas of coast.
- The working papers signalled key reforms. These should not compromise the ability of existing petroleum mining license holders to exercise their rights. These licenses apply to a limited number of localised areas, represent significant investment and must be protected.
- The utilisation of New Zealand's existing gas resources and identification of new ones is currently a matter of national significance and will become even more so with projected increases in energy demand. Oceans Policy needs to recognise this importance and must not introduce additional barriers and constraints. In the working papers, the role of petroleum mining appeared to be overshadowed by consideration of more marginal energy options such as wave power and offshore wind power.

Other economic opportunities

- The security of all submarine assets should be coordinated and managed in an integrated manner, by one institution mandated with enforcement. The principles and protections established in the Submarine Cables and Pipeline Protection Act 1996 should be retained and enhanced and more sophisticated positioning equipment for fisheries technologies could also help to avoid damage to submarine cables.

Comments on Working Paper Eleven: International Oceans Issues

General comments on the paper

- Reference should have been made to those international agreements and conventions dealing with the rights of indigenous peoples and their relationship with their resources.
- The process for implementing international conventions that the New Zealand Government has signed up to, within a territorial sea, is unclear. How are these to be implemented, who is responsible, and are other countries implementing them?
- Care must be taken to ensure free and safe passage of all international shipping in areas such as Cook Strait, which is an international shipping route. Constraints should not be put on any types of vessels because of ill informed and perceived threats by any pressure group.
- Need to check alignment within the territorial sea (ie, under the RMA) with UNCLOS and MARPOL provisions relating to participation and pollution.
- Emphasis should be given to honouring the Treaty of Waitangi with the same vigour taken to honouring international treaties.

Participation in international fora

- Informed non-governmental organisations should have their philosophies and information about them aired in international fora.
- There is minimal participation of iwi in international fora affecting our oceans despite the obligations of the state to give cognisance to indigenous peoples in various conventions and treaties. Where indigenous representatives are present there is little accountability as to how these persons are appointed or their obligations to consult and report back to iwi.
- Maori are not consulted on international agreements, and as a treaty partner they should be.
- Maori should participate in international fora.

International Oceans Policies

- A critical oversight in the Stocktake document was the inadequate analysis of the various international regimes and laws which apply to New Zealand, what effect they have on our domestic legislative and management regimes, and how they are given effect to. When Australia developed its oceans policy, this analysis was published as a comprehensive stand-alone document. All stakeholders then knew exactly what could or could not be done in the various segments of the oceans domain. The Australian publication could be amended to fit the New Zealand situation, and published quickly.
- There has been a lack of attention to other countries' Oceans Policy work (eg, the USA's National Oceanic and Atmospheric Administration (NOAA)).

Comments on Background Paper One: Setting the Scene: New Zealand's Oceans-related Obligations and Work on the International Stage

General comments on the paper

- The section on International Maritime Organisation (IMO), states that 'New Zealand's Maritime Safety Authority has close involvement in the IMO's work, and can implement a wide range of international marine protection and navigational safety obligations through IMO enactments'. MFish is also working closely with IMO on the development of a convention to manage ballast water discharge and this convention is in its final stages of development.

OCEANS POLICY SECRETARIAT

WORKING PAPER SUMMARY
14 March 2003

OCEANS POLICY

Issues with the current oceans management system

The following summary should be read in conjunction with the eleven working papers that have been prepared on Oceans Policy issues:

Paper One: Information Issues
Paper Two: Ocean Use Rights
Paper Three: Maori and Oceans Policy
Paper Four: Environmental Issues
Paper Five: The Land-Sea Interface
Paper Six: Marine Biosecurity
Paper Seven: Marine Cultural Heritage
Paper Eight: Participation in Oceans Management
Paper Nine: Adapting to Future Changes
Paper Ten: Encouraging New Opportunities in the Oceans
Paper Eleven: International Oceans Issues

Our initial analysis suggests that many of the problems articulated in the eleven papers can be fitted into four broad areas. A common theme is the lack of integration between legislation, policy, decision-making, and activities in the marine environment. The four areas are:

1. Differing, and sometimes conflicting, philosophical drivers and objectives across key statutes governing oceans management

2. Some statutory gaps, particularly outside the 12 nautical mile limit

3. Implementation difficulties, or a failure to implement current laws in an integrated and collaborative way, by different agencies

4. The need for better information.

Differing philosophies

There are inconsistent statutory approaches to reconciling competing interests, achieving environmental protection, and involving the public in decision-making. This can lead to unnecessary divisiveness and cost. Particularly at issue appears to be integration between the Fisheries Act, the Resource Management Act (RMA) and the Marine Reserves Act.

Statutory gaps

This is a particular issue beyond the territorial sea. With the exception of rules under the Maritime Transport Act, there are limited statutory requirements for assessing environmental impacts of activities, or for public participation in decision-making. For example, the Continental Shelf Act does not provide opportunities for environmental assessment, public participation or setting monitoring requirements.

Also, there are no formal processes to deal with competing or conflicting uses (for example, use of a seamount for conservation purposes or for mining or trawling), or to enable new uses such as aquaculture. In the limited number of cases to date, decisions have been of an ad hoc nature and reliant on the discretion of Ministers and officials. With advances in technology, it is likely that these pressures will increase in the future.

Within the territorial sea, there are questions as to whether the RMA allows for good decision-making between competing uses (as opposed to decision-making between use and non-use), whether the Act is sufficiently able to deal with cumulative effects, and whether there are adequate statutory mechanisms within the Act or elsewhere for the protection of marine cultural heritage of national significance.

There are also differences across legislation in relation to decision-making processes, with the Fisheries Act in particular seeming to have less obviously transparent and participatory decision-making processes than some other legislation governing our oceans.

Implementation difficulties

Statutory (and other) implementation tools are not being fully utilised.

Although the RMA provides for strategic and integrated decision-making, there are questions of capacity at local authority level, and suggestions that the ‘political’ nature of decision-making can make it difficult for ‘hard’ decisions to be made. There are still serious problems with the land-sea interface, with increasing land-based sources of marine pollution.

There are clear suggestions that there should be more collaboration between central and local government (e.g. more involvement by the Ministry of Fisheries in coastal planning) and more guidance, for instance through more rigorous standards being applied and monitored through the New Zealand Coastal Policy Statement, or through other central government leadership.

There is a wide range of tools available to address Treaty of Waitangi issues and to ensure that Maori values are incorporated into oceans management and decision-making. However, there is still not much experience with how and when the various tools should be used. Both the Crown and Maori are still feeling their way, and need to learn more about which tools are best suited for different needs.

Implementation of the Fisheries Act has, to date, focused around managing particular fish stocks, despite the existence of wider environmental principles. The proposed Strategy for Managing the Environmental Effects of Fishing signals an intention to make more effective use of the tools available in the Act.

In other cases, there appears to be lack of clarity about what statutory (or other) mechanisms to use in what situation. For example, there is a range of mechanisms for protecting marine sites, but no overall strategy as to what mechanism to use when (although a Marine Protected Areas Strategy is currently being developed).

In the biosecurity area, there is not currently the capacity to deal effectively with prevention and incursions. A national strategy is being prepared to establish better connections between the different laws and institutions. This has particular importance for the marine environment.

Uncertainty about responsibilities around the mean high water springs mark boundary has proved frustrating for decision-makers.

Other implementation issues relate to enforcement capacity and lack of funding, skills or information.

Information needs

This is a two-fold problem. Firstly, we lack a shared understanding and approach to what data are collected and for what purposes. Secondly, there is inadequate accessibility and co-ordination of information that is already held. These factors make it difficult to assess the adequacy of our existing data-sets for management purposes, and perpetuate the need for unnecessary duplication of data collection.

If we address these problems properly, we can then identify our information gaps and give them research priority.

Better public information and education about marine and coastal issues would help people to understand their impacts on the oceans and improve compliance.

OCEANS POLICY SECRETARIAT

WORKING PAPER ONE
14 March 2003

OCEANS POLICY

INFORMATION ISSUES

Contents

Introduction

1 The Government's Sustainable Development Programme of Action reflects a commitment to using the best information available to support decision-making, addressing risks and uncertainty when making choices, and taking a precautionary approach.

2 Good information, fit for purpose, is required to make sound decisions and underpin a sustainable development approach to our oceans. This paper examines the current management of our marine information and investigates some of the issues arising.

Information outcomes for oceans

3 A fundamental part of the vision for our oceans is that New Zealanders understand marine life and processes. Without this understanding it will be difficult to achieve our goal of best value for the oceans – especially the aspects relating to wealth creation and protection and restoration of ecological integrity.

4 A key outcome for an Oceans Policy must therefore be a much better understanding of the highly dynamic, diverse and complex system we are trying to manage. This will involve collaboration by managers and users of marine information to promote better collection, management, sharing, access, use and interpretation of data, and more effective coordination of research.

The current management of oceans information

Data collection

5 Many different agencies and community groups collect data and information about various aspects of our marine environment, for a range of different purposes[1].

6 Many data-sets already exist, at a number of different scales, to assist specific management questions. These data-sets quantify a wide range of social, economic, environmental and cultural factors relevant to marine management, such as:

- commercial fish stocks
- non-commercial species
- protected species
- pests and weeds
- land-based pollution, sedimentation, erosion

[1] Information about the range of data collection agencies, and the types of data they collect, is summarised in a number of reports – see e.g. Victoria Froude, *Review of National Databases Relating to the New Zealand Marine Environment* prepared for the Ministry for the Environment Environmental Performance Indicators Programme, August 2000 (unpublished); Victoria Froude, *Review of Existing Coastal and Estuarine Monitoring (excluding regional council monitoring)*, prepared for the Ministry for the Environment Environmental Performance Indicators Programme, June 1998; and Philip Tortell, Coastal Resources Database and GIS – a report to the NZ Maritime Safety Authority, Wellington, July 2001.

- jurisdictional boundaries (e.g. between regions, Continental Shelf, exclusive economic zone)
- hydrographic and bathymetric surveys
- tidal records
- known gas and oil discoveries
- microbial marine water quality
- toxic algae outbreaks
- marine reserves and taiapure
- marine protected areas
- distribution of seafood industry employees
- recreational zones (swimming, boating)
- location of mataitai
- council monitoring sites
- indicator monitoring results
- estuaries.

7 The development of indicators under the Environmental Performance Indicators Programme led by the Ministry for the Environment is a useful tool for better coordination of marine data collection[2]. Indicators allow us to measure key parameters of change, using consistent monitoring and reporting methods, so that we can build a national picture of significant trends. A set of indicators for the marine environment has been agreed[3], but most require development (e.g. establishment of monitoring regimes) before they can be implemented.

Data management

8 Existing data is held by a wide range of public and private agencies.

9 The quality of existing data-sets varies widely, and is not always quantified, which makes it difficult to determine how 'fit for purpose' our existing data-sets are. The Ministry for the Environment has recently produced a draft Environmental Metadata[4] Framework to help address this issue. The approach taken with this Framework is being incorporated into an initiative led by Land Information New Zealand under the E-Government Programme, to develop government-wide standards for geo-spatial information.

[2] The Ministry for the Environment has compiled reports on data available to implement proposed indicators for the marine environment. These provide a good proxy assessment of the coverage and extent of monitoring in relation to key issues and policy goals.
[3] The agreed set includes indicators for: fish stocks, fishing impacts, marine biodiversity, physical/chemical values, human health and values. The fish stocks indicators are already available online at www.environment.govt.nz.
[4] 'Metadata' is data about data. It provides information such as what the data is about, who collected it, where it was collected, what method was used to collect it, how and where it is held, and who looks after it. Metadata is an invaluable tool for finding existing data-sets and determining their 'fitness for purpose' in relation to any management issue.

10 Several other standards and policies have been, and are being, developed within government, including the State Services Commission's E-Government Unit. Among these is the New Zealand Government Interoperability Framework or e-GIF,[5] which will be an important driver for the adoption of spatial data standards.[6] Maritime data quality and metadata standards are also being addressed as a key aspect of the Maritime Special Interest Group's work programme.[7]

Sharing and accessibility of data

11 Although a great deal of information is known to exist, it is often inaccessible to those who need it.[8] This may be because it is in an unusable form, it cannot be located, or it is in private hands (including information held by the publicly-owned Crown Research Institutes).

12 However, a number of initiatives are under way to integrate the marine information that we already have, and to make it more accessible, such as:

- the considerable investment by Crown Research Institutes (CRIs) and the Foundation for Research, Science and Technology (FRST) in database accessibility and integration, and the CRIs having publicly-stated policies on access arrangements
- the development of a Coastal Resources Atlas by the Maritime Safety Authority. This is to be a GIS[9]based tool that will provide comprehensive coastal and marine resource information for the purpose of oil spill response, oil spill contingency planning and oil spill risk assessment
- the development of a National Aquatic Biodiversity Information System (NABIS) under the umbrella of the New Zealand Biodiversity Strategy (NZBS), being led by the Ministry of Fisheries (MFish). This is a centralised decision-making tool that will contain several layers of aquatic biodiversity information. It is designed mainly to enable decision makers and planners to make informed decisions on the issues that affect aquatic biodiversity
- the development of a system to make available information on core marine indicators through the web, to support decision-making about the marine environment. This is led by the Ministry for the Environment as part of its Environmental Performance Indicators Programme, and includes the development of an environment classification as a key component

[5] See www.e-government.govt.nz/interoperability/index.asp.
[6] In time, it will be mandatory for all public service organisations to adopt the e-GIF. Organisations of the wider state sector (crown entities, state-owned enterprises etc.) are encouraged to adopt it, and local government agencies are also invited to use it.
[7] M-SIG is a subsidiary of the Officials Committee on Geo-Spatial Information, which aims to "advise LINZ in a coordinated way about local and central government needs for Maritime Geospatial Data provided by LINZ under its mandate".
[8] As an example, the Maritime Safety Authority (MSA) is working to develop a Coastal Resources Atlas to allow better protection of important ecological and economic resources during marine oil spill responses. It has identified the information it needs for the Atlas, and is aware that a lot of this information already exists. However, much of this either cannot be located or is spread across many agencies that have little ability (or will) to share it. The costs and effort needed to duplicate the information would be great.
[9] Geographic Information System.

- the E-Government metadata initiatives, which will contribute to improved access to information.

13 There are also initiatives to improve institutional coordination between management agencies. A key example is the Environmental Information Officials Group that has been established within central government to discuss better coordination of environmental information generally.[10] Other groups within government include the Marine Biodiversity Coordination Group (led by MFish), the National Maritime Coordination Centre (led by Customs) and the Maritime Special Interest Group (led by Land Information New Zealand).

14 Regional information forums are being established throughout the country so that Ministry for the Environment (MfE), regional councils and territorial local authorities can discuss options to improve sharing of information. MfE is working closely with these forums to support work under the Environmental Performance Indicators Programme, including the negotiation of information sharing protocols for monitoring and supply of indicators data for use at the national level. In turn, these agencies are benefiting from standards being developed by central government, such as MfE's draft Environmental Metadata Framework.

15 Other initiatives are under way outside government. The New Zealand branch of the World Wildlife Fund for Nature is carrying out a biodiversity assessment of New Zealand's marine environment. This is part of a global programme and is due to be completed by mid-2003. It will provide a qualitative assessment of the state of key habitats and species within our oceans, based on information from scientific experts. A further initiative is *Species 2000 New Zealand.* This is part of a global initiative to describe species, and will result in a publication that lists all New Zealand's described taxa, both living and extinct, and that estimates the number of species that still await discovery and description.[11] Work is being led by the National Institute of Water and Atmospheric Research (NIWA), who expect to publish their report in 2004.

Data interpretation

16 Models and tools for interpreting marine information are being developed by a range of agencies, for a variety of management purposes. The marine classification system being developed by NIWA for MfE's Environmental Performance Indicators Programme is one example. The Department of Conservation's (DoC's) Species Classification System is another. Many other models and tools have been developed at smaller scales – for example, to assess the likely effects of new roads on sensitive estuarine environments.

[10] The EIO's stated objective is "To coordinate activities related to the development of information management and delivery systems under the Environmental Reporting (ER), and the National Aquatic Biodiversity Information System (NABIS), Terrestrial and Freshwater Biodiversity Information System (TFBIS) and Coastal Resource Atlas (CRA) programmes, and associated environmental information initiatives".

[11] See www.niwa.cri.nz/rc/biodiv/ and www.aut.ac.nz/eos/documents/species2000.pdf. NIWA's work to date lists a total of 16,405 known marine species within New Zealand's EEZ. NIWA estimates that between 5,680 and 7,700 more marine species remain to be discovered, which means that New Zealand's total marine species count is likely to be in the range of 21,810 – 23,830.

Strategic planning for research and information collection

17 The Ministry of Research, Science and Technology (MoRST) is currently undertaking a stocktake of marine-related research. This will provide a broader overview of relevant research initiatives already completed or under way.

18 The Foundation for Research, Science and Technology allocates public funding to research providers. Decisions on research applications are guided by criteria and research priorities determined through mechanisms such as investment strategy development, Strategic Portfolio Reviews, or individual portfolio reviews. These strategies are developed with input from government officials, external advisors, experts and representatives of end user groups. Many are being renewed now, but revised versions will not influence investment decisions until at least 2005.

19 Limited sharing and coordination of data that is collected make it difficult to estimate the gaps and overlaps between the various research activities. In particular, there appears to be insufficient emphasis on research into the impacts of activities of specific industry sectors.

Information issues

20 This section examines issues arising under the following headings:

- identification of information requirements
- gaps in existing information
- generation of information
- data management
- data sharing and access
- use and interpretation of information
- coordination and prioritisation of research
- capacity.

Identification of information requirements

21 Perhaps the most pressing issue in relation to marine information is the lack of a shared understanding and approach to what data is collected, based on an analysis of the range of management functions and purposes that the data must inform. We need to identify the management requirements for marine information, assess how effectively our current information is delivering on these needs (including what data we can stop collecting), and then identify the research and information gaps that need to be filled (and how we can best get the remaining data that we need).

22 Without such a ‘needs analysis’, it is difficult to determine the adequacy of our existing data-sets.

Gaps in existing information

23 Despite the caveat in the paragraph above, it is possible to identify some significant gaps in our existing information and knowledge. These include:

- gaps in quantitative data on ecological processes, marine taxonomy, impacts of fishing on target species (as well as non-target species and the wider marine environment), water quality issues such as contaminant concentrations in marine and estuarine sediments, Maori environmental concerns, and climate change impacts
- insufficient understanding of the scale of land use impacts, such as sedimentation and pollution on marine biodiversity
- insufficient information on coastal hazards, which makes it hard to justify with certainty where 'hazard lines' and 'buffer zones' should be drawn
- poor information to assess the socio-economic impacts of marine management decisions (e.g. a reduction in the total allowable catch for fishing or the introduction of a marine area closure)
- a poor level of information for decisions relating to sustainability for some fish stocks managed under the quota management system
- taking insufficient account of informal observations about our marine environment by individuals and groups in the community. Traditional Maori knowledge (matauranga Maori) about New Zealand's marine processes and biodiversity is a valuable, but under-used, source of knowledge. There is only partial recognition of information needs in relation to issues of special importance for Maori.

Generation of information

24 We can begin to address data gaps by focusing data collection on the points set out above. However, more generic problems remain.

25 As noted above, we lack a shared understanding and approach to what data is collected and for what purposes.[12] We also need to be clear about who is responsible for collecting what data, and who is liable to pay for its collection.

26 The size and nature of the marine environment – and the fact that data needs to be collected from platforms such as boats – means that marine data is expensive to collect and often results in a long lead time from identification of the need to delivery of data. We have a relatively small population base to fund data collection and research at both national and local levels. This limits our ability to respond to key information needs.

27 Data collection is also made difficult by the physical characteristics of the marine environment. Compared to land, the ocean environment is highly variable. This means that marine processes, species distribution, ranges of 'natural equilibrium', and lengths of natural processes are difficult to estimate and describe. Timescales in relation to oceans' processes and functions also vary greatly, and we understand little about these so far.

[12] As an example, the Maritime Safety Authority approached the Department of Conservation to identify key information needs to safeguard marine reserves from the impacts of potential oil spills. Information about the specific values needing priority protection was not easily available.

28 A further issue is the supply of 'disinformation' by some sectors of the fishing industry when observers are not present. This results, for example, in under-reporting of seabird and marine mammal by-catch. The collection of information on environmental impacts of fishing undertaken from small vessels unsuited to carrying observers remains an unresolved problem.[13]

Data management

29 The large and increasing costs of data collection and management limit our ability to maintain data-sets on an ongoing basis. In addition, some responsibilities for managing marine information are not clearly understood, resulting in a lack of accountability for actions and outcomes.

30 There is a need for better information about who holds what data-sets, and the standards used to manage that data. An agreed metadata approach would help promote the effective management and use of data at different levels and scales. Data quality standards are also required for the delivery of consistent data. The current variability (and even absence) of data standards makes it difficult to determine the quality of existing data and information. Data quality of existing data-sets needs to be assessed according to criteria such as: right data relevance; accuracy; completeness; timeliness; format; and context.

31 Clear data standards can help make data more useful across a wider range of management purposes. As noted above, a number of standards are being developed and used, and there may be a need to review the effectiveness of these for marine management purposes.

32 A common regulatory framework or policy on spatial information is also needed to manage the identification, definition, allocation and recording of the various rights, interests, restrictions and activities in the marine environment. The Cadastral Survey Act 2002 currently provides for the establishment of a spatial reference system and cadastral system for defining and recording tenures, for both land and the seabed. The Act also specifies a regulatory authority and processes for standards, auditing and operation of a cadastral system. The regulatory environment covers the marine area, but usage of the cadastral system is currently concentrated on dry land.

Data sharing and access

33 We have only a limited picture of the marine information that already exists, both in the public and private domains. A priority, therefore, must be to document and standardise data-sets that are currently available.

34 Information is not always constructively shared. To compound the difficulty of finding out what data is already held, access to data is hampered by limits of data compatibility (caused by varying data quality standards) and use restrictions (e.g. for commercial or political reasons). Data may be subject to high costs and other use constraints when it has high commercial value (e.g. geological information about potential minerals or petroleum deposits and fishing, or data used as the basis for rights allocation). Such costs and constraints are usually valid, but may not be

[13] See the Parliamentary Commissioner for the Environment's report 'Setting Course for a Sustainable Future', section 3.8.9.

justified in some cases. Consistent policies or standards on use restrictions may be needed in some areas.

35 In relation to the Crown's funding of research through the Public Good Science Fund, there have been tensions between the public interest and private concerns. Some science providers are unwilling to release information that they have gathered because of intellectual property considerations. For example, the Ministry of Fisheries only learnt of the discovery of an exotic crab in the Hauraki Gulf when it was reported in a museum article in an industry magazine.

36 Limited sharing of existing information perpetuates the need for similar data-sets to be built to support every new purpose and management question that arises. The costs of this are significant.

Use and interpretation of information

37 Because New Zealand's oceans are vast, complex and dynamic, we will probably never have all the information we need to fully understand the effects of our actions on the marine environment. The key management challenge, therefore, is making good decisions in the face of uncertainty.

38 At the moment, we have limited capability for modelling and interpreting data and information. A marine classification system, such as the one being developed by the Ministry for the Environment under its Environmental Performance Indicators Programme, is an important management tool and can be used to help predict the effects of proposed new activities. There is a need for other interpretive tools to be developed and shared.

39 Better coordination is required to develop shared standards and protocols between those agencies which collect data, and those which are working on shared systems for pooling, analysing and interpreting data. These are particularly important for use in aggregated monitoring and reporting programmes,[14] where coordinating agencies do not collect data directly, but instead rely on others to supply it.

40 The absence of protocols for the use and protection of matauranga Maori means that Maori are not confident about sharing their knowledge. This is compounded by limited capacity to interpret such information, and by variable (or absent) processes to incorporate matauranga Maori into decision-making.

41 Environmental education does not have a strong profile in many New Zealand schools, nor is there any purposeful focus on marine and coastal concerns.

Coordination and prioritisation of research

42 As noted above, the Foundation for Research, Science and Technology seeks advice from a range of individuals and agencies on priorities for marine research. However, it has no mechanism for weighing competing (or conflicting) priorities identified by these groups. A clear statement of marine issues of priority to New Zealanders and New Zealand ecosystems is needed for use in setting future research

[14] e.g. the Environmental Performance Indicators run by the Ministry for the Environment, or the National Aquatic Biodiversity Information System being developed by the Ministry of Fisheries.

priorities. Developing an overarching government policy to guide the allocation of research funds relating to oceans information, across different portfolios, would also be a useful tool.

43 There is a need for research to be better coordinated in relation to priority information gaps, and in the context of a long-term view of information needs. We also need to ensure that 'blue skies' research is protected and promoted so that we can safeguard potential uses and applications, and promote innovation and wealth creation.

44 'Goldrushes' for marine space and resources (e.g. high seas, marine-protected areas, aquaculture) create new demands for information. We need to be more strategic about trying to anticipate these demands, and in determining how the costs of resulting research efforts will be met.

Lack of capacity

45 In many cases and contexts, we lack capacity to collect, access and use data and information. In particular, there are gaps in relation to our capability to carry out strategic thinking about marine information needs, and in relation to particular skill sets (e.g. data analysis, taxonomy).

Conclusion

46 Accurate information is a cornerstone of good decision-making. There are many gaps in our knowledge of the marine environment, either where research has not been carried out, or existing information has not been made available to those who need it.

47 Collecting and managing marine information effectively is a huge task: New Zealand's oceans are vast, complex and dynamic. We may never have all the information we need – or indeed the tools and capacity required – to fully understand the effects of our actions on the marine environment.

48 However, we can use the information and the tools we do have more effectively, and we can focus our future research efforts more strategically. An Oceans Policy can help by providing the framework for us to:

- plan, prioritise and resource the generation of information that is needed for the range of marine management functions
- focus research in areas where it is most needed
- encourage better sharing of existing information
- develop good practice and tools for making decisions in the face of uncertainty.

OCEANS POLICY SECRETARIAT

WORKING PAPER TWO
14 March 2003

OCEANS POLICY

OCEAN USE RIGHTS

Contents

Introduction

1 The Crown, under international law, has sovereignty, and certain sovereign and jurisdictional rights relating to the oceans depending on the area of the ocean in question. It exercises this responsibility through various domestic laws that set up management frameworks to authorise specific uses or underpin common law uses and international freedoms. The statutory processes to create, allocate, and protect use rights define the nature and extent (attributes) of the use rights. Case law also contributes to the evolving interpretation of the nature and extent of use rights.

2 The purpose of this paper is to identify issues or problems associated with the creation, allocation, and protection of ocean use rights. 'Use rights' encompasses *public uses* such as sailing, swimming and recreational fishing; and *exclusive uses* such as ports, marine farms and commercial fishing. The term includes both extractive and non-extractive uses of the ocean.

3 This paper does not discuss resource ownership rights,[1] ecosystem rights,[2] or Treaty of Waitangi rights[3].

4 Use rights define who may do what, where and for how long. Use rights generally also include responsibilities to avoid damage to the environment and avoid encroaching on other people's use rights. Use rights may result from positive specification and allocation, or from protection of common law or international law rights.

5 Use patterns change over time in response to changing population pressures, evolving social values, emerging technologies, and new market conditions. Consequently, the processes to create new use rights and reconcile competing uses are critical to the specification of use rights.

Relationship to Ocean Policy outcomes

6 To achieve best value, management of the ocean must enable a pattern of public and exclusive uses that is continually adjusting in response to new demands and opportunities. A fundamental outcome with respect to ocean use rights is to retain the oceans as a source of public enjoyment and well-being while encouraging investment to create wealth for New Zealand.

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[1] With very limited exceptions there are no private ownership rights to the seabed or wild living resources in New Zealand's oceans. The Crown owns the seabed within the Territorial Sea, although this position is being appealed to the High Court by several iwi. Ownership of the seabed, living resources, and the water column beyond the Territorial Sea is precluded under the United Nations Law of the Sea, which only recognises Coastal States' sovereign rights to use and manage resources in the EEZ and Continental Shelf.

[2] Ecosystem rights, including protection of intrinsic values, are generally expressed in law in the form of limits (responsibilities) on the exercise of use rights. Paper Four (environmental issues) discusses issues relating to environmental management.

[3] Paper Three (Maori and Oceans Policy) addresses specific issues relating to the role of the Treaty in Oceans Policy.

7 To achieve this, at least in part, it is necessary to specify use rights in a manner that is clear – that is, people know what they can and cannot do – and in a manner that encourages wealth creation and environmental stewardship. Clear specification of use rights includes detailing the processes and principles to reconcile conflicting uses so that users know how and under what conditions their existing use can be restricted to enable ongoing wise use of the ocean.

8 This paper identifies aspects of our processes to create, allocate and protect use rights that result in unnecessary or unreasonable uncertainty for the users, and consequently discourages investment in wealth creation (including protection of public uses) and environmental stewardship.

Current management in relation to oceans use rights

9 A range of extractive and non-extractive use rights exist for our oceans – for instance rights to take fish, withdraw natural gas, occupy space for marinas, go sailing, and enjoy the natural character of the coast. Some rights are held by the public, other rights are held by individuals or groups. The specification of rights varies across different uses. There is nothing inherently wrong with the variety of specification of use rights in the ocean; in general they reflect reasonable differences in the nature of the activity they enable.

10 Ocean use rights are created, protected and allocated (or preserved) under a variety of statutes, including the Resource Management Act , Marine Transport Act, Fisheries Act, Marine Mammals Protection Act, Marine Reserves Act, Crown Minerals Act and Continental Shelf Act. Part 1 of the Ocean Policy Stocktake describes the full regulatory framework for ocean management.

Processes to provide for and protect public uses and enjoyment

11 Most public uses are provided for (and protected) under the Resource Management Act coastal planning criteria and procedures. Recreational fishing is provided for under the Fisheries Act. The Marine Mammals Protection Act (MMPA) provides for absolute protection of marine mammals – which delivers on a social value not to harvest marine mammals.[4] The Marine Reserves Act protects areas for public uses (e.g. research and scenic sites) and to protect biodiversity (a component of ecosystem integrity). Designation of areas for defence training, including weapons firing and exercises with other countries, is provided for both within and beyond the territorial sea.

12 Coastal plans under the Resource Management Act are guided by the New Zealand Coastal Policy Statement and can include regional rules designating a range of public uses as ‘permitted activities’, while simultaneously including zoning rules to manage incompatible activities (such as swimming and water skiing). Applications for resource consents under the Resource Management Act must be evaluated against the

[4] The Wildlife Act also provides for absolute protection of certain species of marine wildlife, but in most cases these species are either threatened or grow too slowly to support a sustainable take. The Wildlife Act includes provisions to allow harvest of specific native species. Both the Wildlife Act and the MMPA acknowledge that fishing may lead to inadvertent killing of protected species.

regional coastal plan to judge the acceptability of any impacts on public uses and enjoyment.

Processes to provide for new exclusive use rights

13 The Resource Management Act provides for the creation of exclusive use rights in the territorial sea by granting coastal permits. Coastal permits are granted for specific activities, for fixed periods of time and subject to conditions to manage potentially adverse impacts on the environment and other users. As with other resource consents, there are no renewal rights for coastal permits. Coastal permits are granted on a first come, first served basis, insofar as they are consistent with the coastal plan. The aquaculture reform proposes to allocate future aquaculture space by tender.

14 Under the Fisheries Act, Individual Transferable Quota (ITQ) are created and allocated at the time a fishery enters the quota management system. The initial ITQ are allocated principally on the basis of catch history, with 20% going to Maori in accordance with the Fisheries Deed of Settlement. Once allocated by government, ITQ is a tradeable, ongoing share in the allowable commercial catch. The Fisheries Act also contains procedures to create spatial rights, notably customary fisheries management areas. Exercise of ITQ and all other fishing is subject to limits and restrictions to ensure environmental sustainability. These restrictions are subject to review every year.

15 Rights to extract minerals and petroleum are created and allocated under the Crown Minerals Act and Continental Shelf Act. These rights are granted on a ‘use it or lose it’ basis. Within the territorial sea these activities also require resource consents under the Resource Management Act. Beyond the territorial sea there is no statutory requirement for consideration of impacts on other users of specific or general authorisations.

16 Navigation rights and laying of submarine cables are international freedoms provided under the United Nations Convention on the Law of the Sea, some of which extend into the territorial sea[5]. Navigation and laying of submarine cables are regulated under international agreements as well as domestic laws (e.g. Maritime Transport Act, Submarine Cables and Pipelines Protection Act).

Processes to reconcile conflict among competing uses

17 Reconciliation of competing uses regulated by the Resource Management Act can occur through coastal planning (especially zoning rules) and resource consent procedures.

18 Reconciliation of competing fishing interests occurs under the Fisheries Act through the process of allocating the total allowable catch among the different fishing sectors (customary, recreational and commercial). Where spatial conflict arises, it can be addressed through the dispute resolution procedures (Part VII) and methods closures in the Fisheries Act.

[5] For example, navigation cannot be restricted in the Cook or Fouveaux Straits.

19 Under the Crown Minerals Act, reconciliation between competing potential users of mineral permits can occur through establishment of minerals programmes and permit allocation criteria.

Problems with the current management

20 There are a number of issues arising from the current management of ocean use rights, which are discussed below.

Management and provision of public amenity uses

21 Issues here include:

- 'hot spot' demand areas (e.g. Northland, Tasman, Coromandel). There is a mismatch between the funding base for provision of public uses (mostly regional) and the source of demand for the activities (big cities, national, international)
- cumulative erosion of public amenity values as discretionary coastal consents are granted
- poor management of impacts of public uses on the environment and other users, namely
  - recreational fishing/coastal stripping
  - sewage from boaties
  - cumulative effects/overcrowding.

Conflict among existing users

22 Issues here include:

- recreational fishing versus commercial fishing, especially in inshore areas and for prime recreational species (snapper, blue cod, kahawai)
- difficulties for the recreational sector to use the Fisheries Act dispute resolution procedures
- conflict between incompatible public uses, namely
  - conflict with ocean-based recreation in its various forms (e.g. jet skis, beach buggies)
  - increasing numbers of tourists (e.g. Abel Tasman, Doubtful Sound and Ninety Mile Beach).

Conflict between existing uses and new uses

23 Conflict between existing uses and new uses include:

- conflict between fishing and aquaculture, and between fishing and marine reserves
- conflict between public amenity uses and new coastal uses, such as aquaculture or new shellfisheries

- absence of public return for exclusive uses undermines public legitimacy (e.g. concern that Individual Transferable Quota are allocated free to incumbents, and the absence of coastal charges, which leads to a sense of government 'giveaways' and unfair speculative returns to private individuals).

Missing attributes to enhance wealth creation

24 A number of attributes that could enhance wealth creation are missing, namely:

- the lack of protection for navigational freedoms and fishing from unreasonable displacement by new spatial activities (especially the cumulative effect of new activities)
- the limited statutory processes to lower the transaction cost of collective decision-making, especially for fisheries.

Regulatory gap for certain activities

25 Outside the territorial sea there are limited regulatory processes to authorise spatial activities other than petroleum and mineral extraction. The Continental Shelf Act contains little guidance and relies on the discretion of officials and ministers.

- If, for example, a deep-sea aquaculture development and petroleum pipeline were proposed for the same area of marine space, there would be no formal process to assess and reconcile the potential conflicts between the two activities, or between these activities and fishing

- Two years ago an Australian company applied for a minerals prospecting permit over a seamount in the Kermadec Range. The Continental Shelf Act gives the Minister of Energy the authority to grant permits, but does not specify any considerations or timeframes for the decision-making process. The seamount was subsequently closed off to fishing, under the Fisheries Act, as a precautionary measure to protect a potentially fragile and diverse ecosystem. The prospecting permit has only recently been granted – following an ad hoc process to resolve competing interests involving the same Minister with different portfolios and protracted discussions among officials. Ad hoc processes of this nature do not promote investor confidence.

26 There are no clear processes to provide for marine amenity areas to meet the growing interest in fish-viewing. Such amenity areas could support activities ranging from snorkelling on coastal reefs to submarine tourism on seamounts. Absence of clear processes, both within and beyond the territorial sea, leads to unmet demand and use of other tools, such as marine reserves, to achieve a solution.

Assessment of issues

What are the key problems?

27 Key problems related to the creation, allocation and protection of ocean use rights needing immediate action are:

- conflicts between competing users
- management and provision of public amenity uses.

28 Issues needing to be addressed in the near future are:

- attributes of use rights to enhance wealth creation
- regulatory gaps for certain activities

Why are these problems occurring?

29 There are some overarching reasons for the problems set out above.

Absence of comprehensive and fair processes to reconcile conflict between uses

30 Conflict between uses arises because of the direct effects of displacement and the indirect effects of activities. These effects are, in turn, driven by increased pressure from existing uses or as a consequence of new uses emerging in a particular location. Conflict between fishing and aquaculture is being partially addressed through the aquaculture reform. However, it is foreseeable that the intensity of conflict between ocean uses will increase in future unless fair processes to reconcile competing uses are established.

31 The need for fair processes to reconcile competing uses arises from current problems, however it is likely to be of greater importance in relation to managing potential future conflicts.

32 Most of the ocean statutes contain some mechanism to reconcile conflicts that arise among users or between uses that are the focus of the statute. However, there are no effective means to reconcile conflicts between uses regulated under different statutes. This problem is most acute with respect to conflict between fishing and other spatial uses of the ocean, especially in inshore areas.

33 Existing processes are not fair because consideration of the impact of new use rights on existing users is either partial or non-existent and, in effect, allows reallocation (or restriction) of use rights from existing users to new users without mitigating the adverse effects.

34 There is poor integration of the Fisheries Act with other ocean statutes, in particular the Resource Management Act. Under the Resource Management Act, fishing rights can be encroached upon to provide for other uses. The fishing industry is put in a position in which it must object to a proposed plan or coastal permit because this is the only means to prevent impacts on their activities (and, hence, to protect their investment in fishing gear and quota). This results in unnecessarily high planning costs (e.g. Tasman/Golden Bay). Similarly, fishing activities are often accused of

causing damage to the coast with little redress for other users through the Resource Management Act. There is an unmet demand for more local management of inshore fishing.

35 Under the Fisheries Act, there is no requirement to consider impacts on other users. In general, the creation of individual transferable quota has minimal direct impact since the fish are already being caught. However, establishment of a new fishery can impact on other existing uses of an area (e.g. establishment of a new cockle harvesting area may interfere with other public uses of the beach). There are also limited means to impose restrictions on fishing to implement agreements that may facilitate co-existence with non-fishing uses (e.g. restrict recreational fishing in certain reefs to provide for fish-viewing amenity areas, in the knowledge that adverse effects will be mitigated by the regional council building new boat ramps to improve access to nearby recreational fishing grounds.)

36 While the Resource Management Act does allow for planning for the coastal area, in practice this has been of limited effectiveness due to insufficient strategic direction in the plans, capability and funding constraints, and limited allocation tools. The focus of the Act is on environmental effects, and in reality, most uses are authorised on a first-come first-served basis. There are limited means within the Act to select what might be the best use in any particular area.

37 Some activities that were in existence before the Resource Management Act came into force have existing use rights (such as ports), and there are difficulties in using charging or other mechanisms to gain any public return for the use of space (there is no direction about public return for the use of public space within the Act).

38 The statutory processes to reconcile competing uses regulated by different ocean statutes are either non-existent or ad hoc. Tools to implement potential agreements are often limited in terms of effectiveness (timeliness, flexibility, and scope). The effect of these limitations is to restrict opportunities for interested parties to reach agreements that are mutually beneficial.

Inappropriate attributes to enhance wealth creation and environmental stewardship

39 Resource consents, petroleum permits and Individual Transferable Quota are clearly defined use rights; however, they do not necessarily have the attributes that maximise opportunities to achieve best value for New Zealand. Some changes to attributes of existing use rights could enhance wealth creation/investment and innovation by reducing uncertainty.

40 One option might be to consider the merit of options to enable continuity of certain marine uses authorised under the Resource Management Act on the condition that ongoing improvements in environmental performance are assured, and the default position that areas can return to public use remains.

41 In the case of fishing rights and navigation rights, it is desirable to increase their security against attenuation arising from authorisation of new uses. In addition, investment in collective activities, such as resource enhancement and conflict

resolution, can be encouraged if the transaction costs of decision-making, and binding in potential free riders, could be lowered.

42 Absence of a public return (resource rent or royalty) for uses authorised under the Resource Management Act and Fisheries Act can undermine the public legitimacy of the exclusive use rights granted.

43 At an operational level, there is inadequate mapping or recording of use rights in the ocean. Accurate recording can increase certainty about who has rights where. This can, among other things, help to identify the interested parties when conflict arises. The Cadastral Survey Act 2002 provides a statutory regime that can be expanded to cover the marine area in a more coherent manner.

Regulatory gap in relation to certain uses

44 There is no statutory framework to authorise and regulate certain uses, both within and beyond the Territorial Sea. This is most acute for offshore, surface ocean uses such as aquaculture and potential power generation. This gap is also discussed in other background working papers (see Paper Four, Environmental Issues and Paper Nine, Future Changes).

Operational constraints in relation to provision of public uses

45 Regional councils undertake protection and management of many public uses, especially public amenity uses. Many councils face significant operational challenges, related to funding and capability.

46 Inadequate coastal planning results in conflict between incompatible public uses, and excess reliance on coastal consents for discretionary activities. In both cases, public amenity values are eroded over time with no clear limits.

47 Provision of public uses requires adequate funding to maintain the quality of experience and to protect the environment from the impacts of use. When the funding base is regional and the demand is from users outside the region, provision can become unaffordable for the region.

Conclusions

48 In combination, these issues result in unnecessary uncertainty for existing and new users of the ocean. This uncertainty leads to:

- the need to devote resources to preventing any ‘encroachment’ (because there are limited opportunities for mutual agreements to be reached)
- delayed or missed marketing opportunities
- undesirable cumulative effects on public use and enjoyment
- underinvestment, especially in research and institution building.

49 It is foreseeable that the range and intensity of oceans uses will change over time, particularly in response to population changes and emerging technologies. In the

absence of change, problems associated with conflict between competing uses will amplify and become more intractable in the future.

50 The existing framework to create, allocate and protect use rights requires some key reforms if New Zealand is to maintain a healthy ocean environment while encouraging investment to meet our social, cultural and economic needs and aspirations.

Appendix. Key expectations – social context

The attributes of ocean use rights must reflect New Zealand's social context and values. Key expectations of ocean uses, as identified through Stage One of the Oceans Policy, are:

- *ecological sustainability.* Human activities should not compromise the ecological integrity of the ocean. A corollary is that all ocean uses should be subject to environmental restrictions that may alter over time as our understanding of ocean ecosystems improves.
- *widespread public access*. The ocean is valued as a public common, where public access is the norm. A corollary is that coastal space should not be permanently set aside for private use, except in limited circumstances.
- *respect for existing uses*. Both public and exclusive uses of the ocean contribute to the well-being of the nation. These users have an expectation of being able to continue their use, provided it does not harm the environment or interfere with the uses of others. A corollary is that reallocation of uses should respect existing uses, to the extent that existing uses are socially acceptable.
- *individual and collective responsibility*. As a democratic society, we value individual and collective responsibility for our actions. A corollary is that users should be able to exercise choice—and face the consequences, both positive and negative, of their decisions. Tools to hold users accountable should seek to maximise voluntary compliance and ensure that users can take actions to avoid harmful consequences.
- *respect for the Treaty of Waitangi*. The Treaty is a unique part of our cultural heritage. Maori—in particular—expect the uses and users of the ocean to reflect and recognise Treaty rights and responsibilities.
- *recognition of international freedoms*. Both domestic and international shipping interests expect navigational freedoms to be recognised (This expectation derives directly from international obligations under the United Nations Convention on the Law of the Sea.)
- *recognition of national defence needs*. New Zealand's defence and security agencies expect to have appropriate access to the oceans to provide for New Zealand's defence needs.

Glossary

Public uses include activities that relate to public enjoyment of our ocean and social values attached to the ocean. They are non-commercial activities for the user, but commercial activities such as tourism operators may support and enhance the public use. Public uses are either open to anyone in New Zealand (i.e. non-exclusive) or managed for the benefit of all. Public uses may be restricted to particular locations—e.g. water skiing lanes. Two cases of public uses managed for the benefit of all are heritage values (historic sites) and defense needs—both of which generally require the public to be excluded in order for the public benefit to be provided or protected.

Exclusive uses are any uses that are either limited to a defined group or individual (e.g. QMS fisheries, coastal consents, and petroleum permits) or require some degree of public exclusion to favour a defined group or individual (e.g. shipping lanes or cable protection zones). Exclusive use rights seldom require total restriction of public uses and access. In general, public uses are restricted, in effect, because they are incompatible (for instance sailing and surface aquaculture) or where necessary to protect public safety (e.g. ports) or to prevent theft (e.g. intertidal oyster farms).

Use rights encompasses public uses such as sailing, swimming and recreational fishing; and exclusive uses such as ports, marine farms and commercial fishing. The term includes both extractive and non-extractive uses of the ocean

Attributes (characteristics) of use rights include duration, transferability, transformability, enforceability, exclusivity, and compensability. The optimal specification of attributes depends on the nature of the activity and the natural resource. In addition, to retain social legitimacy, attributes of use rights must adapt to changing social contexts.

OCEANS POLICY SECRETARIAT

WORKING PAPER THREE
14 March 2003

OCEANS POLICY

MAORI AND OCEANS POLICY

Contents

Introduction

1 The overall objective of the Oceans Policy process is to develop comprehensive policies for the protection and wise management of our marine environment, and to ensure a sustainable development approach to oceans management. A vital part of that work is to ensure that there is appropriate consideration of Maori interests and Treaty of Waitangi responsibilities as those policies are developed.

Desired outcomes

2 In practice, this means that an Oceans Policy must develop an overall framework for thinking about the management of oceans that gives useful guidance on the types of matters that need to be considered from a Treaty perspective, and on the range of practical tools available to address them.

3 This issues paper begins that work. The essential challenge that it poses is how to develop policy in this area that is sufficiently flexible to enable practical and effective working relationships to develop that are appropriate for the issue and the people involved, while giving sufficient certainty to ensure that the relationships do in fact develop.

Background

4 Stage One of the oceans policy process identified the following vision:

> New Zealanders understand marine life and marine processes and, accordingly take responsibility for wisely managing the health of the ocean and its contribution to the present and future social, cultural, environmental and economic wellbeing of New Zealand.

5 This vision is consistent with the Government's commitment to sustainable development in policy making and practice. One of the Government's key goals, in achieving sustainable development, is to strengthen national identity and uphold the principles of the Treaty of Waitangi. The Government has also signalled that it aims to build and support co-operation between management agencies and iwi and hapu in relation to the management of habitat and native species.

6 Considering how the principles of the Treaty of Waitangi should inform Oceans Policy development, and in particular how the Policy can support the development of collaborative relationships, is therefore an important part of this phase of Oceans Policy development.

7 It is in the interests of all New Zealanders that we develop comprehensive policies for the protection and wise management of our marine environment, and ensure a sustainable development approach to oceans management. This needs to acknowledge that sustainable development is about looking after people and taking account of the social, economic, environmental and cultural effects of our decisions.

8 In the Oceans Policy context it is important to recognise that the Government has comprehensively settled all Maori claims in respect of commercial fishing through

the Maori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This settlement places a range of legal rights and obligations on the Crown that must be acknowledged in any Oceans Policy, and it also incorporates a range of mechanisms making better provision for Maori non-commercial customary rights and interests. The regulatory framework for customary non-commercial fishing devolves responsibility for the management of customary fishing to kaitiaki (guardians) appointed by tangata whenua, and includes provisions for mahinga mataitai reserves over traditional fishing grounds that allow kaitiaki to manage all fishing activity within these areas once a mataitai reserve has been approved. Importantly the regulations are as much about the right to manage as they are about the right to take fish.

9 The Crown has also settled Treaty claims by entering into comprehensive deeds of settlement with a range of iwi and hapu groups including Ngati Ruanui, Te Uri o Hau and Ngai Tahu. In general, historical Treaty settlements settle all the claims of a claimant group, including any claims to the oceans. The redress contained in a deed of settlement (including any oceans-related redress) is often given effect to by legislation.

10 It is significant that New Zealand is not alone in working through these issues. Internationally, countries such as Canada and Australia are grappling with how to recognise indigenous peoples' interests in fisheries and marine management. Although both countries are at different stages in their relationships with indigenous people, there is a clear acceptance that indigenous people have a important role to play in relation to the planning for, and management of, marine resources.

Perspectives from Maori

11 Maori have a particular and unique standing as the Crown's Treaty partner, and the depth of connection between Maori and the sea must not be ignored. The Maori connection with the ocean permeates many aspects of Maori life – it is cultural and spiritual, as well as practical and economic.

12 In Stage One, the Ministerial Advisory Committee found that in the case of tangata whenua there is a well established set of relevant values, with a number of key concepts spoken of consistently as essential to meeting Maori standards with regards to a successful Oceans Policy. Viewed holistically, these concepts form the basis of a Maori value and management system, although they may vary in application or name for different iwi and hapu. The concepts are:

- kaitiakitanga – the obligation of whanau, hapu and iwi to protect the physical and spiritual well-being of taonga (things of value) within their mana (control)
- mana – authority which, when manifested in spiritual authority, is referred to as mana atua. When derived through birth right it is referred to as mana tipuna. When derived through sheer personality, leadership qualities or achievements it is referred to as mana tangata. In reference to the marine environment, it denotes the authority for the exercise of the stewardship obligation as deriving from atua, ancestors and confirmed by the Treaty of Waitangi

- manaakitanga – an obligation to provide guests with care and kindness in the knowledge that some day that care and kindness will be reciprocated
- mauri – the life force and unique personality of all things animate or inanimate. It is a divine force that in the creation process entered into the realm of atua giving them a life force. In *Te Ao Turoa* (the natural world), mauri binds all things to their spiritual source in atua. A key consideration of resource management practices (tikanga) is the maintenance and protection of mauri
- noa – to be free or made free from the restrictions associated with tapu
- rahui – a form of tapu set up over a resource (for a period of time) by a hapu or its chief for spiritual, social or economic reasons
- tapu – the mana of atua (gods). Things that are tapu or made tapu are perceived as having the investiture of the atua
- tino rangitiratanga – the exclusive control of tribal taonga (all those things important, both tangible and intangible) for the benefit of the tribe, including those living and those yet to be born
- utu – a general principle that for every thing gifted another of at least equal value should be returned. Utu also denotes reciprocity between the living and the departed. In traditional Maori terms, mana is not achieved through acquisition of material but rather by distributing wealth to others. It is through the ritual gift distributions that reciprocal obligations are established and balance achieved
- whakapapa – (genealogy) transcends the Maori world and evidences the relatedness (the whanaungatanga) of all things. For Maori, whakapapa demonstrates the linkages between the transcendental realm of Te Kore, *Te Po* (the world of the night) where atua and ancestors dwell and the material-physical world of *Te Ao Marama* (the world of light or the natural world)
- whanaungatanga – denotes the view that, in the Maori world, relationships are everything. From the Maori perspective, humans are not considered superior, but an equal part of life in the natural world.

13 An Oceans Policy should endeavour to embrace and recognise these important concepts, and discuss how they might best be woven into the fabric of resource management rules and practice in this area. As the brief discussion of the concepts shows, there is already significant overlap between these values and the values that underpin the Crown's sustainable development approach to its responsibility to protect and manage the natural environment.

Current management tools

14 The Crown currently gives effect to the principles of the Treaty of Waitangi in two main ways. First, it has accepted an obligation to resolve historical grievances in accordance with the principles of the Treaty of Waitangi. It does this through the Treaty settlement process in which it works with claimant groups to identify and resolve well-founded historical grievances. Through this process, the Crown has

settled claims relating to Maori fishing rights generally. It has also settled the historical claims of a number of iwi and hapu, including claims to the oceans.

15 The second way in which the Crown gives effect to the principles of the Treaty of Waitangi is to incorporate them into its policy frameworks through strategies, plans or other means. One option that has been used is incorporating reference to the principles in legislation that agencies are then required to consider in carrying out their functions.

16 The Crown has incorporated the need to consider the principles of the Treaty of Waitangi in much of the legislation relating to natural resource management in New Zealand. Specific references to the Treaty that affect oceans management are included in the Resource Management Act, the Conservation Act, the Crown Minerals Act, and the Fisheries Act. In some cases the legislation sets out specific tools and guidance for implementing these principles: for example, the new Local Government Act sets out specific principles and requirements for local authorities to implement as a means of taking appropriate account of the principles of the Treaty and to maintain and improve opportunities for Maori to contribute to local government decision-making. In other cases agencies are required to develop the tools to give meaning to the principles of the Treaty in a practical way.

17 The range of tools available for the recognition of Maori views allow for:

- management by the Crown, informed as necessary by discussion with tangata whenua
- participation by tangata whenua in management decision-making through information, consultation, cooperation, joint planning or negotiation
- advisory committees, (joint) management boards and other structures to enable a level of shared decision-making
- tangata whenua ownership and management of a private resource.

18 A useful analysis can be found in the Department of Conservation's recently released draft Nga Akiakitanga Nuku Kaupapa Maori (Maori Strategic Policy Initiatives). Among other things, it provides guidance on potential ways and means to forge effective and successful partnerships with tangata whenua. It suggests that the nature of the arrangements entered into will vary according to local circumstances.

19 More specifically, on a practical level, this has included (in marine areas):

- statutory protocols entered into through the Treaty settlement process and covering, among other things, marine mammal issues
- Maori committees of conservation boards
- advisory committees to Ministers – for example, 50% Maori representation on Kapiti Island Marine Reserve Committee and the Te Tapuwae Rongokako Marine Reserve Committee.

20 The Ministry of Fisheries is also developing a Treaty Strategy that is looking to achieve, or sustain, the following objectives:

- the Ministry and tangata whenua working in partnership to provide for the utilisation of fisheries resources while ensuring sustainability
- tangata whenua managing customary fishing within their rohe moana
- Maori actively participating in commercial fishing
- tangata whenua actively involved in wider fisheries management
- the Ministry recognising and providing for use and management practices of Maori in the management of fisheries
- active protection of the fisheries taonga.

21 The Ministry of Fisheries has identified a number of tools that might enable these objectives to be better met. These are currently being implemented to various degrees. They are:

- the creation of regional groupings or forums made up of fisheries representatives of the iwi and hapu from a particular region
- the appointment of kaitiaki and the establishment of mataitai reserves
- obtaining meaningful input from tangata whenua into fisheries management plans
- developing policies on how traditional knowledge and customary fishing information will be incorporated within wider fisheries management processes.

22 The Ministry of Economic Development has developed protocols that expand on how the Crown Minerals Act provisions will be administered to meet Maori interests.

23 Likewise, tools available under the Resource Management Act range from:

- the ability to transfer functions to a public authority (including iwi authorities) (section 33)
- being able to recognise tikanga Maori in hearings (section 39)
- having regard to any iwi planning instruments in decision-making processes (section 61)
- requiring regional policy statements to state matters of significance to iwi authorities (section 62)
- consultation with iwi authorities, tangata whenua in the preparation of statutory plans (First schedule to the RMA).

Issues identified by Maori

24 Although Crown agencies are starting to put in place a range of tools for recognising Maori interests, and although the Treaty settlement process (including commercial fishing) is putting in place mechanisms to resolve historical grievances, Maori still cite a number of barriers to their aspirations.

25 The issues raised by Maori, particularly during Stage One but also in a range of other forums such as the Waitangi Tribunal, include the following:

- management/regulatory interests: this is clearly a large part of Maori concerns. Although some of these are currently provided for, such as customary fishing, these may be hampered by other problems such as capacity
- a perception that Maori views (such as those described in paragraph 11) are not adequately valued by the Crown: for instance, Maori feel that in dialogue with the Crown the parties are talking past one another, or that the Crown does not follow up on Maori input
- governance and mandate: there are no clear rules (except in limited, specific circumstances) that describe where, when, how and who to consult with. Both the Crown and Maori are frustrated with mandate issues. For the Crown, there can be difficulty in identifying who are deemed to be the representatives of certain iwi or hapu. For Maori, this difficulty can be used as an excuse for not ensuring Maori involvement
- capacity: even where both the Crown and Maori are clear about communication, the resources required for Maori to contribute meaningfully can be a significant burden. The most common case is that of consultation, where various government agencies may consult with Maori, with the obligation on Maori to turn up. This creates difficulties for iwi that may not have enough money and people to participate effectively
- protection versus sustainable development: absolute protection of areas of the marine environment in perpetuity would not generally be a feature of the Maori world view. Under that view all resources are managed in a sustainable way, so that absolute restrictions are not required. This debate manifests itself in topics such as marine reserves
- ability to benefit from economic development: part of the reason for Maori interest in various resources stems from a desire of Maori to gain a share of the financial benefits of new space allocations, technologies and so on. In their view recognising Maori in an Oceans Policy is therefore not just about management in accordance with tikanga, but ensuring that Maori receive a share of the benefits too
- traditional tools (for example, rahui): Maori are limited in their application of traditional management tools to the marine environment, particularly at a local level. Where tools are provided, such as under s186(a) and (b) of the Fisheries Act these may be hampered by capacity or governance issues.

Key issues

26 The Oceans Policy must be inclusive of Maori. Finding a better way to recognise Maori knowledge systems and experience such as those described in paragraph 12 is important for the development of an effective and uniquely New Zealand Oceans Policy. It is also important because of the Crown's Treaty relationship with Maori and the obligations that flow from this. The work must also take account of the legal obligations created through the fisheries Treaty settlement and Treaty settlements with iwi/hapu.

27 The matters that need to be debated, in order to develop an Oceans Policy that takes account of the principles of the Treaty, can usefully be grouped under the following questions:

- How can we ensure that decision-makers have a good understanding of the implications for Maori of a particular decision?

  A common response is to impose consultation obligations on decision-makers, or to create participation rights for Maori. As a matter of practice, it may also be important to ensure that the organisation taking those decisions maintains a good level of knowledge of Maori perspectives on its work.

- How can we ensure that decision-makers not only understand, but actually take account of, Maori perspectives?

Statutes often set out the considerations or perspectives that must be considered as decisions are made. These considerations can and do require explicit consideration to be given to Maori perspectives on the issues.

- How can we ensure that settlements of past grievances that have already been achieved are not undermined?

  Of prime importance in the oceans context is the need to support rather than undermine the major settlement that was achieved in relation to commercial fisheries, and to maintain strong post-settlement relationships with Maori. The same applies to settlements achieved with individual iwi such as Ngai Tahu. In relation to the arrangements that were entered into to acknowledge Maori customary fishing, the question is probably more focussed on what might be done to support and encourage effective exercise of those customary rights.

- What other resource based interests of Maori may need to be considered?

  As new resources and industries emerge, and regulatory regimes are accordingly developed to accommodate these uses, there will be a need to consider whether there is any Maori interest in the activity. There may be an interest that might warrant protection or support because it is a manifestation of an indigenous right, that is not appropriately dealt with through the settlement of historical grievances. Or there may also be a desire to support future economic development for Maori in the activity. In either case, future options should not be foreclosed and consideration will

need to be given to whether those goals need to be reflected in the design of the regulatory regime, or pursued through some other initiative.

28. The discussion above indicates that there is already a wide range of tools and mechanisms being used to ensure that Maori values are incorporated into management and decision-making. However, while there is a range of tools available, there is still not much experience with how and when they should be used. Both the Crown and Maori are still feeling their way, and need to learn more about which tools are best suited for the different needs. So the practical issue is how to provide guidance and improve on what tools and mechanisms should be used in what situation, and how these decisions should be made. Some of the considerations that might be relevant in developing this guidance could relate to:

- the significance of the area to tangata whenua
- the concerns of tangata whenua and whether those concerns are general or specific
- the capacity that iwi/hapu have (different arrangements require more or less time, energy and resources; in some cases the mechanisms might be available and appropriate but the resourcing is not)
- the level of interest in the area by other parties
- the unsatisfactory features of current arrangements
- the statutory obligations in relation to the area.

29 Decision-makers also need to be provided with sufficient flexibility to enable relationships to develop with Maori depending on local contexts, while providing sufficient certainty and guidance to ensure that the use of tools and mechanisms for Maori involvement is not dependent on personalities. In order to include a Maori perspective, it may prove important to consider how concepts such as kaitiakitanga, manaakitanga and rahui can best be given practical effect at both a general and specific level.

Conclusion

30 An Oceans Policy should endeavour to embrace and recognise important concepts in the Maori view of oceans management.

31 There are already legal and policy frameworks available to achieve this – historical Treaty settlements and through incorporation of the principles of the Treaty of Waitangi in natural resource management policy and/or legislation. There is also a range of practical tools that have been developed to involve Maori and incorporate their views in both management and decision-making.

32 These various sources provide the building blocks for constructing an Oceans Policy that takes careful account of the interests of Maori at all levels. Over the coming months the Oceans Policy project will be discussing and developing these ideas further, in order to develop a Policy that contains the tools for the Crown and Maori to continue to develop effective ways of working together for the protection and wise management of this country’s marine environment.

OCEANS POLICY SECRETARIAT

WORKING PAPER FOUR
14 March 2003

OCEANS POLICY

ENVIRONMENTAL ISSUES

Contents

Introduction

1 This paper discusses the management of environmental effects of human activities on the ocean. It examines issues arising from the management of both current and foreseeable future activities.

Environmental outcomes for an Oceans Policy

2 The vision defined in Stage One of the Oceans Policy process reflects New Zealanders' desire for healthy seas. It is clear from Stage One that people expect to be able to use the ocean as a source of food and other economic benefits over the long term. They want their children to have similar opportunities to experience and enjoy the ocean as they have had. Without a healthy ocean environment, these expectations will not be met. This means that any policy relating to the oceans needs to ensure that the ocean environment has abundant biodiversity and can sustain a wide range of uses.

3 The Oceans Policy should reflect a sustainable development approach to oceans management. The Government's Sustainable Development Programme of Action highlights a commitment to considering the environmental consequences of its decisions through:

- addressing risks and uncertainty when making choices and taking a precautionary approach when making decisions that may cause serious or irreversible damage
- decoupling economic growth from pressures on the environment
- respecting environmental limits, protecting ecosystems and promoting the integrated management of land, water and living resources.

4 Similarly there are international imperatives stemming from the United Nations Convention on the Law of the Sea (UNCLOS), the International Convention for the Prevention of Pollution from Ships (MARPOL), the Rio Declaration and other agreements that place obligations to protect the marine environment from the harmful effects of human activity. For example, UNCLOS requires states to protect and preserve the marine environment, conserve its living resources, and promote the equitable and efficient use of marine resources.

5 Therefore, it is important to maintain and restore ecological integrity (including abundant biodiversity) within New Zealand's oceans. Achieving this should not preclude attainment of other elements of the oceans management system (e.g. respecting the Treaty, wealth creation and public use and enjoyment), but requires that such activities or values should not compromise the natural capital that underpins and enables those activities.

6 So what does "maintaining and restoring ecological integrity" mean? Key concepts are protection, restoration and ensuring that human activities (on land and sea, and those resulting in the introduction of alien species) do not compromise the quality of the marine environment. Protection and restoration does not necessarily prevent use – for example, the Leigh marine reserve is one of the most heavily utilised sections of the New Zealand coastline outside city beaches. Restoration, in this

context, means to facilitate recovery. In practice, restoration would primarily be passive, such as the removal of degrading influences, rather than active, such as restocking.

7 A key requirement of any ocean management system is the recognition of uncertainty, and the limits of our information about how marine ecosystems function. Marine ecosystems are constantly changing and do not always fit neatly within administrative boundaries. Achieving this recognition will require decision-making (management systems) that are cognisant of ecosystem processes and functions, and that can be tailored to draw upon our evolving understanding of how ecosystems work and how they respond to different human impacts.

8 Finally, a more consistent approach to environmental performance is required for all activities. This does not mean that exactly the same approach should be taken or that all decisions should be made centrally. Rather, when it comes to the assessment and management of environmental effects, different activities should be treated fairly and according to the magnitude of their potential effects on the environment. A range of methods could be used to implement defined levels of performance, including statutory limits, codes of practice, standards, or economic instruments.

Current environmental management

9 A brief summary of the key elements of current environmental management of the oceans is set out below. A more comprehensive description is set out in the Oceans Policy Stocktake[1].

Resource Management Act

10 The Resource Management Act (RMA) deals with a wide range of environmental effects on marine resources within the territorial sea, through provisions in plans and resource consents. In addition to these controls, marine pollution regulations under the RMA give effect to New Zealand's obligations under the International Convention for the Prevention of Pollution from Ships (MARPOL) and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention) within the territorial sea[2]. They deal with the dumping of waste at sea and the discharge of oil, sewage and harmful substances arising as a result of the normal operation of ships and offshore installations. However, in some cases the requirements are less onerous than those of the relevant international instrument (e.g. sewage discharge provisions).

Fisheries Act

11 The Fisheries Act regulates recreational, customary and commercial fishing throughout New Zealand's oceans. The Act requires the sustainable utilisation of fish stocks. There are currently no specified or structured environmental assessment

[1] Oceans Policy Stocktake – Legislation and Policy Review, November 2002. See www.oceans.govt.nz/resources/publicdoc.html.

[2] Strictly, the regulations apply to the coastal marine area, which is defined in section 2 of the RMA as the area extending (usually) from the line of mean high water springs (see footnote 4) to the outer limits of the territorial sea.

procedures (for instance, to assess the wider effects of fishing on ecosystems), although environmental information is taken into account when available. Some regulations under the Act are environment-related for specific activities, methods or areas (such as seamount closures).

12 The Ministry of Fisheries is about to release its draft Strategy for Managing the Environmental Effects of Fishing (previously known as the Environmental Management Strategy). The purpose of the Strategy is to make meaningful improvements in managing the environmental effects of fishing, to implement an ecosystem approach to fisheries and to allow MFish to meet its environmental obligations in an effective and coordinated manner. The draft Strategy sets out a high-level framework and approach. More detailed strategies will be developed within this framework to address specific environmental issues.

Maritime Transport Act

13 Marine protection rules promulgated under the Maritime Transport Act (MTA) work in combination with marine pollution regulations under the Resource Management Act to provide a relatively seamless regulatory framework for marine protection within New Zealand's jurisdiction. Just as marine pollution regulations under the RMA give effect to New Zealand's obligations under MARPOL and the London Dumping Convention *within* the territorial sea, marine protection rules under the MTA give effect to these same obligations *beyond* the territorial sea to the limits of the exclusive economic zone – and in some cases, to the limits of the continental shelf. In addition, marine protection rules cover design, construction and equipment requirements, and shipboard operational and emergency procedures relating to the prevention of pollution from boats, both within the territorial sea and beyond. The Maritime Safety Authority can also regulate and restrict international shipping to prevent transit through sensitive areas within New Zealand's ocean.

Marine Mammals Protection Act

14 This Act provides for the protection, conservation and management of marine mammals within New Zealand and New Zealand fisheries waters. Among other things, it allows the Minister of Fisheries to set maximum allowable levels of fishing-related mortality for threatened species or any other marine mammals – such as the Hector's Dolphin and New Zealand Sealion.

Marine Reserves Act

15 This Act sets out processes for establishing and managing areas of the sea and foreshore as marine reserves for the purpose of preserving them in their natural state as the habitat of marine life for scientific study. It is proposed to replace the present Act with new legislation that will[3] address issues such as:

- the land-sea interface: marine reserves can currently extend landward as far as the mark of mean high water springs[4], which means that land-based impacts can be hard to manage

[3] The Marine Reserves Bill is currently before the Select Committee.
[4] The average of high water heights occurring at the time of spring tides.

- the seaward boundary: the Bill proposes to allow establishment of marine reserves throughout New Zealand's exclusive economic zone, whereas the current Act only provides jurisdiction to the limits of the territorial sea
- the exclusivity of purpose with respect to scientific study: this creates problems creating reserves for environmental or other purposes. The new purpose set out in the Bill is "to conserve indigenous marine biodiversity ... for current and future generations".

Other controls beyond the territorial sea

16 There are few explicit requirements for management of environmental effects beyond the territorial sea. Provisions under the Fisheries and Maritime Transport Acts are discussed above. The Continental Shelf Act covers most seabed activities beyond the territorial sea (at the discretion of the Minister) although environmental requirements are not specified. Regulations can be made – however none have been made so far. Recent environmental impact assessments under the Continental Shelf Act have been carried out through an ad hoc process.

Other marine functions within the context of international law

17 The Maritime Safety Authority derives significant environmental functions through mandates conferred upon it by the Crown to head New Zealand's participation in various international instruments and associated forums concerned with protection of the marine environment (and the safety of navigation). As an example, the MSA is currently leading the New Zealand application to the International Maritime Organisation for a shipping exclusion zone to be put in place around the Poor Knights Islands to limit the risk of environmental impacts from vessel-related incidents in the area.

Protection mechanisms

18 Current protection tools and strategies include:

- the Biodiversity Strategy, which sets a goal of 10% of the area of New Zealand's exclusive economic zone to be set aside as protected marine areas
- marine reserves (e.g. Goat Island, Tonga Island, Kapiti, Kermadecs)
- fisheries regulations and notices – method or area closures (e.g. seamounts, Separation Point) and fishing season closures to limit bycatch of protected species (e.g. squid fishery/New Zealand sealions)
- mataitai, taiapure, and rahui closures to protect customary fishing areas and values (e.g. Rapaki Bay, Palliser Bay, Koukourarata, Pukerua Bay)[5]
- marine mammal sanctuaries (e.g. Banks Peninsula)
- population management plans under the Marine Mammals Protection Act
- whale sanctuary status of New Zealand's exclusive economic zone[6]

[5] See sections 186A and 186B of the Fisheries Act.

[6] A large proportion of New Zealand's EEZ lies within the Southern Ocean Whale Sanctuary administered by the International Whaling Commission, with the remainder lying within the proposed

- marine protection rules under the Maritime Transport Act[7]
- marine pollution regulations under the Resource Management Act[8]
- cable protection zones/offshore installation exclusion zones (e.g. around the Cook Strait cable)
- marine parks (e.g. Sugar Loaf Island, Hauraki Gulf)
- international protection measures promoted by the Maritime Safety Authority, such as shipping exclusion zones like the one proposed for the Poor Knights Islands (see paragraph 17 above)
- sites of special significance identified under the Resource Management Act.

19 The Ministry of Fisheries and Department of Conservation are also developing a Marine Protected Areas Strategy to provide direction on priorities for protecting important marine areas and values, and on the range of protection measures currently available.

Problems with the current management

20 Environmental problems in the oceans reveal themselves in a number of ways discussed below.

Cumulative effects

21 Effective management of the cumulative effects of activities is a major challenge. The marine environment is vast, dynamic and only partly understood by marine managers, making it difficult to gauge the environmental impacts of many different activities over time.

22 Effective identification and management of cumulative effects is a problem for management of most marine-related activities. For example, it is difficult to assess the overall effects of quota stock fishing on the wider ecosystem, and it is hard to manage the many diffuse discharges that pollute waterways flowing to the sea.

Land-based activities

23 Land-based activities can have significant adverse impacts on the sea. The problems relating to the land–sea interface are discussed in Working Paper Five.

Fishing activities

24 There are a number of adverse environmental impacts and concerns stemming from fishing activities. They include:

- the problem of fisheries by-catch for some species, notably the Hector's dolphin, albatrosses and petrels, and the New Zealand Sealion

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South Pacific Whale Sanctuary. New Zealand has a clear international obligation to ensure that decisions affecting our oceans do not have adverse impacts on the great whales, including impacts on their potential recovery from the currently depleted populations.

[7] These can be made under Part XXVII of the Act for wide-ranging purposes – see ss 386 and 388.

[8] These are made under section 15B of the RMA – see RM Amendment Act 1997, s6.

- constraints on the effectiveness of monitoring and compliance. Discrepancies are sometimes found between the data gathered at sea by official fisheries observers and the returns lodged by fishing company staff. Under-reporting of by-catch in the absence of fisheries observers poses a particular problem
- the pressure of harvesting from customary and recreational fishing which has led to overfishing and a shortage of shellfish in some areas
- a concern that enforcement officers are few and far between, with poaching identified as a major problem (particularly paua).

Other economic activities

25 Mechanical activities such as trawling, dredging, dumping and the extraction of oil, gas and minerals can have adverse effects on some marine habitats, including seamount communities and coral, bryozoan, sponge and other benthic communities (dredging in Golden Bay has been cited as an example of this).

Beyond the territorial sea

26 Beyond the territorial sea there is a lack of consistent controls on the environmental impacts of activities, and ad hoc responses to new activities.

27 The Continental Shelf Act and Fisheries Act allow for some types of 'new' seabed activities (e.g. mining and bioprospecting) but the decision-making processes with regard to permitting activities and assessing environmental effects are not specified. New Zealand's only gas field beyond the territorial sea, Maui, did go through an environmental assessment – but there was no statutory requirement to do this. The assessment was completed by the Parliamentary Commissioner for the Environment. Impact assessment provisions will need to be strengthened and consistently applied as new cases arise in the future (for instance, as the Maari oil field is projected to come on line, probably within the next few years).

28 New technologies may not be covered effectively under existing legislation, except in the broadest sense under the Continental Shelf Act – which relies on official and Ministerial discretion for the management of environmental effects. For example, tidal and wave power could alter tidal currents, affecting the habitat of seabirds and fish, but there are no specific requirements to assess these effects.

29 Similarly deep-sea aquaculture (beyond the territorial sea) is becoming more technologically feasible, yet there is no statutory framework to authorise this activity and regulate its environmental effects. Environment Canterbury (Canterbury Regional Council) is currently considering an application for a marine farm more than 12 nautical miles long. Although in this case the farm would be oriented so that it is located wholly within the territorial sea, it seems only a matter of time before an application is tendered for a farm that spans the boundary of the territorial sea. Such an operation would be subject to very different environmental controls on each side of the boundary.

30 Dumping of dredge spoil occurs in most regions of New Zealand and is generally managed through Resource Management Act processes. However, disposal

of dredge material beyond the 12-mile limit does occur in one location in New Zealand (Auckland) due to a perceived prohibition on the activity within the coastal marine area of Auckland.

Protection of marine areas

31 While a large number of tools are available for protecting the marine environment, problems still persist with degraded areas – particularly in hot spots of usage around the country. One example is Spirits Bay, which has one of the highest known levels of marine biodiversity. There is limited protection from the effects of fishing and other activities in the area (including regulations to prohibit trawling and dredging).

32 A key issue is that we still have limited knowledge about what should be protected and where. The Biodiversity Strategy's 10% goal for marine protected areas is a clear objective. Developing a series of genuinely representative marine protected areas within the territorial sea and the exclusive economic zone will require careful consideration of where priority sites and values are, and how they should be protected. Both the draft Marine Protected Areas Strategy and the Marine Reserves Bill will help to address these issues.

Clean-up

33 There are administrative gaps in clean-up requirements relating to things like ammunitions dumps and sunken vessels. Also, heavy metals from land use can contaminate the ocean; there is little information about how effectively clean-up bonds are working; contingency plans for some activities are non-existent (there are differences in planning, for example; and beyond the territorial sea, contingency plans are not required for activities such as aquaculture, bio-mining and mineral (but not petroleum) extraction). A further problem is a lack of management of exclusion zone removals (for example, when petroleum wells are removed, rendering exclusion zones redundant). Although the Ministry of Foreign Affairs and Trade has responsibility for this under the Continental Shelf Act, they do not have the expertise or capacity to enforce removals. Changes to the Maritime Transport Act are being considered to remedy this problem.

Biosecurity and the probability of breaches

34 Problems relating to biosecurity are discussed in more detail in Working Paper Six.

Assessment of the issues – why are problems occurring?

Overarching reasons

35 There are some overarching reasons why the problems set out above are occurring. These relate to the institutional arrangements for environmental decision-making and the way that information is used to make decisions.

Institutional arrangements

36 Institutional problems appear to arise mainly as a result of the complex, and sometimes difficult, relationships and mandates of different agencies. This may be

partly because of conflicting legislative purposes which lead, for example, to the conflict between the Department of Conservation's 'preservation' approach and the Ministry of Fisheries' 'sustainable use' approach.

37 Institutional arrangements for managing the environment are not focused on managing ecosystems as a whole. Administrative boundaries (regions, aquaculture management areas, iwi and hapu, fisheries management areas, and regional conservancies) inevitably range across ecosystem boundaries. Problems arise as a result of administrative boundary locations; however, shifting these boundaries would probably only result in shifting the problem.

38 Some boundary issues, especially relating to the mean high water mark, are causing day-to-day confusion. In some cases, illegal structures are being built across the line of mean high water – and because administrative roles and responsibilities are not clear, the courts sometimes allow this to happen. The 12 nautical mile boundary creates a further set of problems; councils are reporting increased activity in applications that have the potential to cross the line – with very different regimes and requirements in place to regulate the same activity either side of the line. Confusion also arises as a result of differing definitions of 'inland water' and 'internal water' boundaries under the Maritime Transport, Resource Management, and Fisheries Acts.

Information

39 The lack of information about the marine environment makes it hard to know where management should be focused to address key threats to ecosystems. Even where information is available, knowledge about the actual effects of proposed activities is not always utilised in decision-making (e.g. attention is often focused on the adverse effects of mineral prospecting, but the effects of some types of fisheries research or aquatic environment research may have as much effect as some types of mineral prospecting). This results from limited sharing between agencies of information that can be used to assess the relative values of activities so that the 'best' use can be determined. Information issues are discussed further in Working Paper One.

40 The dynamic and complex nature of ocean ecosystems, and the limits of knowledge about how they function, can make it hard to predict and prevent irreversible impacts on ecosystems. The diversity of ocean ecosystems also complicates protection and restoration initiatives, making it difficult to diagnose values or sites in need of protection or restoration, identify the best protection measure in any particular case, and prioritise work between sites.

41 Inadequate monitoring of the marine environment (and the effects of activities) is a significant issue for regional and district councils, as well as the Ministry of Fisheries. Lack of monitoring makes it difficult to enforce environmental responsibilities, and to direct research, management and policy efforts most effectively. The high costs of monitoring in the marine environment add to the need for a better understanding of where to monitor and how (see Working Paper One for further discussion of this issue).

42 Finally, the lack of awareness about existing marine protection measures and a lack of education about the effects of their activities is a key issue for the public and other users of the sea.

Specific reasons

43 There are some specific reasons why certain problems are occurring relating to different elements of the management system.

Biosecurity and land/sea effects

44 The reasons for ongoing land effects on the sea and the risk of a breach in biosecurity are discussed in Working Papers Five and Six.

Fisheries

45 In the case of environmental management of fisheries, while the quota management system manages specific fish stocks, we lack a comprehensive ecosystem-based approach for managing the environmental effects of fisheries within territorial waters. Until recently, section 12 of the Resource Management Act has been taken to prevent councils from imposing controls on the harvesting of any plant or animal (which includes fisheries) – for instance to mitigate adverse impacts on ecosystems. However, the Environment Court has recently ruled that fishers (and others harvesting plants and animals) could be subject to direct control under the RMA in addition to controls under fisheries legislation.[9] This may significantly strengthen councils' powers to control the environmental effects of fishing and other harvesting activities.

46 We also lack a comprehensive ecosystem-based approach to deal with the cumulative effects of customary and recreational fishing; setting catch limits alone may not be effective enough to control the effects on the stock and connected ecosystem. Fisheries plans enabled under legislation have been slow to eventuate, as has the use of customary fishing tools (although there are some examples of these).

47 The Ministry of Fisheries is working on an environmental management strategy[10] to rectify this problem, but (as with all strategies that are not incorporated into law) it is unclear how effective this will be and whether the enforcement elements of the fisheries legislation will apply in the event that the Strategy is not complied with. There may be a need for additional controls to give more teeth to the Strategy.

48 Illegal activity is extremely difficult to monitor and control over such a large area, and while there are significant powers of enforcement, fisheries officers have a difficult task and have to deal with progressively more violent offenders.

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[9] See Golden Bay Marine Farmers v Tasman District Council W42/2001, chapters 10 and 11. The Environment Court (Kenderdine J) ruled that the exemptions under section 12(1)(c) and (e) for 'lawful harvesting' are not limited to meaning 'lawful' under the fisheries legislation only. It found that if it was intended to limit the term 'lawful' to having approvals under the fisheries legislation only, the section would have specifically referred to both Acts.

[10] Draft Strategy for Managing the Environmental Effects of Fishing.

Protection

49 The lack of protection for some areas and 'hot spots' does not appear to relate to the lack of tools, but rather to the lack of a strategic approach to selecting the *right* tools for the job. For example, a marine reserve may be ineffective if the main reason for degradation is an adjacent sewage discharge. In addition there is a need for a strategic approach to identifying priority values and areas for protection. The Marine Protected Areas Strategy (if implemented effectively) should provide some strategic direction on which sites to protect and the most appropriate tool in any particular case.

Beyond the territorial sea

50 Discharges from installations and vessels, and dumping are controlled under the Maritime Transport Act and associated marine protection rules. The Maritime Safety Authority is drafting a new rule to manage discharge of waste and hazardous substances from offshore oil and gas installations more effectively. However most environmental effects of activities beyond the territorial sea are assessed on a case-by-case basis at the discretion of officials and ministers. This is largely because the Continental Shelf Act does not contain any explicit references or regulations for environmental management (although there are broad regulation making powers). At this stage, a limited number of activities are being managed under the ad hoc system in place at present, although some stakeholders consider that they are unable to participate in this system, and commercial activity is constrained by lack of knowledge about the system they will face. Officials are ensuring that there is some level of assessment of effects before allocating licences and permits.

51 The differences in legislative requirements on either side of the 12-nautical mile limit are significant, and lead to questions about fairness and the adequacy of environmental risk management controls beyond the territorial sea.

Clean-up

52 Within the territorial sea, liability for clean-up is an issue – that is, who pays to clean up. Similar problems are faced in relation to contaminated sites on land. Once a marine structure such as a shellfish farm becomes redundant, it is unclear who is liable for clean-up if there are no specific provisions in the resource consent. Beyond the territorial sea, gaps in the legislative requirements and lack of capacity of agencies responsible appear to be the key causes of clean-up problems.

Conclusions

53 The discussion above indicates a need for immediate action to address the following key environmental problems:

- adverse effects of land use and management on the sea (see Working Paper Five)
- significant risks of a breach in marine biosecurity (see Working Paper Six)
- gaps in protection and management of special marine areas and 'hot-spots'
- inadequate management of the environmental effects of fishing activities.

54 Problems that will need to be addressed in the near future include:

- the need for better management of the cumulative effects of activities on the marine environment
- the need for more effective environmental management controls on activities beyond the territorial sea (including environmental assessment provisions)
- the need for clarity around clean-up liability.

55 Overarching drivers behind these specific areas include:

- the lack of communication and connection between different management systems, caused by factors such as different purposes in legislation and lack of clarity around some management boundaries
- the need for management systems to better reflect ecosystem processes and functions
- a lack of coordinated information and monitoring to inform decision-making, and a need for better marine environmental education.

OCEANS POLICY SECRETARIAT

WORKING PAPER FIVE
14 March 2003

OCEANS POLICY

THE LAND–SEA INTERFACE

Contents

Introduction

Conserve the land and you will save the sea. Make a link between the two[1]

1 The land and sea are inextricably linked. The global coastal margin is an important boundary connecting processes operating on land with those in the ocean. It is a site of rapid population growth, industrial and agricultural practices, and urban development. The flow of water from the mountains to the sea carries the sediment and pollutants of land activities into marine ecosystems. Some human activities, such as ports and sewerage systems, straddle the land–sea interface and utilise the marine environment as part of the urban infrastructure.

2 The importance of integrated management between the land and sea is highlighted in international agreements such as the 1995 Washington Declaration on Protection of the Marine Environment from Land-Based Activities. In the New Zealand context, management of the land–sea interface raises many important issues for an Oceans Policy. The coastal margin has many management challenges, such as hazard management, protection of public access and amenity values, and the protection of fragile ecosystems such as estuaries. Ecological integrity of the oceans can be threatened by pollution from land-based activities, both through direct discharges such as sewage and stormwater, and through non-point source pollution of rivers hundreds of kilometres from the coast.

Problem issues with the land–sea interface

3 There are a number of problems faced in management of the land-sea interface. These issues have been identified through four sources:

- submissions to Stage One of the Oceans Policy
- discussions with relevant bodies of local, regional and national government
- examination of regional policy statements and regional coastal plans
- relevant literature, particularly the 1997 State of the Environment Report, and the 1999 report of the Parliamentary Commissioner for the Environment.

Effects of land use on waterways

4 Land use practices have a profound effect on the water quality of adjoining rivers, which has a downstream effect on marine water quality, particularly in near shore or low energy environments, where pollutants have little chance to disperse.

5 Water quality can be affected by both point and non-point source pollution. Point source pollution is discharged from specific sites, such as factory outfalls. Pollutants washed into waterways as run-off from land surfaces are non-point source

[1] Submission of the New Zealand Federation of United Seafood Interests Inc to Stage One of the Oceans Policy.

pollutants. In many cases, removal of riverbank vegetation has caused an increase in the contamination of rivers from non-point source pollution.

Agriculture

6 Agriculture dominates the middle and lower catchments of most streams and rivers. Agricultural practices in the main require the application of fertilisers and pesticides, which if not broken down, may leach into groundwater or contribute to run-off. Additional organic waste is discharged into surface waters from facilities that process agricultural products and animal carcasses[2]. The recent increase in conversions to dairying has intensified land use in a number of regions.

7 Good management practice in relation to dairy shed effluent and waterways is essential for maintaining water quality for downstream users and ultimately coastal waters. In recent decades some of these pressures have improved as the agricultural sector has become more aware of the problems, water waste treatment technologies have improved and international consumers have demanded higher environmental standards in the production of New Zealand's exports.

Sedimentation

8 Land use changes such as subdivision or forestry can increase the sediment load of rivers, particularly when riparian margins are disturbed. Downstream, this sedimentation can have profound effects on marine ecosystems, particularly in low-energy enclosed areas where sediment cannot 'escape' to the wider marine environment.

9 For example, concerns about sedimentation in Whangamata Harbour have caused concern over the loss of estuarine habitats and biological communities. This sedimentation also affects human uses – for example reduced access and navigation, loss of recreational space, loss of amenity value, and loss of water views and property values.

Water abstraction

10 Increasing urban demand for water has reduced the levels of some rivers and aquifers. Agriculture also draws a large amount of water from waterways. Water flows are also affected by damming upstream. Changes affect the habitat of ecosystems on the coastal fringe influenced by flow levels (e.g. estuaries) or through changing sedimentation levels.

Point-source discharges

11 Urban areas produce a large amount of sewage and stormwater. After varying degrees of treatment most end up discharging these into the marine environment. Sewage and stormwater have adverse effects on marine water quality, and the discharge of sewage in particular is of considerable social/cultural concern, especially

[2] Ministry for the Environment and GP Publications 1997, *The State of New Zealand's Environment* 7.37

to Maori. Stormwater is a major source of marine debris, much of it non-biodegradable plastic which contributes to the litter of many urban coastlines. Stormwater can also carry a number of toxic substances and heavy metal pollutants discharged off road services. Some industries also have direct discharges into the oceans; for example, fish processing outfalls.

12 A recent and severe case of land-based pollution occurred at Waikare Inlet in the Bay of Islands, where sewage from the Kawakawa treatment facility is suspected to have led to a viral infection that affected local oyster farms.

Loss of natural character/amenity values in the coastal environment

13 A major issue for many councils is the trade-off between coastal development and natural character values. There is also a tension between amenity values and public access issues – increased access and development on the coastal environment can diminish the values that attract people in the first place. Issues with the protection of natural character are occurring around the country, particular in relation to areas of rapid development such as North Auckland or Tauranga.

Perception of reduced public access to the coastal environment

14 Councils are divided in opinion as to the scope and severity of the issue. The Ministry of Agriculture and Forestry is currently leading a project examining access issues, including access to the coastal environment across private property. The work responds to concerns over the need to clarify and enhance the legal situation pertaining to public access over private land and the foreshore of lakes and the sea and along rivers.

Adverse impacts on fragile ecosystems

15 Fragile ecosystems such as estuaries or mangroves are adversely affected by modifications such as infilling, rubbish disposal and commercial land development[3], or through diminished water quality. Areas adjacent to urban centres, such as estuaries in the Auckland region, are under extra pressure, particularly due to heavy metal contamination from motor vehicles.[4]

Increasing danger of natural hazards

16 Coastal hazards are natural events that threaten the health of coastal ecosystems and communities. Population growth and increased development on the coastal fringe mean that people are increasingly putting themselves 'in harm's way' of hazards such as coastal erosion, storm surge or tsunami. Hazards can be created or intensified by human activity. For example, coastal development can accelerate coastal erosion by removing stabilising vegetation.

[3] Ministry for the Environment and GP Publications 1997, *The State of New Zealand's Environment*, 7.27
[4] Ministry for the Environment and GP Publications 1997, *The State of New Zealand's Environment*, 7.74

17 The frequency and severity of hazards varies around the country. For example, the long exposed reaches of the Bay of Plenty or the West Coast could be severely damaged by a tsunami. Areas of intensive development such as Auckland or Tauranga may see accelerated coastal erosion and a higher vulnerability to storm events.

Variations over space and time

18 The incidence, scope and priority of land–sea issues vary around New Zealand. The state and inter-relationship of geography, ecosystems and human uses lead to large spatial variations in the nature and incidence of problems. For example:

- The Auckland region is experiencing rapid population growth, placing increasing pressure on the marine environment, particularly in relation to retention of natural character and protection of sensitive coastal ecosystems
- The primacy of dairy farming in Waikato and Southland raises river management issues different from those of areas with different concentrations of land use patterns, such as sheep farming or horticulture
- The Gisborne area has high levels of sedimentation, requiring management responses very different from those in areas of lower sedimentation.

19 Land–sea issues will change over time with the flux of human and natural systems. For example:

- Large-scale dairying conversion in recent years in the Waikato and Southland has resulted in increased concerns about river pollution, and downstream effects on coastal water quality. If land use patterns change in the future, this issue may diminish in importance.
- Spatial concentration of residential development on the coastal fringe has increased natural hazard, public access and amenity value issues.
- New technologies can enable the avoidance or mitigation of some adverse environmental effects. For example, sewage treatment technologies now make it possible to produce a ‘cleaner’ discharge than in the past.

Policy problems underlying land–sea interface Issues

20 The land–sea interface is difficult to manage, for a number of reasons. Work on the Oceans Policy is trying to untangle the many interacting strands of ‘the problem’ to see where improvements to the management system can be made. To date, the following policy problems have been identified.

Implementation of the Resource Management Act

21 The Resource Management Act (RMA), in theory, provides for a high degree of institutional coordination. Arbitrary boundaries, such as the mean high water spring mark and the boundaries of different councils present challenges that the RMA addresses through a policy hierarchy and provision for integrated planning.

22 A fundamental philosophy of the Resource Management Act is that the environmental effects of activities should be managed, as opposed to focusing on the type of activity in question. The assessment of individual activities on a case-by-case basis can lead to cumulative problems, such as the effects of individual farms on river water quality.

23 A key message to arise from consultation with local government, however, is that effective implementation of the Resource Management Act is the issue, rather than the design of the legislation (although some areas could be 'tidied up'[5]). The Resource Management Act has a wide range of tools to promote integrated planning, such as the hierarchy of policy statements and plans, or provision for joint hearings and transfer of powers. The following problems have been raised in relation to effective implementation of the Resource Management Act .

Societal pressures and political decision making

24 The Resource Management Act is just one part of the planning process. Councils deal with the expectations of their constituents, which are not always easily aligned with statutory requirements. This is expressed through tension around issues such as the protection of natural character, or the management of coastal hazards (when everyone wants to build on the beachfront). Often councils may know what activities are causing problems, but are unwilling to take steps that would adversely affect the economic and social values of their constituents.[6]

25 Political and social pressures can also mean that the 'big projects' will always go through, due to their national significance and benefits for the region. It is unlikely that councils would not approve any major petroleum development in Taranaki, or a large energy scheme such as Project Aqua[7].

Institutional fragmentation

26 Management of the land–sea interface cuts across the jurisdictional boundaries and responsibilities of territorial and regional councils, which have different roles and objectives affecting their decisions. The Resource Management Act's model of integrated planning may be hard to implement in practice. Other players such as the Ministry of Transport, the Ministry of Fisheries and community groups, for example, also have roles to play in the complicated management scheme, and there may be a need to clarify the fit between these.

27 One cause of institutional fragmentation, enshrined in statute, is the mean high water spring boundary, which separates many management functions between the terrestrial and marine environments. This arbitrary boundary does not recognise the interaction of human and natural systems across the land–sea interface, and can be "a ridiculous day-to-day irritation"[8] for coastal planners. One example of this problem is the management of noise pollution. For example, noise levels from the local harbours annoy residents in Lyttleton, or the Auckland CBD, but noise control staff from local

[5] For example, the management boundary at Mean High Water Spring.
[6] Pers comm, (2003) *Coastal planners meeting*, 19-2-03.
[7] Pers comm, (2003) *Coastal planners meeting*, 19-2-03.
[8] Pers comm, (2003) *Coastal planners meeting*,19-2-03.

authorities do not have jurisdiction to regulate activities on the water as they do on land.

Working relationships

28 Most good practice examples of integrated management demonstrate strong and constructive working relationships between relevant parties. There are many current examples of Resource Management Act authorities working together constructively to overcome jurisdictional fragmentation.[9] Community-based solutions such as maitaitai and taiapure work best when iwi, local community and government agencies are all working together, there is 'buy-in' to the projects and there are the 'teeth' to enforce it when required.[10]

29 In some cases, though, provisions for policy consistency and integrated management are debated in a litigious rather than cooperative manner. Reasons for relationships to break down can include 'patch protection', or the fractious relationships of key individuals. It is hard to implement integrated management effectively without good relationships and a degree of 'buy-in' from all parties.

Capacity issues

30 Land–sea issues are difficult to deal with, because of their complexity and cross-boundary nature. Good planning requires good resources, and it is notable that larger, better-resourced councils have better developed plans and means of implementation (e.g. monitoring programmes), and are better able to address difficult issues. In some cases, the human and financial capacity of agencies may not be sufficient to deal with problems effectively.

Complexity of issues and lack of information

31 It is hard to plan well without baseline information on the environment, and an accurate picture of how a proposed activity may affect that environment. This is particularly true of cumulative effects – how does a council know when to draw the line and stop further development?

32 Councils are often required to make decisions in the face of uncertainty. Without good information on the cause and effect of environmental problems, councils are poorly placed to respond to the issues.

33 This problem is a fundamental constraint on the ability of councils to address land–sea problems. If a council is unsure as to the downstream effects of an activity, or the cumulative effect of many small impacts, it is very hard to relate decisions about specific activities to distant impacts in different jurisdictions. It has to be accepted, however, that managers will seldom have all relevant information about complex issues, and there is a need to develop techniques for decision-making in the face of uncertainty.

[9] For example the Raglan Sedimentation Management Plan, or Waitakere City Council / NIWA / Ministry of Transport project modelling vehicle fleet emissions and environmental impacts
[10] Pers comm., meeting with territorial authorities 11/2/03

Monitoring

34 Another information-related issue is monitoring, in theory a prerequisite for good environmental management. Some councils appear to lack the capacity to better maintain sound monitoring provisions, and there is a need for guidance on how monitoring can be better targeted (within the constraints of limited information on marine ecosystem processes and functions).

'Bedding-in' of the Resource Management Act

35 Although the Resource Management Act has been in force since 1991, it is widely accepted that there is significant room for improvement in its implementation. Many plans have only been operative for a short time, and some are still at a draft/proposed stage. Given that the RMA was such a significant paradigm shift in resource management planning, it is understandable that it will take time to adapt to the new framework.

36 Second generation plans, and improved experience with implementation, should enable councils to deal better with issues such as integration across jurisdictional boundaries, or management of cumulative effects.

Lack of guidance from central government

37 The current review of the New Zealand Coastal Policy Statement has revealed some dissatisfaction from some councils, who seek guidance on issues of national priority, such as integrated catchment management or natural hazards. A lack of national environmental standards may also be limiting councils' ability to set appropriate standards at the local level.

38 Central government has the ability to set national environment standards[11] that prescribe both technical standards relating to the use, development, and protection of natural and physical resources and methods for implementing these standards. To date, no environmental standards have been implemented; those developed so far are still at a guideline stage. In this respect, central government has not taken the opportunity to provide guidance to local authorities that may help them deal with some land–sea interface issues.

39 Discussions with councils have revealed a varying degree of support for central government involvement, particularly in relation to regulatory measures such as standards or policy statements. There is fairly common consensus, however, that there is some role for central government in setting national management priorities and facilitating best practice/information sharing dialogue between councils.[12]

The wider management framework for sustainable development

40 Aside from Resource Management Act implementation issues, the wider context of planning presents certain challenges for land–sea management. Changes in

11 RMA ss43, 44

12 Pers comm. Meeting with Territorial Authorities focus group 11-2-03, Meeting with Regional Coastal Planners 19-2-03

activity patterns are driven by a number of economic and social cycles (e.g. the aquaculture boom, local elections, desirability of coastal property). The environmental planning cycle – for example, the RMA, council by-laws, and other statutes where relevant – may not be well-suited for intervention at the right times to regulate these activities properly. In other words, negative effects may happen due to a number of different reasons, but environmental managers have limited ability to address the issues. For example, the aquaculture boom was driven by the high productivity of marine farms, and a subsequent sudden increase in investment. Concerns about the ability of the RMA to respond effectively and quickly to the issue, and inability to understand and manage the cumulative effects of new marine farms, led to recent reforms to aquaculture legislation and a moratorium on new applications.

Existing uses

41 A related issue is the 'rollover' of existing activities; for example forestry, agriculture, and industrial activities. Plans can only deal with proposed new uses, which means that different standards apply to 'old' activities, or activities with existing use rights. This makes it difficult to attribute environmental trends to different activities and uses, although some councils are currently exploring how to address existing use problems.

42 Reforms to the Local Government Act, to allow strategic community planning, may help councils address these issues. Long Term Council Community Plans (LTCCP) are to be prepared by every local authority at least every three years to provide, among other things, for: integrated decision making; the coordination of the resources of the local authority; and an opportunity for participation by the public in decision making on activities to be undertaken by that local authority. The authority of local government to undertake these roles is strengthened by the grant of a 'power of general competence'.

Conclusions

43 Current management of the land–sea interface raises a number of problems. Their effects on the maintenance of ecological integrity, preservation of public access and amenity values and the economic values of the oceans are particularly relevant to the Oceans Policy.

44 Land–sea interface problems have to be assessed on a case-by-case basis, and in their geographic and temporal context. Local authorities are best placed to deal with their own local issues, and at this stage it is hard to identify any national priority for how the problems should be ranked.

45 With respect to the causes of these problems, it appears problems in the implementation of the Resource Management Act may be more important than problems with the legislation itself. Development of policy options should, therefore, focus on making the existing system work better, and encourage greater integration between the various management agencies involved. There may also be some scope for central government to take a more proactive role in providing national guidance and facilitating good practice.

OCEANS POLICY SECRETARIAT

OCEANS POLICY

WORKING PAPER SIX
14 March 2003

MARINE BIOSECURITY

Contents

Introduction

1 Biosecurity is not defined in legislation, but a good summary description is:

> *Biosecurity, or biological security, is the system for the prevention, eradication and management of the risks posed by pests and diseases to the economy, the environment, and human health.*[1]

2 We use the term 'marine biosecurity' to apply this description to New Zealand's marine environments.

3 The Government's Sustainable Development Programme of Action reflects a commitment to:

- using the best information available to support decision making
- addressing risks and uncertainty when making choices and taking a precautionary approach when making decisions that may cause serious or irreversible damage
- respecting environmental limits, protecting ecosystems and promoting the integrated management of land, water and living resources.

4 This paper examines the current status of marine biosecurity in New Zealand and identifies the key issues and desired outcomes for developing a comprehensive system of marine biosecurity management.

Background

5 We rely heavily on our marine biodiversity and natural resources for our wealth and way of life. Biosecurity plays a key role in protecting these interests and values.

6 The marine environment provides a significant proportion of our national revenue. Seafood is our fourth biggest export earner, at over $1.49 billion annually, and the seafood industry employs over 26,500 people (full-time equivalents). Tourism, a market that is arguably based on our biodiversity and large island environment, contributes 9% of our Gross Domestic Product.

7 New Zealand's biosecurity system is world-leading, but it is under increasing pressure.[2]

8 New Zealand has already received at least 148 accidentally introduced exotic marine species – some of which have caused serious problems[3]. It may only be a matter of time before there is a catastrophic breach that seriously damages our marine ecosystems and the growing marine economy that is reliant on those ecosystems (such as tourism, fishing, aquaculture and bioprospecting).

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[1] 'Guarding Pacific's Triple Star – Draft Biosecurity Strategy for New Zealand' published December 2002, page 13.
[2] Draft national Biosecurity Strategy, page 9.
[3] e.g. Undaria and algal blooms affecting shell-fish.

9 Such a breach could also put at risk human health and our enjoyment of the marine environment. Biosecurity is essential for maintaining the quality of recreational waters, such as bathing beaches and shell-fish gathering areas, as well as traditional food-gathering areas. It also plays an important role in safeguarding people's access to the ocean and its resources for commercial, recreational and customary purposes.

10 We therefore have a clear interest in minimising risks to New Zealand's marine environment from biosecurity threats.

Desired outcomes for marine biosecurity

11 It is therefore essential that the adverse effects of marine pests, weeds and diseases are effectively prevented or managed.

Current biosecurity management system

Legislation

12 The statutory framework for biosecurity is provided by two main pieces of legislation. The Biosecurity Act 1993 provides tools to manage the risk of pests and unwanted organisms being accidentally (or illegally) introduced into the country. The Hazardous Substances and New Organisms Act 1996 covers the intentional introduction of new species and genetically modified organisms. The Resource Management Act 1991 and the Fisheries Act 1996 also provide some tools for managing marine biosecurity.

Management agencies

13 Four central government agencies are responsible for biosecurity in New Zealand: the Ministry of Agriculture and Forestry (MAF), Department of Conservation (DoC), Ministry of Health (MoH), and the Ministry of Fisheries (MFish). Memorandums of Understanding (MOUs) developed between the four departments define responsibility for issues and techniques for cooperation.

14 MFish has responsibility for a range of marine biosecurity functions including:

- ballast water and hull fouling/cleaning management at the border
- surveillance at ports of entry and high risk areas
- some incursion and pest management functions.

15 A more detailed description of MFish's biosecurity functions is in Appendix One.

16 The other central government agencies also have functions that relate to or affect marine biosecurity. DoC has marine biosecurity responsibilities in relation to risks to indigenous flora and fauna; MoH is involved when human health is an issue; and MAF has functions relating to the setting of standards for imported risk goods, and certification of exported seafood products.

17 At the local level, regional councils have biosecurity responsibilities which are implemented through coastal plans under the Resource Management Act and pest management strategies under the Biosecurity Act.

National strategies

18 A draft national biosecurity strategy[4] was published in December 2002, and a marine biosecurity strategy is under development. These are key documents setting out the government's marine biosecurity goals, management priorities and management tools.

Draft national Biosecurity Strategy for New Zealand

19 The government's draft national Biosecurity Strategy covers marine as well as land-based and fresh water biosecurity. The draft Strategy is expected to be submitted for Cabinet approval by 30 June 2003, and to be publicly released in July 2003. Its aim is:

> to ensure we have the best biosecurity systems in the world to keep New Zealanders, our natural resources and our unique native plants and animals safe and secure from damaging pests and diseases by keeping them out or quickly finding and eradicating them and by controlling or eliminating established pests and diseases.[5]

20 The draft national Strategy proposes that MFish should take on an expanded role and become accountable for marine biosecurity, and ensure that "capabilities are developed to address economic, environmental and societal outcomes within the marine environment"[6]. It is also proposed that MAF becomes the lead agency for terrestrial and fresh water biosecurity. The implications of these new accountabilities and governance arrangements are still being worked through.

21 A working group has been established to develop policies and frameworks to support the national Strategy if and when the government signs up to it.

MFish's proposed marine biosecurity strategy

22 MFish is developing its own strategy for marine biosecurity, which will sit under the umbrella of the national Strategy. The marine biosecurity strategy will help MFish implement the government's goals as they relate to marine biosecurity.

23 The risk management approach underpins MFish's work on marine biosecurity (including the draft strategy). Risk management enables decisions to be made in an environment where we accept that we cannot achieve zero risk, and that we have limited information, resources, and conflicting demands for resources.

[4] 'Guarding Pacific's Triple Star – Draft Biosecurity Strategy for New Zealand' prepared on behalf of the Biosecurity Council and published in December 2002 for the purposes of consultation.
[5] Draft national Strategy, page 8.
[6] Draft national Strategy, page 31.

Key issues arising for New Zealand

Issues set out in the Draft Biosecurity Strategy for New Zealand

24 The draft national Biosecurity Strategy identifies the following key issues in relation to biosecurity[7]:

- Society's increasing expectations of biosecurity
- Stretched or missing capabilities to meet these new demands
- Inadequate risk analysis and decision-making processes for risks that are increasingly difficult to quantify and decisions involving more difficult value judgements
- Need for governance mechanisms and legislation to address these emerging pressures adequately
- Cost implications of lifting biosecurity performance – who will pay, and how will this be decided?

25 The draft national Strategy identifies four necessary prerequisites to lifting performance across the biosecurity system[8]:

- Leadership and participation: clear leadership, including communication of a collective vision, and integration and coordination across the biosecurity system. The public, industry and government agencies must have a strong sense of ownership, support and commitment to biosecurity and be active and informed participants in biosecurity programmes
- Responsiveness to Maori: recognising the special nature of taonga
- Decision-making and priority setting: decisions must be taken at the appropriate level, taking into account the full range of values and based on good science and adequate information
- Capability and funding: agencies should have the resources and capabilities to deliver on their accountabilities, with the correct incentives in place for industry and individuals to fund biosecurity activities.

Particular issues arising for marine biosecurity

26 Issues identified in the draft national Strategy (above) flow across the entire biosecurity management system. Within the context of these, particular issues arise in relation to marine biosecurity. These are described below.

Information

27 Information is core to managing marine biosecurity effectively. However, we know a lot less about natural resources, processes and functions in the ocean than those on land. This lack of information makes it hard to determine whether a newly-discovered species has been in New Zealand for some time or has just arrived. It also makes it hard to assess the risks posed by a new species, and to evaluate the best response to avoid or minimise adverse impacts.

[7] Draft national Strategy, page 10.
[8] Draft national Strategy, page 10.

28 Key information gaps occur in relation to:

- the extent of our marine biodiversity
- the status of pests within the marine environment
- the risks of particular vector pathways
- the range of organisms that could have an impact
- the consequences of particular exotics arriving in New Zealand.

29 Generic marine information issues are discussed in more detail in Working Paper One.

National guidance on priorities, values and outcomes for marine biosecurity

30 A key problem for management agencies is a lack of national guidance (e.g. in legislation, policies or strategies) on the priorities, values and outcomes that should guide biosecurity management. This means that decision makers are hindered in their ability to decide on what action to take first, and to focus resources accordingly. It also creates difficulties in responding to people's range of expectations – for instance on appropriate risk tolerance levels. Issues of particular significance for Maori, and in relation to the Treaty of Waitangi, also arise in the context of this problem.

Roles and responsibilities

31 Although Memorandums of Understanding (MoUs) and other policies provide clarity on most aspects of agencies' roles and responsibilities, some gaps remain.

32 Roles are clearly defined for biosecurity responses at the beginning of the incursion response process. However, there is less clarity later in the process when the focus moves from the initial incursion response phase to the ongoing management phase. In particular, it can be difficult to resolve funding liability issues when a decision is made to transfer ongoing management responsibility from a national agency to a regional organisation. Problems with the control of Undaria highlight this problem.

33 There is also less clarity about who is responsible for managing diseases in the marine environment.

34 Both the draft national Biosecurity Strategy, and policies being developed by the working group to support it, will help clarify roles and accountabilities across biosecurity management issues and agencies.

Jurisdictions

35 Management discrepancies arise as a result of differing jurisdictional boundaries under various laws governing biosecurity. The Resource Management and Biosecurity Acts set out powers within the territorial sea (i.e. out to the 12-nautical mile limit), whereas the United Nations Convention of the Law of the Sea, Maritime Transport and Fisheries Acts all set out obligations within the exclusive economic zone (to the 200-nautical mile limit). This means that management obligations differ depending on where the biosecurity issue arises. In some cases, different obligations

affect the same issue because the biosecurity threat moves across jurisdictional boundaries (for instance, because it is carried in ballast water or on boat hulls).

36 There may also be a need to assess whether biosecurity measures are effective within current jurisdictional boundaries – that is, to ensure that the legislation allows measures to be carried out where they can have best effect (within or beyond the 12-nautical mile boundary).

Funding and capability

37 National and local biosecurity management agencies need adequate resources and capabilities to deliver on their roles and responsibilities and to achieve desired outcomes. Gaps in current resourcing arrangements are hard to assess, due to the lack of an overarching framework for assessing risks, priorities, capabilities and resourcing across marine issues and management agencies. Such a framework would ensure that New Zealand is not exposed to significant risks while being well protected against others.

38 In addition to this generic issue, particular gaps are a lack of taxonomic expertise and strategic priority-setting skills, and inadequate marine information.

Awareness and education

39 Many people who carry out activities in the marine environment have little understanding of what marine biosecurity is, why it is important, and who manages it. This can result in the late reporting of new species, seriously compromising management agencies' ability to react effectively and prevent unwanted species from becoming established. It can also mean that people do not know that their activities are causing a biosecurity threat, and therefore do not take any actions to reduce risks.

40 MFish issues information on some known pests, and asks people to report findings of these. However, more guidance is needed so that people know who to inform about new findings or incursions.

Assessment of the issues

41 As described above, key marine biosecurity issues have already been identified in several key contexts – notably under work on the draft national Biosecurity Strategy and MFish's proposed marine biosecurity strategy. Most of these issues will be addressed in programmes of action developed under these strategies. However, an Oceans Policy may be able to strengthen existing initiatives in a number of ways. These are considered below.

Information

42 Working Paper One sets out a series of issues in relation to the need for better coordination of marine information. Responses to these issues should make explicit provision for information needs in relation to marine biosecurity.

National guidance on priorities, values and outcomes for marine biosecurity

43 An Oceans Policy will have, as a clear focus, the development of overarching priorities, values and outcomes for managing the marine environment as a whole. These will act as points of reference for agencies' policies and activities on specific issues such as marine biosecurity.

Roles and responsibilities

44 An Oceans Policy should set out mechanisms for coordinating agencies' activities across the full range of oceans issues – perhaps through establishment of a new institution, statute, or set of guiding principles. Agencies' roles and responsibilities will need to be clearly defined and integrated under any such integrating mechanism. Roles and responsibilities in relation to biosecurity should be an important focus of this work.

Jurisdictions

45 Jurisdictional problems have been identified in the context of a range of oceans management issues and activities. Measures to address these should address problems arising specifically in the context of marine biosecurity.

Funding and capability

46 An Oceans Policy should provide guidance about key priorities for focusing management effort across the full range of oceans issues. This could provide direction for national and local funding decisions across all management agencies to address key threats to the marine environment. It would also help management agencies to rank biosecurity needs in relation to other management priorities, and allocate their funding appropriately to manage biosecurity as effectively as possible.

Awareness and education

47 An Oceans Policy could help to augment public awareness and education efforts under current policies under generic methods designed for raising awareness across the full range of oceans issues.

Conclusions

48 The government has identified biosecurity as an issue of particular significance for New Zealand. Several key strategies and initiatives are in place and under development to ensure effective biosecurity management; the draft national Biosecurity Strategy and proposed MFish marine biosecurity strategy are particularly significant. The Oceans Policy process will need to align itself clearly with these initiatives.

49 The Oceans Policy can help to strengthen these existing initiatives by having special regard to the following dimensions of biosecurity issues:

- information
- national guidance on priorities, values and outcomes
- roles and responsibilities
- jurisdictions
- funding and capability
- awareness and education.

Appendix One: Ministry of Fisheries work programmes for managing marine biosecurity in New Zealand

Border control

Border control work is the focus of the majority of the Ministry of Fisheries' biosecurity effort. The presumption is that prevention is better than cure. MFish's border control focuses on ballast water and hull fouling / cleaning as these are the main vectors for introducing new marine organisms. (International mail and airports are controlled as a major aspect of MAF's biosecurity efforts.)

Ballast water

Under the Biosecurity Act, no ballast water may be discharged without the permission of an inspector. The import health standard (IHS) for ballast water from all countries tells inspectors what conditions must be met before ballast water from other countries can be discharged into New Zealand waters. The IHS requires all vessels to exchange their ballast water mid-ocean. In some situations it is not safe to exchange so an inspector may grant exemptions should weather conditions have precluded exchange. Exemptions do not apply to discharges of ballast water sourced from high-risk areas (at this time, Tasmania and Port Phillip Bay, Victoria). See 'A Guide to New Zealand's Ballast Water Controls'.

All vessels arriving in ballast must complete the vessel ballast reporting form. The form is designed to allow better collection of more accurate information. The form also enables cross-checking of the information provided, providing a degree of compliance monitoring, and will alert MFish to any vessels that are supplying obviously incorrect information. Compliance validation is still a challenge in this field. There is a lot of effort going into developing compliance validation methodologies, here and overseas.

Internationally, there has been gradual progress towards international legally binding controls on ballast water. The International Maritime Organisation (IMO) is leading this programme, and has already developed guidelines, on which New Zealand's controls are based. The intention is to have a convention on ballast water in 2004, with the controls coming into force after that. New Zealand has led the world in developing mandatory controls on ballast water. Australia has now followed suit. Some parts of Canada, the USA, and some South American countries are also moving in this direction. The development of international controls will create a much more consistent framework. Most experts anticipate that ballast water exchange at sea will gradually be replaced by better treatments (e.g. filtration, UV treatment). The successful application of an improved biosecurity regime with respect to ballast water will depend on the widespread adoption and successful promulgation of the new regime amongst state parties. New Zealand will need to take a leading role in promoting acceptance of tighter regulations and in monitoring their enforcement.

Hull cleaning and hull fouling

Any vessel or structure in water eventually becomes home to marine organisms. Organisms growing on vessel hulls can be spread. Sometimes they are scraped off deliberately when a hull is cleaned, sometimes they are knocked off by accident, and sometimes they just discharge reproductive material into the sea. The threat posed is thought to be significant—it is estimated that over 69% of exotic marine species in New Zealand arrived on vessel hulls[9].

MFish, in collaboration with the Ministry for the Environment, is exploring options to manage the risk. Consultation on proposed regulations was undertaken in early 2002 and MFish is now refining its proposals in response to submissions received. It is intended that controls be mainly targeted at highest-risk vessels and be accompanied by guidelines explaining how to minimise risks associated with hull cleaning.

MFish is investigating hull fouling controls to decrease the risk of vessels arriving in New Zealand with fouled hulls, and conducting additional research to identify levels of risk. The Ministry of Foreign Affairs and Trade will work with the Ministry of Fisheries to have tighter controls on hull cleaning and fouling at an international level.

Surveillance

We cannot completely protect New Zealand from unwanted organisms. Therefore, surveillance within New Zealand is an important part of biosecurity. MFish runs a surveillance programme including port baseline surveys, targeted surveillance and a public surveillance network.

Baseline surveys are being undertaken in New Zealand's highest-risk ports to improve knowledge of their biodiversity and pest status. The surveys will establish a baseline from which MFish can measure the effectiveness of voluntary or legislative controls over time. Ports will be resurveyed every few years to monitor changes in biodiversity.

Targeted surveillance for high-risk exotic species is undertaken in areas most at risk of invasion.

The public surveillance network provides additional monitoring in a broad range of areas. The network aims to raise awareness about invasive marine species among those using the marine environment.

Incursion response

MFish has an incursion response protocol, which is due to be refined in the light of research results. The protocol directs MFish's response to incursions of marine pests. A central part of incursion response is the process of risk assessment undertaken by the Chief Technical Officer for marine biosecurity. This risk assessment aims to enable objective decisions to be made on the appropriate response to any new incursion.

[9] Cranfield et al 1998

Eradicating introduced marine species is very difficult—but it is an emerging area of science. Tools are presently limited, but we are gradually developing an incursion response toolbox as New Zealand and international research progresses. As mentioned, the focus has to be on preventing incursions rather than mopping up when new species arrive.

Pest management and domestic translocation

We know of at least 148 exotic marine species in New Zealand. Some pose problems, while others have a production value (e.g. Pacific Oyster). As on land, it is preferable to eradicate or control unwanted exotic species and manage valuable ones so they don't damage the natural environment.

The most commonly known exotic marine species is Undaria (Undaria pinnatifida) or Japanese kelp. Undaria is a difficult organism to manage, and there are conflicting views on its effect and potential value. A precautionary approach is desirable in such instances. To this end, some resources have been allocated for work to control the further spread of Undaria to areas of high value. The Department of Conservation has also been undertaking eradication work in Bluff and Big Glory Bay and Half Moon at Stewart Island.

Research

Relative to the terrestrial environment, there is very little information about marine biosecurity as with the whole marine environment. The management focus is to take a precautionary approach, but significant effort has to be put into addressing some of the critical information gaps.

In July 2000 MFish received funding under the Biodiversity Strategy package to develop information and management systems to enhance New Zealand's biosecurity. The marine biosecurity programme aims to increase knowledge of potentially invasive species and of marine biodiversity in areas most at risk from invasion, as well as supporting the development of our compliance, surveillance and response capabilities.

OCEANS POLICY SECRETARIAT

WORKING PAPER SEVEN
14 March 2003

OCEANS POLICY

MARINE CULTURAL HERITAGE

Contents

Introduction

1 One of the strongest themes of the public consultation during Stage One of the Oceans Policy was the strong connection of New Zealanders with the oceans. This connection is expressed in many ways, and New Zealanders have a strong desire to maintain this connection.

2 An important means for maintaining this connection is through the protection of marine cultural heritage sites and values. This paper examines the extent to which existing laws provide effective protection for marine cultural heritage sites and values.

Desired outcomes for marine cultural heritage

3 A key outcome for Oceans Policy should be the recognition and protection of marine cultural heritage sites and values.

Current management of marine cultural heritage

4 Obligations for cultural heritage protection set out in international and national law are described below.

International context

5 Three key international instruments are:

- the ICOMOS Charter for the Protection and Management of Archaeological Heritage (1990)[1]
- the ICOMOS Charter on the Protection and Management of Underwater Cultural Heritage (1996)
- the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001)[2]: which seeks to "improve the effectiveness of measures at national and international levels for the preservation in place, or if necessary for scientific or protective purposes, the careful removal of underwater cultural heritage".

6 These documents provide that marine historical and cultural heritage shall be recorded, protected and preserved, and in particular that investigation and activities shall avoid unnecessary disturbance of human remains or venerated sites. They establish international standards of best practice in relation to underwater heritage that can help guide New Zealand's domestic activities.

7 New Zealand has not yet ratified the UNESCO Convention. If it does decide to ratify the Convention, domestic law will need to be aligned with it.

[1] ICOMOS is the International Council on Monuments and Sites, a non-government agency that acts as UNESCO's principal adviser on heritage issues. The ICOMOS Charters are not legally-binding.
[2] UNESCO is the United Nations Educational, Scientific and Cultural Organisation.

Domestic law

8 Domestic law on the management of cultural heritage is mainly contained in the Resource Management Act 1991 and the Historic Places Act 1993. Other relevant provisions are contained in the Antiquities Act 1975, Te Ture Whenua Maori Act 1993 and the Fisheries Act 1996.

Resource Management Act 1991

9 The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources. The Act applies within the territorial sea, and defines natural and physical resources as including land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.

10 Section 6 of the Act sets out matters of national importance that regional councils and territorial authorities must recognise and provide for in managing the use, development and protection of natural and physical resources. These include recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites and other wāhi tapu and taonga. Section 7 of the Act sets out matters which decision makers must "have particular regard" to, which include the recognition and protection of the heritage values of sites, buildings places and areas.

11 The Resource Management Amendment Bill (No 2) proposes to elevate historic heritage to the status of a matter of national importance. This would mean that regional and district plans must recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development.

Rules in plans

12 Under the Act, regional councils have responsibility for managing activities that have adverse effects on the coastal marine area. They are required to prepare regional coastal plans (which must not be inconsistent with the New Zealand Coastal Policy Statement) that set out environmental outcomes, objectives, issues and policies for implementing their coastal management responsibilities under the Act.

13 In their regional coastal plans, regional councils can set out rules relating to management of the coastal marine area – including in relation to protection of marine cultural heritage. These rules are set in consultation with the community. Any activity in the coastal marine area must be authorised by a rule in a regional coastal plan.[3] Anyone wanting to carry out an activity in the coastal marine area that contravenes a rule in a regional coastal plan must seek a resource consent from their regional council.

14 Territorial authorities manage the effects of activities on land. These activities can impact on the marine environment. Territorial authorities give effect to their responsibilities through district plans (which must not be inconsistent with regional

[3] Note that this is the opposite presumption than operates on land, where any activity is allowed so long as it does not contravene a rule in a plan.

coastal plans or the NZCPS and again, are prepared with community consultation), but their district plans only apply above the mark of mean high water springs (MHWS)[4]. This means that district plans provide no protection to heritage sites in the coastal marine area.

15 Although the Act provides opportunity for protection of marine cultural heritage through rules in plans, there has been little uptake to date. Regional coastal plans have contained few provisions giving effect to cultural heritage aspects of the Act (including under section 6). For instance, very few regional coastal plans contain plan provisions that identify archaeological sites or sites of historic or cultural heritage, or include rules that control adverse effects upon them.

16 As noted above, district plans provide even less protection, as they can only apply to the mark of mean high water springs (MHWS).

Resource consents

17 Consent authorities must consider any adverse effects on historic heritage values when considering applications for resource consents affecting such values or sites.[5] Consent authorities must have regard to Part II of the Act (which sets out the purpose and principles), including sections 6 and 7 (matters of national and other importance), and the contents of any relevant plan or policy.

Heritage orders

18 The Act provides for heritage orders, but because they work through district plans (and not regional coastal plans), they only apply above MHWS and therefore provide no protection for marine cultural heritage.

Water conservation orders

19 Water conservation orders apply to rivers, lakes and wetlands, and can be used to preserve the natural state of outstanding water bodies[6]. They have limited application below the mark of MHWS, except for wetlands.

Historic Places Act 1993

Heritage covenants

20 A heritage covenant is a voluntary agreement between the Historic Places Trust and the owner or lessee of land. The covenant can include any terms that the parties agree and can be registered against the title of the land. Voluntary covenants attach to land titles. Because land in the coastal marine area is held by the Crown, land titles do not exist below MHWS. As there are few blue water titles in private ownership, this tool would rarely be used.

[4] The average of high water heights occurring at the time of spring tides.
[5] Section 104 RMA.
[6] Section 199 RMA. Outstanding characteristics can be protected for recreational, historical, spiritual or cultural purposes.

Historic Places Trust register

21 The Historic Places Trust maintains a register of historic places/areas and wāhi tapu/areas to inform owners and the public, and to assist protection under the Resource Management Act.

22 Registration does not provide any direct statutory protection, but is an advocacy tool to inform owners and local authorities about the heritage significance of a heritage place. Any protection for registered heritage places is through rules and provisions in regional coastal and district plans.

23 Anyone, including the HPT, can propose that a place or area be registered, but needs to support their proposal with information that demonstrates that the proposal meets the statutory requirements for registration. Registration is declaratory only as it relies on recognition by local authorities in planning documents to be effective.

24 The HPT recently carried out a preliminary search of the register to assess entries below MHWS. They found that the register currently includes the following sites protected under the Historic Places Act: two reefs registered as wāhi tapu areas, two wrecks registered as historic places, and sixteen wharves, jetties, breakwaters or seawalls registered as historic places.

Archaeological sites

25 The Historic Places Act provides a consenting regime whereby any person wanting to modify, damage, destroy or investigate an archaeological site is required to obtain authority from the Historic Places Trust to do so. This mechanism does not provide permanent protection. It applies to wrecks and other archaeological sites of human activity which occurred before 1900.

26 There is a wide range of archaeological sites in the marine environment, including sites associated with events of importance in New Zealand history, and submerged sites and structures, wreck-sites and wreckage and their archaeological and natural context..

27 Examples of historically and culturally iconic coastal and marine sites of national importance for all New Zealanders are:

- the Abel Tasman anchorage near Separation Point in Golden Bay
- the Captain Cook anchorages around Cook Cove in Queen Charlotte Sound
- the Captain Cook anchorages in Dusky Sound, Fiordland
- the wreck c. 1792 of the Endeavour at Facile Harbour, associated with very early sealing and shipbuilding activity.

28 There is also a mechanism in the Historic Places Act to gazette post-1900 sites as archaeological sites, however this has very seldom been used.

Antiquities Act 1975

29 This Act protects any chattel more than 60 years old of national, historical, scientific or artistic importance, including wrecks. Antiquities are subject to export restrictions but are not protected in situ.

Te Ture Whenua Māori Act 1993

30 Te Ture Whenua Māori Act allows for Maori reservations to be put in place for communal purposes. It is unclear whether the Act could be applied to the protection of marine cultural heritage, as the definition of "land" under the Act is currently being tested in the courts. Maori freehold land or any general land may be set apart as a reservation for cultural, historical, scenic, wāhi tapu or other purposes, which then becomes communal land. The reservation may be held for the common use and benefit of the people of New Zealand.

Fisheries Act 1996

31 The Fisheries Act provides for mataitai reserves, taiapure local fisheries and "section 186" temporary closures. These tools are for the protection of customary fishing, which in some cases may be its own form of cultural heritage. Taiapure can also be used to protect spiritual/cultural values. Complex procedural and consultation requirements may be a barrier to greater use of these tools.

Reserves Act 1977

32 Tools under this Act are designed for protection of land-based sites, and therefore cannot be used to protect marine cultural heritage.

Marine Reserves Act

33 This Act is currently being reviewed, but the Amendment Bill now before the Select Committee does not specifically provide for marine reserves for cultural heritage purposes (although marine cultural heritage values and sites may be protected indirectly through reserves established to meet other purposes of the Act).

Problems with management of marine cultural heritage

34 Three main issues arise in relation to management of marine cultural heritage, and limit the achievement of stated goals and outcomes for these:

- Inadequate research and information on where sites are located
- Lack of national guidance on the prioritisation and appropriate resourcing of marine cultural heritage protection in relation to other marine issues
- Inadequate uptake of protection tools currently available, and the limited range of tools available in the marine environment compared to on land.

Research and information

35 Insufficient research has been carried out to identify where marine cultural heritage sites are, and this is a major limitation on effective protection. Local authorities need better access to information on sites of cultural heritage value so that they can better reflect cultural heritage values in their plans. Other management agencies and groups also need better information so that they can make effective use of protection mechanisms available under legislation.

34 Most marine cultural heritage sites have not yet been identified. For example, of the more than 2000 known shipwrecks, only 150 have been located. It takes significant investment to locate sites, and it can be particularly difficult to locate wāhi tapu, as this often involves accessing culturally sensitive information. There is a wide range of sites of national significance in addition to the sites of wrecks and wāhi tapu. Heritage inventories need to be prepared to address the lack of knowledge of sites of cultural and historic heritage value in the marine environment.

37 The Historic Places Trust's Register includes historic places, historic areas, wāhi tapu and wāhi tapu areas that have been identified and assessed as having historical or cultural heritage value in relation to the provisions of the Historic Places Act. To date the focus has been mainly on land-based sites and heritage places. The register of sites is not a definitive list of all heritage places, and is particularly deficient in the areas of Maori heritage and marine cultural heritage. The Trust is undertaking work that confirms and updates the documentation of historic resources already listed in the register, however at this stage information on sites in the coastal marine environment is not up to date or comprehensive.

National guidance

38 Management agencies have received insufficient national guidance on the importance of marine cultural heritage in relation to other priorities. Insufficient priority and funding has been afforded to marine cultural heritage protection at national and local levels, with the result that desired outcomes have not been met.

39 The Resource Management Act Amendment Bill (No. 2) proposes to make historic heritage a matter of national importance. This will mean that local authorities will have to recognise and provide for historic heritage in their planning processes. However, there are problems with the tools available for councils to give effect to this recognition (see the discussion under the 'protection tools' heading).

40 Few regional coastal plans identify any sites of cultural heritage value, and none prohibit activities within those sites that may have adverse effects upon them. Few regional councils have carried out research or prepared heritage inventories and as a result marine cultural heritage is not adequately recognised or protected through provisions in regional coastal plans.

41 Any new mechanism to provide increased national protection will also need to be underpinned by:

- expansion and maintenance of the Historic Places Register to ensure that it comprises a comprehensive schedule of New Zealand's marine heritage

- research on unlocated sites
- efforts of local authorities and other groups to identify sites of cultural and historic heritage, and include rules in regional coastal plans that protect significant sites.

Protection tools

42 There are opportunities for protection under existing legislation – particularly through the use of rules in regional coastal plans. More effective use of these has been constrained by the two problems outlined above: lack of national guidance and information. It has been further compounded by:

- the limited range of tools available for protecting sites and values below MHWS, compared to those available on land
- constraints on input by advocates charged with proposing, supporting, and helping to enforce rules in regional coastal plans to work effectively.

43 This lack of protection becomes particularly important in the case of sites of national significance. For the purposes of this paper, sites of national significance in the marine environment are those identifiable seascapes which can be said to contribute to the national identity of New Zealand. Some of these are equally relevant to Maori and Pakeha, such as sites related to the first interactions of Maori and Pakeha in New Zealand. There are only a limited number of these sites, and they are confined to discrete areas. Examples are:

- the site of Abel Tasman's anchorage in 1642, off Wainui Inlet, Golden Bay
- Toka a Taiau, Gisborne – the site of the first recorded formal meeting of Maori and Pakeha in 1769
- Ship Cove, a favourite landing site of Captain Cook
- Burning of the Boyd, Whangaroa Harbour, in 1810
- the site of the sinking of the Rainbow Warrior in 1985.

44 These sites are largely in the same state as when they became historically important. They are, therefore, very susceptible to encroachment by modern developments that would impair their historical character. For example, a marine faming venture in Ship Cove would materially alter the Cove's visual character so that it would not longer be in its historical state. Current tools are not adequately designed to stop this from occurring.

45 Local authorities can protect land-based cultural heritage with tools provided in the Reserves Act 1977, but there is no comparable mechanism for the marine environment. The Reserves Act provides for the declaration of historic reserves on land to protect "in perpetuity such places, objects, and natural features, and such things … as are of historic, archaeological, cultural, educational, and other special interest".

46 Registration under the Historic Places Act is primarily a tool for the recognition of cultural heritage value and does not itself provide protection. The register is declaratory only, and a lack of resources within the Historic Places Trust may limit its comprehensiveness.

47 Although the Historic Places Act is the main statute for management of impacts on archaeological sites, it does not provide protection for other heritage places except through voluntary covenants. Voluntary covenants attach to land titles, and land titles do not exist below MHWS, so this tool has no effect in relation to marine cultural heritage. The Antiquities Act 1975 only provides protection (from export) for wrecks or material recovered from wrecks more than 60 years old found in territorial waters.

48 Finally, rules in regional coastal plans only apply within the territorial sea. This means that there is an even more limited range of tools available for protecting marine cultural heritage sites and values beyond the 12-nautical mile limit than are available in the coastal marine area.

Conclusions

49 There is inadequate provision under existing mechanisms for the protection of marine cultural heritage. The main reasons for this are:

- Inadequate research and information on where sites are located
- Lack of national guidance on the prioritisation and appropriate resourcing of marine cultural heritage protection in relation to other marine issues
- Inadequate uptake of protection tools currently available, and the limited range of tools available in the marine environment compared to on land.

50 These problems are illustrated by:

- inadequate provision in regional coastal plans for identifying and managing heritage values through the resource consent process. Very few regional coastal plans contain plan provisions that identify archaeological sites or sites of historic or cultural heritage, or include rules that control adverse effects upon them
- the lack of any protection tool (outside the RMA planning process) for heritage sites of national significance
- tools such as heritage orders can only be incorporated into district plans, which, by definition, only apply above MHWS, and water conservation orders only have relevant application to wetlands
- the main statute for the protection of cultural heritage, the Historic Places Act, only applies to the marine environment in relation to archaeological sites and wrecks, and provides a consenting regime whereby any person wanting to modify, damage, destroy or investigate an archaeological site is required to obtain authority from the Historic Places Trust to do so. This mechanism does not provide permanent protection.

- archaeological sites are not always adequately protected, as applications may be made to damage or modify them
- the registration of sites with the Historic Places Trust has declaratory effect only.

51 These issues need to be considered to achieve desired outcomes for marine cultural heritage.

OCEANS POLICY SECRETARIAT

WORKING PAPER EIGHT
14 March 2003

OCEANS POLICY

PARTICIPATION IN OCEANS MANAGEMENT

Contents

Introduction

1 The New Zealand government has committed to improving its ability to engage effectively with the public. The government's Sustainable Development Programme of Action reflects a commitment to work in partnership with local government and other sectors and encourage transparent and participatory processes[1].

2 Stage One of the Oceans Policy process revealed that people want to have confidence in decision-making about the marine environment and want to be part of the decision-making process. The Stage One report entitled *Healthy Sea: Healthy Society* summarises the results of consultation and particularly emphasises the desire of New Zealanders to participate more effectively in oceans management. The challenge for an oceans policy is to ensure that people are able to participate effectively in matters of importance to them.

3 The purpose of this paper is to:

- identify 'principles of participation' underpinning recent New Zealand legislation
- outline the provisions for participation in marine management legislation and assess whether they are satisfactory
- assess implementation barriers to effective participation
- raise issues that should be addressed by an oceans policy.

Public participation principles and outcomes for oceans

4 A number of principles for public participation can be taken from the State Services Commission in their 1995 paper *The Public Service and the Public,*[2] and the Sustainable Development Programme for Action[3], as shown below:

Principle One: Transparent and participatory processes should be encouraged[4].

Principle Two: Official information should be increasingly available to the people of New Zealand in order to enable their more effective participation in the making and administration of laws and policies.

Principle Three: There is a requirement to provide sufficient time for those consulted to prepare a meaningful response.

Principle Four: Consultation should occur while policy options are still open and when there is a need for further information and points of view to be taken into consideration.

Principle Five: There is a general obligation to provide members of the public with an opportunity (either in writing or in person) to make representations where they may be affected directly by decisions[5]. It is generally desirable to consult with parties interested in or affected potentially by new policies[6].

[1] Sustainable Development for New Zealand, Programme of Action
[2] The Public Service and the Public, A paper in the guidance series 'Public Service Principles, Conventions and Practice', State Services Commission, published in September 1995.
[3] Sustainable Development for New Zealand, Programme of Action
[4] Sustainable Development for New Zealand, Programme of Action
[5] The Public Service and the Public, A paper in the guidance series 'Public Service Principles, conventions and Practice, State Services Commission, published in September 1995.
[6] The Public Service and the Public

Principle Six: There is a general duty, on application, to provide persons with reasons for decisions affecting them. Where applicable, it should be made clear to applicants what avenues are open to them to appeal a decision.

5 These principles spring from the belief that participation by the public is a positive and desirable thing. People think this because public participation, both generally and in respect of marine management, has two major benefits:

- Involving different people improves the quality of policy decisions through access to information they hold and their relative perspectives. The policy is therefore more likely to reflect real problems and acknowledge competing interests.
- If people are involved in the decision-making process they are more likely to understand why a particular decision has been made and accept the legitimacy of the outcome and comply with the decision.

An Oceans Policy should seek to maximise these benefits while trying to reduce unnecessary transaction costs. It must also recognise that opportunities for public participation need to be appropriate to the nature and scale of activity proposed and its likely impacts. In some circumstances, such as in a biosecurity emergency, participation may not be appropriate.

6 In summary, transparent and participatory processes should lead to better decisions and increased legitimacy of (and compliance with) decisions. In general, people should be given a chance to participate meaningfully in decisions that affect them.

Assessing current legislation on oceans management

7 Current opportunities for the public to participate in marine management fall into three main categories:

- input into management frameworks
- input into consents/concession processes
- involvement in management

Each category for involvement will be explained and discussed below.

Input into management frameworks

8 Management of the oceans in New Zealand is governed in a variety of ways: planning frameworks, centralised decision-making and market-based models. Planning frameworks are at national or regional levels, and in are generally high level documents that define management objectives and regulate activities in relation to these objectives. The Continental Shelf Act has centralised decision-making, and fisheries management is through the market-based quota management model albeit regulated by the government.

9 In general, plan-based legislation requires public participation in the preparation of the plans[7]. This usually means that the plan is publicly notified and submissions are called for (before a specified closing date). The Resource Management Act, the Conservation Act, the Biosecurity Act and the Marine Reserves Act all have plan-making processes that are required to be open to the public, and there are no statutory limits on who can participate.

10 The Continental Shelf Act is the key existing instrument for management of the oceans beyond the 12 nautical mile limit of the territorial sea. Under this Act decisions to grant permits for mining are made by the Minister of Energy. The Act has no statutory requirement for public participation, which means that people have no certainty that they will have opportunities to be involved in future decisions made under the Act.

11 Commercial fisheries resources are allocated in a market model. The total allowable catch (TAC) for each fish stock is set by the government and includes an allowance for the customary and recreational sectors and a total allowable commercial quota. Portions of the total allowable commercial catch are bought and sold under a market framework.

12 The Fisheries Act 1996 has a large number of provisions that require the Minister to consult with "such persons or organisations as the Minister considers representative of those classes of persons having an interest in the issue concerned, including Maori, environmental, commercial and recreational interests". This is generally interpreted widely by the Ministry of Fisheries to allow anyone with an interest to have their say (the key exception to this is decisions in relation to enforcement actions where some degree of confidentiality is necessary for successful planning and management operations).

13 The complex and technical nature of fisheries management decision-making means that fisheries management consultative processes tend to focus on stakeholder groups who have expressed a particular interest in fisheries management (environmental, customary, commercial and recreational groups). Limited attempts are made to proactively involve the general public in decision-making, which has led to a public perception that fisheries management is not transparent.

Input into consents/permits processes

14 People can apply for permission to do things which are not permitted activities in plans created under the Resource Management Act. To obtain permission to carry out mining activities within the 12-mile limit requires approvals under the Crown Minerals Act and the Resource Management Act. Outside the 12-mile limit the Resource Management Act does not apply; applications for petroleum mining are under the Crown Minerals Act, and all other mining applications must be applied for under the Continental Shelf Act.

[7] See Appendix One

The Resource Management Act 1991

15 There are no 'standing' constraints under the Resource Management Act 1991, which means anyone can make submissions to plans or consent hearings. Decisions on resource consents may be either public or limited public processes depending on the actual or potential effects of the activity and the way the activity is classified in the plan (e.g. controlled or discretionary).

16 Full public notification is costly and councils have to establish in their plans the circumstances in which consents will be fully notified. Some resource consents require only the written approval of affected parties rather than full public notification[8]. Most applications appear to be notified in the marine environment because it is difficult to identify which people may be affected by an application.

17 There is considerable debate about council practice with respect to public notification. The current Resource Management Amendment Bill has introduced "limited notification" procedures that require only those "adversely affected" by an activity with minor effects to be notified. In some cases, it has been argued that the Resource Management Act process provides too much opportunity for participation, and parties with a spurious interest in the matter have used the process to hold up an application for their own ends. On the other hand, people argue that too few consent applications are ever notified.

Mining

18 To obtain permission to carry out mining activities within the 12-mile limit requires approvals under the Crown Minerals Act and the Resource Management Act. There are no general requirements for public consultation on the granting of new permits under the Crown Minerals Act, although relevant iwi are consulted about permits proposed for their rohe. Assessment of the environmental effects of mining falls under the Resource Management Act and there are opportunities for the public to make submissions on proposals.

19 Outside the 12-mile limit, the Resource Management Act does not apply; applications for petroleum mining are under the Crown Minerals Act and all other mining applications are made under the Continental Shelf Act. Sometimes consultative processes have taken place[9] but the lack of a statutory planning process means that there is a level of uncertainty about whether there will always be a participatory process.

Being involved in management

20 There is a range of opportunities under different pieces of legislation for people to become directly involved in the management of an area or resource.

[8] On average 95% of consents are non-notified – Ministry for the Environment (2002), Annual Survey of Local Authorities

[9] Establishment of the Maui platform in Taranaki case – consultation did take place. Neptune resources case: no consultation took place. See Neptune Resources case study.

Fisheries

21 Iwi groups have the ability to have a direct input into the management of particular areas; for example, mataitai reserves such as the one at Rapaki in Lyttleton Harbour.

22 Taiapure management committees are appointed by the Minister of Maori Affairs who nominates people considered to be representative of the local Maori community. To date all taiapure management committees have included representatives from the local community and other stakeholder groups, in addition to tangata whenua.

Resource Management

23 Section 33 of the Resource Management Act 1991 allows councils to devolve functions to another public authority.[10.] Functions have been transferred between local authorities, but no functions have been transferred to any iwi. A study by the University of Waikato suggests that lack of resources on both sides, rather than an unwillingness to consider transfers, has been the biggest constraint to date[11].

Marine reserves

24 There are sixteen marine reserves around the country and applications are currently being processed for a further ten.[12.] Some marine reserves have marine reserves committees appointed by the Minister of Conservation (under specific criteria) they are established to provide oversight and guidance of the Department of Conservation's management of marine reserves. The community is often involved in helping the Department of Conservation with law enforcement. Community advisory committees consisting of representatives from tangata whenua, community and recreation groups help with the management of most marine reserves.

Involvement in overall priority setting

25 The public have a range of opportunities to be involved in decision-making and management under specific statutes. However there are very limited mechanisms for them to be involved in assessing priorities for competing activities proposed under different statutes. For example, outside the 12 nautical mile limit there may be a situation in the future of a marine farm and an oil rig proposed for the same area under different legislation. In that situation, there would be limited opportunity for the public to indicate which use they would prefer.

26 The fragmented nature of oceans management means that participation opportunities are essentially limited to input into whether a specific activity should

[10] The functions, powers or duties (with exceptions) can be transferred to any local authority, iwi authority, Government department, statutory authority, and joint committee set up for the purposes of section 80 of the Act. Refer to Section 33 of the Resource Management Act 1991.
[11] Factors Facilitating and Inhibiting Transfers to Iwi under Section 33 of the Resource Management Act, by Hamish Rennie, Jill Thompson and Tikitu Tutua-Nathan, University of Waikato, 1999.
[12] Department of Conservation website www.doc.govt.nz 25/2/03

take place under a specific act, rather than wider input into what range of activities might be given priority.

Implementation issues

27 Even when participatory processes are statutorily required, implementation problems can arise. Choosing tools for public participation in decision-making or management is difficult because the tool must be appropriate to both the type of decision and the stakeholders involved. Consultation guides are published for both councils[13] and central government[14] which aim to try and provide advice to agencies about which participatory processes work best in which situations. Currently decision-makers primarily use the following methods to involve the public:

- informing and educating people about policies, strategies or decisions
- seeking views and ideas in relation to a policy proposal from relevant people or groups
- involving the public in the management of a particular area.

Community groups also seek out opportunities to become involved in governance and decision-makers should be able to respond appropriately.

28 This section of the paper outlines the major problems that agencies or the public face in trying to work together, taking into account that there are a variety of tools for involvement available. The issues can be summarised as: lack of knowledge, capacity of the public or decision-makers, and balancing the negative effects of participation.

Lack of knowledge

29 One of the main barriers to effective participation is the lack of knowledge or incorrect information that the public may have on any given issue. This is particularly important because in order to participate the public must:

- know what opportunities they have to input into decision-making
- have a good understanding of the issues involved in that topic.

30 A study by the Wellington Regional Council[15] indicated a lot of confusion between the city/district council and regional council responsibilities, as well as limited awareness of the Wellington Regional Council's functions and activities in relation to the marine environment. This lack of knowledge highlights that the public may not even know which agency to approach when trying to find information on a particular issue.

31 Stage One of the Oceans Policy process highlighted that amongst the general public there is in particular a significant lack of understanding of fisheries

[13] See the quality planning website www.qualityplanning.govt.nz
[14] See work by the State Services Commission and the Ministry of Social Development.
[15] 'Our Marine Environment: Residents' perspectives', AC Nielsen and Wellington Regional Council, June 2001.

management in New Zealand (particularly of the Quota Management System)[16]. In general, it was found that people identified with issues involving the coastline and inner harbours but had little or no connection with, or appreciation of, issues concerning the deep sea.

Capacity of the public

32 The public, iwi or stakeholder groups may not have the time or resources to spend on participation. The public have indicated frustration at the lack of co-ordination between government consultation processes. This problem of time and resources seems to affect iwi particularly. There is anecdotal evidence that the stress placed on kaumatua or kuia has been called 'death by hui'.

33 Most members of the public are not strongly interested in participating or they have other priorities. Often people will only participate when they feel that something is at stake. People also rely on the 'free rider' effect, expecting other members of the community to have the same view as them.

34 The lack of take-up of management tools such as mataitai and taiapure may be an indication that the amount of time and resources needed are too great for community groups. Another problem is that a mataitai cannot go ahead until a kaitiaki is appointed and tribal boundaries are agreed between iwi or hapu, which can be difficult.

35 Some decisions are complicated and in order for people to participate effectively they may need background in the issues. For example there may be some technical elements to fisheries management that are particularly complex.

Capacity of decision-makers

36 The State Services Commission acknowledges that "identifying and informing interest groups, seeking their views, building the results into the overall analysis and feeding back requires substantial investments of time and effort". Often agencies (and councils, in particular) can find this a struggle as they have deadlines and budgets to meet.

37 Decision-makers may not have the capacity to weigh the opinions of different members of the community. This is particularly difficult if the people who participate are not representative of the community. Interest groups and organised lobbies can often be a lot more articulate, organised and well-resourced than single members of the public and it can be difficult to take this into account.

Balancing the negative effects of public participation

38 Issues in the marine environment can often stir up conflict and polarise people's views. Often the types of consultation methods used provide incentives for

[16] Healthy Environment; Healthy Society – Report of the Ministerial Advisory Committee on Oceans Policy.

people to promote extreme views as a negotiating position and/or because they feel under threat.

39 Often the public have unrealistic expectations about outcomes from public participation. This means that if people do not get the result that they want from one round of consultation, they do not wish to participate again[17].

40 Participation can have negative effects if long processes mean that business proposals cannot proceed within acceptable timeframes. An example of this is the high level of participation that occurs under the Resource Management Act, which businesses argue can hold up their proposals for an unreasonable length of time.

Conclusions

41 Statutory opportunities for the public to participate in marine management vary depending on the statute or policy in question. The Resource Management Act has comprehensive provision for public participation, but issues arise around a perceived lack of transparency in the fisheries process (because of complexity) and a legislative gap outside the territorial sea under the Continental Shelf Act. There is also a fundamental issue about how the public should be involved in setting priorities across conflicting uses in the marine environment. At present there is no mechanism for public values to be incorporated into oceans management as a whole.

42 There are also a number of implementation issues that may prevent people being able to participate effectively in marine management. Some of these issues arise because the public does not have the capacity to become properly engaged in the process, and other issues arise because decision-makers do not have the ability (often through a lack of time or resources) to allow for more effective public participation.

43 Gaps in the legislative framework, and implementation problems around public participation, stand in the way of high-quality decision-making, legitimacy of (and compliance with) decisions, and the ability of people to participate meaningfully in decisions that affect them.

[17] 'Encouraging Significantly Better Consultation as an Input to Policy Advice' State Services Commission, 2000.

Appendix One. Statutory requirements for participation

Biosecurity Act 1993

Pest Management strategies – national and regional: National Pest Management Strategies must be publicly notified and the Minister must seek public submissions. A Board of Inquiry (a public process) must be held where significant parties are opposed to significant elements of a National Pest Management Proposal. The process for approving regional Pest Management Strategies is similar to the national process. Public notification is required, submissions received and considered, and a decision taken by the regional council. A regional council may use Hearings Commissioners in much the same way as a Board of Inquiry is used at the national level.

There is a specific requirement to consult tangata whenua in the preparation of a regional Pest Management Strategy. Potential effects on matters related to Maori is specified as a reason why a Pest Management Strategy (national or regional) might be required (s.57 and s.72).

Biosecurity emergencies: The Minister is also required to consult ("to the extent practical") before recommending that a biosecurity emergency be declared (as defined in part 7 of the Biosecurity Act).

Conservation Act 1987 (National Parks Act 1980 & Reserves Act 1977)

Conservation plans: There is a statutory requirement for participation in the formation of plans under the Conservation Act 1987. Conservation management strategies are required to be publicly notified and are required to have a submissions process (Section 7). The conservation management plans also follow the same process.

Involvement in management: The Reserves Act contains a range of provisions for delegating management to community boards or others. A number of reserves are managed under these provisions (for example the Kaiteriteri reserve in Nelson). While these are not in the marine environment, they are useful models for successful public participation in actual management.

Continental Shelf Act 1964

The Continental Shelf Act 1964 applies to the granting of minerals (other than petroleum) permits outside of the territorial sea. The issuing of licenses to explore or mine is at the discretion of the Minister for Energy. There are no requirements for public participation under the Act.

Crown Minerals Act 1991

The Crown Minerals Act 1991 prescribes centralised decision-making. The Minister grants permits and prepares minerals programmes. The Minister may delegate the granting of permits to the Chief Executive of the Ministry of Economic Development, but not decision-making relating to minerals programmes (s.6). There is public participation around the creation of new minerals programmes and their review (10 yearly).

There is no public consultation around the granting of mining permits, except if the permit is in relation to the rohe (land area) of a particular iwi/hapu, in which case they are consulted about how they think the permit will affect their interests. While there is no public participation around the granting of minerals permits, the public have the opportunity to comment upon the environmental effects of mining activities, either through the Resource Management Act plan creation process or on decisions regarding individual mining activities.

Fisheries Act 1996

A large number of provisions within the Fisheries Act 1996 require the Minister of Fisheries to consult with such persons or organisations as the Minister considers representative of those classes of persons having an interest in the issue concerned, including Maori, environmental, commercial and recreational interests. (This is generally interpreted widely to allow anyone with an interest to have their say).

Section 12(1)(b) of the Fisheries Act 1996 requires the Minister to provide for the input and participation of tangata whenua before making sustainability decisions under Part 3 of the Act. The Minister must also have particular regard to kaitiakitanga when making those same decisions. The fact that kaitiaki, nominated by tangata whenua, are being appointed by the Minister under the customary regulations makes the requirement to have regard to kaitiakitanga a very real and tangible one in the context of fisheries management.

Historic Places Act 1993

Any person may propose a place, area or wähi tapu for registration under the Historic Places Act 1993 and may make a submission on such proposals when they are publicly notified.

Marine Reserves Act 1971

A number of bodies can propose a marine reserve and the proposal is then publicly notified and notice in writing is given to people that have land adjoining the proposed reserve. A plan with the proposed marine reserve marked on it is then available for people to look at, in the Department of Conservation office nearest to the proposed reserve. People have two months to raise objections to the reserve. The

submissions are considered by the Minister of Conservation in conjunction with the Minister of Fisheries and the Minister of Transport.
The Department of Conservation is responsible for caring for and managing marine reserves. Each reserve is administered by a Marine Reserve Committee that consists of six to eight people who are appointed by the Minister of Conservation (and who are picked to specific criteria). The Committee must prepare a Marine Reserve Management Plan which is also open to public submission.
The Marine Reserves Act 1971 is currently being reviewed, with the Department of Conservation leading the process; however the participation requirements are likely to remain the same.

Maritime Transport Act 1994

Under the Maritime Transport Act 1994, the Maritime Safety Authority develops rules/regulations in consultation with the maritime community and other interested parties. These are required to be publicly notified with a period for public submissions to be received.
Dumping permits under the Marine Transport Act may be publicly notified depending on the potential environmental effects of the activity.

Resource Management Act 1991

National Policy Statements: The New Zealand Coastal Policy Statement follows the same process required for preparing a national policy statement, with the exception that the Minister involved is the Minister of Conservation and not the Minister for the Environment. A Board of Inquiry is appointed by the Minister, and the public is able to make submissions on the proposed Coastal Policy Statement or National Policy Statement.
Regional Coastal Plans: The process of developing plans occurs under the First Schedule, and the public has the right to make submissions on proposed plans and can lodge a reference with the Environment Court on decisions made by the council on the plan. Meetings are held in public and the public has the right to be heard.
Regional Councils are required to consult with other government agencies and tangata whenua when preparing plans. Informal consultation can occur at a pre-notification stage, when councils scope out issues and approaches with the community and stake-holders.
Consents: There is no requirement for 'standing' under the Resource Management Act 1991, which means anyone can make submissions to plans or consent hearings. However decisions on resource consents may be either public or limited public processes depending on the actual or potential effects of the activity and the way the activity is classified in the plan (e.g. controlled or discretionary). Full public notification is costly and the council has to establish in the plan the circumstances in which consents will be fully notified. Some consents require only the written approval of affected parties rather than full public notification.
There is considerable debate about councils' practice with respect to public notification and the current Resource Management Amendment Bill has looked at the concept of limited notification procedures to reduce costs for applicants. Decisions on consents (as with plans) are appealed to the Environment Court (for a *de novo* hearing) and then to the High Court, but only on points of law. Consultation with tangata whenua is also expected on individual resource consents and designations. Applicants have to reveal what effects, if any, a proposal will have on matters of significance to Maori. They must also state what consultation is carried out, which provides a mechanism for local authorities to suggest that more information/consultation is required before an application is accepted

Submarine Cables and Pipelines Protection Act 1996

The Submarine Cables and Pipelines Protection Act 1996 provides for the protection of submarine cables and pipelines from damage by fishing operations or ships anchoring. The legislation requires consultation with affected parties when making regulations about cable and pipeline protection.

OCEANS POLICY SECRETARIAT

WORKING PAPER NINE
14 March 2003

OCEANS POLICY

ADAPTING TO FUTURE CHANGES

Contents

Introduction

1 The marine environment is in a state of constant change. Natural and human influences on the oceans vary over time and space to produce a highly dynamic environment.

2 One of the challenges for the Oceans Policy project is to design flexible, forward-looking policy capable of dealing with future challenges. The Government's Sustainable Development Programme of Action has identified the need for policy that ensures the well-being of current and future generations. It also reflects the Government's commitment to the principle of considering the long-term implications of government decisions.

3 This paper discusses a number of possible changes to the ocean environment that may arise in the future to demonstrate the adaptability of management systems and identify any resulting policy problems.

Adapting to future changes

4 Humanity's influence on the sea has increased markedly over time. Growing populations, patterns of urbanisation and technological advances have enlarged our ecological footprint at a rapid rate and have led to increasing conflict over the use of scarce resources.

5 One means of planning for the future is to assume a continuation of current trends, and extrapolate the policy requirements that will eventuate. This paper examines four trends that may have a profound influence on the future state of the marine environment:

- population: spatial concentration and demographic changes
- increasing competition for marine space
- increasing impacts on marine ecosystems and natural capital
- the potential impacts of global warming.

6 This paper is not intended to present an exhaustive list of future trends; the discussion in this paper focuses on the general adaptability of decision-making frameworks. There may be other trends, not identified here, that have significant effects on marine management.

Population: Growth, spatial concentration and demographic changes

7 The demographic and geographic distribution of New Zealand's population is changing over time and placing increasing pressure on the marine environment, particularly the coastal fringe and the near-shore ocean – which features the majority of recreational uses and infrastructural requirements (e.g. sewage/stormwater disposal, ports).

8 New Zealand's population is increasingly concentrated in urban areas, which increases the load on contingent environments. The Auckland Regional Council's submission to Stage One of the Oceans Policy project cited population growth as the leading pressure on Auckland's marine environment.

9 Even in rural and peri-urban areas, population pressures are concentrating on the coastal fringe. Coastal residential development is popular for those in pursuit of the 'Kiwi Dream', and factors such as coastal hazards do not seem to diminish the value of coastal land[1]

10 The demographic structure of populations can also affect resource use and development patterns. For example, New Zealand's aging population could result in changing patterns of urban development, such as increased demand for seaside retirement housing.

11 Population pressures have seasonal variations. The summer months see an influx of people to popular holiday areas, often in isolated communities with small rating bases and infrastructures unable to cope with sudden peaks in usage.[2]

Future state of the environment

12 The implications of the population trends for the future state of the environment are summarised below:

- Marine pollution from land sources will increase, due to increased sewage load, run-off and sedimentation from inland activities such as farming.
- There will be a requirement for increased infrastructural development, particularly over the land–sea interface (e.g. sewerage systems, ports, telecommunications cables).
- The effects of other activities may compromise the economic values of the ocean, e.g. damage to aquaculture through increased sewage outfall.
- The load of recreational users upon amenity areas (e.g. beaches) will increase.
- Recreational values will be diminished due to overcrowding of the coastal fringe and near shore ocean.

Increased competition for marine space

13 Pressures of population growth, and growing interest in activities such as marine farming, have placed increasing pressure on near-shore space. The future will see increasing clashes of sometimes incompatible activities, ranging from recreational uses to commercial operations. The clash of activities could extend further offshore in the future, as near-shore space becomes crowded and technological advances enable new uses of the oceans.

[1] pers comm. Department of Conservation 3/2/2003
[2] pers comm. Territorial authorities focus group meeting 11/2/03

Future state of the environment

14 The implications of increased competition for marine space are summarised below:

- The future marine environment will be crowded, and various property rights may have their value eroded due to an inability to access the necessary space. For example, commercial fishers may be unable to fully implement their quota management system rights if other commercial/recreational uses are carried out in the same area as fishing activities.
- A clash of incompatible activities may, therefore, make it hard for New Zealand to achieve 'best value' from the oceans.
- New Zealanders have a perception of our oceans and beaches as common areas open to all 'as a birthright'. New Zealanders have been afforded such ready access in the past with enough space to accommodate all users and uses, but pressures are increasing in this area.
- Increasing effects of individual activities, and the cumulative effects of different activities, may have negative effects on marine ecosystems.

Increasing impacts on marine ecosystems and natural capital

15 The marine environment is a rich source of resources, such as fish and minerals. Exploitation of these resources has increased over time with growing demand and technological innovations. Extractive uses place pressure on marine ecosystems, both in terms of the resource being taken, and in terms of flow-on effects on the wider ecosystem (e.g. habitat destruction, by-catch).

16 Natural capital is those characteristics of natural systems that provide tangible and intangible goods and services of economic value to people. A healthy environment underpins much of the wealth generation capacity of the oceans. For example, the fishing industry would collapse if marine ecosystems were heavily stressed through overfishing, or the effects of other activities. Ecosystem impacts can, therefore, have implications for the economic uses of the oceans, as well as intrinsic and amenity values.

17 The marine environment is used as a sink for human pollution. Sewage, river-borne agricultural run-off and sedimentation all end up in the oceans, as do localised discharges from vessels and marine structures.

18 Marine ecosystems are also disturbed by activities not directly extractive or depository; for example, the establishment of coastal structures, or the passage of boats.

19 The load of these activities on marine ecosystems has increased over time, due to factors such as demographic changes, increased demand for marine resources, and technological innovations.

20 Threats to the integrity of marine ecosystems also affect the wealth-generating capacity of the oceans. Some industries, such as fishing or aquaculture, require a healthy marine habitat to sustain their livelihood. Some non-extractive activities, such as ecotourism, are directly dependent on the intrinsic/amenity values of a clean and healthy environment.

21 Developments in technology and better management techniques also offer the opportunity to reduce environmental impacts in some cases. Better sewage treatment facilities, or technologies to avoid fishing by-catch, are examples of technological developments that lessen adverse effects on the environment.

Future state of the environment

22 The implications for the future of the trend of increasing impacts on the marine ecosystem and its natural capital are summarised below:

- Increased demand for marine resources will place pressure on their sustainable utilisation.
- There will be increased impact on the ecosystem because of the secondary impacts of activities (e.g. by-catch from fishing).
- Threats to ecological integrity also threaten the ocean's economic potential, which is underpinned by a healthy environment.
- New technologies will create new stresses on the marine environment, but also provide opportunities for better management and wealth creation (discussed later).

Global warming

23 The Kyoto Protocol is the international community's response to the threat of human-induced climate change. This paper does not examine how the development of an Oceans Policy could interface with climate change mitigation policy; rather, it examines the possible implications of global warming for the marine environment.

Future state of the environment

24 The implications of global warming are summarised below:

- A large amount of human development is concentrated in coastal areas, which will be vulnerable to rising sea levels.
- Weather patterns may change, and extreme events such as storms may become more common.
- Climate change has the potential to influence the geographic location of ecosystems, species diversity, and ecosystem services through variations in temperature, sea level, and so on.
- Ecosystems are dynamic and undergo change as a function of time in response to a variety of stressors, including climate. While ecosystems are capable of adapting to change, global change may occur at such a rapid rate that ecosystems are unable to keep up and are therefore vulnerable.

Planning for future changes: Adaptability of the management framework

25 It can be argued that some aspects of New Zealand's management framework are not sufficiently adaptive and flexible to effectively deal with future trends.

Resource Management Act

26 The Resource Management Act is responsible for managing many of the issues associated in the previous discussion of trends. The RMA sets out the framework for assessing the environmental effects of resource uses on land and to the extent of the territorial sea[3]. In terms of adaptability to change, the RMA process has the following drawbacks.

27 A fundamental philosophy of the Resource Management Act is that the environmental effects of activities should be managed, as opposed to focusing on the type of activity in question. This essentially makes the RMA a reactive system, not well-suited to planning for future pressures or needs. The assessment of individual activities on a case-by-case basis can lead to cumulative problems, such as the recent 'goldrush' for aquaculture space. The RMA proved ineffective at dealing with this rapid spread of marine farms, and a two-year moratorium has been placed over further applications until regional coastal plans can be modified to accommodate future sustainable aquaculture development.

28 Key policy instruments under the Resource Management Act, such as regional policy statements and regional/district plans, have taken a long time to create. The slow plan-making and amending process makes it difficult to react quickly to changing circumstances. Resource consent decisions on individual activities can also take a long time to resolve, especially if matters are referred to the Environment Court.

29 Decision-making processes under the Resource Management Act are politicised by the nature of local government decision-making. Decision-makers bound to a three-year electoral cycle may often focus on short-term gains while discounting long term effects. This issue is demonstrated by current concerns over investment in coastal residential development, at the expense of coastal natural character and public access to the sea, or under-investment in expensive water management infrastructure. Often community pressures, or the economic implications of 'tough' decisions, can be as important as the RMA planning framework.

30 Central government has provided ineffective guidance to councils to assist them with forward-looking planning. The New Zealand Coastal Policy Statement (NZCPS) is currently under review, and recent workshops have revealed, for example, that "the NZCPS does not provide councils with sufficient guidance for addressing the adverse effects of the aquaculture boom" and "With demand for use of the coast increasing, there was also a significant increase in incidents involving conflicting

[3] There are some exceptions, e.g. the Fisheries Act controls effects of fishing activity on fish stocks both within and outside the territorial sea.

uses. NZCPS policies on public access have provided little guidance on how to manage these conflicts."[4]

Other legislation

31 Some legislation is more adaptive to changing circumstances. The Fisheries Act, for example, has an adaptive approach to stock management, allowing changes to quota limits when a fish stock is under pressure. Issues around the adaptability of council planning may be improved by recent changes to the Local Government Act to provide for strategic community planning. This may allow a more integrated system providing for the interface between economic, social and environmental issues, and thus better adaptability to future changes.

Areas of uncertainty in the policy framework

32 In cases where the Resource Management Act does not apply, such as decisions on the use of space or the assessment of environmental effects outside the territorial sea, the policy framework is too incomplete to provide for any kind of forward-looking, strategic planning. If, for example, a deep-sea aquaculture development and petroleum pipeline were proposed for the same area of marine space, there would be no formal process to assess and reconcile the potential conflicts between the two activities. It could also be argued, however, that the very lack of a formal decision-making framework makes the system adaptive and able to respond to individual issues as they arise (albeit at the cost of certainty and consistency).

'Point of intervention' issues

33 Changes in activity patterns are driven by a number of economic and social factors (e.g. the aquaculture boom, local elections, desirability of coastal property). Environmental management frameworks are often disconnected from these processes, which means that people can often not plan for, or influence, drivers for change, and have to respond to changing circumstances as they arise, after a certain amount of 'lag' time.

Lack of information

34 Good information is a cornerstone of accurate decision-making. Uncertainty about the components and interactions of the complex marine environment, and the individual and cumulative effects of activities, presents problems for planning. These issues are discussed at greater depth in the information issues paper.

[4] Young, D. (2002) *Monitoring the Effectiveness of the New Zealand Coastal Policy Statement: Views of Local Government.* Unpublished report, Department of Conservation, pp 3,4.

Conclusions

35 A management framework ill-suited to adaptability presents the following problems for an Oceans Policy to address:

- Changes to the marine environment, and the human activities in and around it, can occur quickly, and problems may arise if the management regime is not adaptive, flexible and capable of timely change. The nature of the current management system, particularly the Resource Management Act, does not promote forward-looking and adaptive planning. This could result in negative impacts on natural and human value, and prevent the achievement of 'best value' from the oceans.

- Increased use of the oceans for different purposes will result in growing conflicts between users. These conflicts could be between different commercial uses (e.g. fishing versus aquaculture), but could also involve the erosion of public good uses such as swimming or recreational fishing. The current management framework is not well-suited to planning for a range of different activities and resolving conflicts when they arise.

- Marine ecosystems, and natural capital for future uses, will face increasing pressure over time, and accurate management of the marine environment may be hampered by lack of knowledge about the individual and cumulative effects of current and future activities.

- The current management system does not interface well with many of the underlying economic, social and political drivers for change, meaning that instruments such as the Resource Management Act are often in 'catch-up' mode.

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WORKING PAPER TEN
14 March 2003

OCEANS POLICY

ENCOURAGING NEW OPPORTUNITIES IN THE OCEANS

Contents

Introduction

1 The oceans offer great potential for innovation and investment in a range of different wealth-creating activities. The purpose of the Government's recently released *Growing an Innovative New Zealand* strategy is to lift New Zealand's GDP[1] per capita to the top half of OECD[2] countries. Future opportunities in the oceans have the potential to help New Zealand meet this goal. While a large amount of New Zealand's land-based resources are already being utilised, the exclusive economic zone and continental shelf offer largely untapped space and resources[3] for future developments.

2 Future technologies and management techniques will enhance our ability to realise these opportunities. Technology will enable new uses of the oceans, many of which fall outside the scope of the current marine management framework. Technology also provides opportunities to improve our understanding and effective management of the marine environment, and to promote environmentally effective practices, such as the increased use of renewable energy.

3 This paper examines some different potential activities in the oceans, to demonstrate policy issues that may arise in the future. The current management framework is then examined with regard to how it would facilitate these and any other possible future economic opportunities.

4 The Oceans Policy Secretariat has commissioned a private sector report to explore the current and future economic opportunities in the oceans, and explore any policy issues preventing the maximisation of these opportunities. The report will help develop the ideas in this issues paper, and get a sense of what issues are important for investors and wealth creators.

Potential technologies

Energy generation technologies

5 The oceans offer a wide range of energy sources. Many are renewable (i.e. they do not involve the depletion of a finite resource), and represent an opportunity to develop sustainable energy solutions for future needs. Future energy sources also present a number of policy and planning issues, as demonstrated in the following examples.

Offshore windfarms

6 Europe has pioneered the construction of offshore wind farms, with a small number already operational. The appeal of offshore wind generation is offshore locations avoid the 'not in my backyard' issues experienced on land, such as

[1] Gross Domestic Product
[2] Organisation for Economic Cooperation and Development
[3] Aside from commercial fishing

complaints about visual pollution. The strong and constant winds over the sea also provide a more reliable energy source than on land.

7 The establishment of wind turbines offshore is more difficult and costly than on land, with difficulty and cost increasing with the depth at which is being built, and the distance from shore. For this reason, it is likely most offshore wind developments in the near future would be in the territorial sea, and subject to the provisions of the Resource Management Act. Wind farms further offshore may be a possibility in the future however.

Wave power

8 The World Energy Council estimates two terawatts of energy could be harvested from the world's oceans, the equivalent of twice the world's current electricity production. New Zealand has a high wave energy potential, due to the long 'fetch' of our coastline.

9 There are a number of new wave power technologies emerging to capture this resource. All require the establishment of offshore generators of differing descriptions.

Ocean currents and tidal power

10 Ocean currents are a huge source of untapped energy. Sea water is much denser than air, providing a 5-knot ocean current with more kinetic energy than a 350 km/h wind.

11 Tidal power operates by building a barrier across a river estuary. The tidal flow drives turbines to produce electricity.

New harvesting technologies

Deepsea aquaculture

12 All of New Zealand's marine farms are located close to the shore, where construction and access are easier and farms are more sheltered from extreme weather conditions.

13 Near-shore aquaculture is not, however, without its problems. Marine farms can close off sections of shallow bays, where fish wastes concentrate and the oxygen in the water is depleted by quick-growing algae. Further, because the density of fish is high, diseases can spread rapidly. Land use on the shore and pollution from shore-based activities can affect marine farms, as recently demonstrated at Waikare Inlet in the Bay of Islands.

14 Recent experience with the aquaculture 'goldrush' has also demonstrated the extent to which aquaculture can conflict with other uses of near-shore space, and negatively affect surrounding ecosystems through disruption of habitats and nutrient flows.

15 Some of these problems can be solved or mitigated by moving operations offshore where water circulation is better, and fewer activities compete for the space in question. Deep-sea aquaculture developments are more expensive, however, as sites are harder to construct and gain access to, and there are more extreme weather conditions to deal with. They are also less productive, due to lower nutrient levels further offshore.

Fishing techniques

16 A major reason for worldwide depletion of fish stocks in the 20th century is the advent of sophisticated, industrial-scale fishing techniques. New Zealand does, however, have a quota management system (QMS) in place to govern the sustainability utilisation of fish stocks, and this paper does not discuss the effectiveness of the QMS in meeting this goal. Future technology, however, will probably allow a wider range of species to be caught in a wider range of environments. Again, the sustainable management of the stock in question is an issue for the QMS, but policy makers need to be aware of the wider environmental effects of new techniques.

17 New technologies may have positive implications for environmental management. More advanced and targeted fishing technologies could help avoid or mitigate adverse effects, such as by-catch or damage to sea floor habitats. Also, more advanced detection and ecosystem modelling systems could allow targeted catches that maximise sustainable yield while mitigating the effects on the wider ecosystem.

Extractive activities: mining and bioprospecting

18 Seabed mining and bioprospecting are two very different types of extractive activity that can occur in the marine environment that nonetheless raise a number of common policy implications.

Seabed mining

19 There are currently no offshore mining[4] operations in New Zealand. Offshore mining is a developing area that is not yet commercially viable, particularly due to the costs and technical challenges involved with accessing underwater environments. There is, however, a growing body of knowledge around the potential nature and location of seabed resources. Many are associated with hydrothermal (underwater hotspring) mineralisations.

20 Mineral resources in New Zealand identified to date include[5]:

- gas hydrates – methane in an ice matrix
- coastal sand and gravel
- titanomagnetite and ilmenite sands

[4] 'Mining' does not include petroleum extraction for the purposes of this paper. New Zealand already has operational petroleum extraction from the ocean, and advances in petroleum mining technology should allow exploration and extraction in deeper waters in the future.
[5] Centre for Advanced Engineering (2001), *Our Oceans, A Journey of Understanding*, p8.

- placer gold
- phosphate nodules on the Chatham Rise
- metal-rich volcanic deposits on the Kermadec–Tonga ridge.

Bioprospecting

21 Bioprospecting is the examination of biological resources (e.g. plants, animals, micro-organisms) for features that may be of value for commercial development[6]. These features may include chemical compounds, genes and their products or, in some cases, the physical properties of the material in question. The oceans are a rich source of biodiversity and potential bioprospecting discoveries.

The potential of natural capital: tourism and the economic value of healthy environments

22 Natural capital is those characteristics of natural systems that provide tangible and intangible goods and services of economic value to people. When considering potential economic opportunities in the oceans, it is important to consider that environmental protection and economic development can be viewed as mutually supporting processes. A healthy environment underpins much of the wealth generation capacity of the oceans. The fishing industry would collapse if marine ecosystems were heavily stressed through overfishing, or the effects of other activities. The ecotourism market requires healthy, natural environments to attract tourists.

23 There is a common assumption that economic benefit is derived from use and use is generally understood to be extractive, in an economic sense. Examples such as the Leigh marine reserve – which prohibits extraction – demonstrate the 'ecotourism', non-extractive benefits of healthy environments. This reserve receives 200,000 visitors annually and supports several small businesses in the area, as well as indirectly contributing to many others.

24 On the other hand, economic development opportunities can also contribute to better environmental management. For example, the information gathered to assess the environmental effects of a proposed activity can add to environmental knowledge of the area.

Information technology: monitoring and modelling

25 Developments in monitoring technology mean we now have the ability to place highly sensitive instruments deep in the ocean, or far into space, with long-term monitoring and observation potential. High-speed data transmission now allows information to be sent to and from remote sites with relative ease.

26 Information collection and transmission technologies will continue to improve in the future, allowing data on factors such as sea temperature, salinity, sea surface

[6] The Ministry of Economic Development is current leading a bioprospecting policy project, examining how to maximise benefits to New Zealand

height, currents, winds and ocean colour (i.e. phytoplankton) to be monitored in near real time.

27 The computing power and complex software needed to model this information is becoming available today. In the near future we may be capable of establishing models that integrate all relevant data to create a quantitative and complete picture of active processes in the sea, and which are also capable of forecasting events and trends in the marine environment – for example climate change, the occurrence of harmful blooms and the onset and dispersal of pollution. One key challenge for the future is to determine how these models and their outputs should be incorporated in decision-making systems.

28 Another possible application of future technology is the delimitation and monitoring of property rights. Such technologies could help to reconcile the different uses of space in the marine environment through precise monitoring of activities across different locations (e.g. sonar, satellites, tagging).

Encouraging wealth creation: policy problems

29 It can be argued that current management frameworks do not encourage new opportunities to create wealth from our oceans. These are the major 'problem areas' for an Oceans Policy to address:

- allocation of space and conflict between activities
- gaps in the legislative regime
- uncertainty and inconsistency around the assessment of environmental effects.

Allocation of space and conflict between activities

30 Within the territorial sea, the Resource Management Act permits activities in relation to their environmental effects[7]. The focus on environmental effects does not address a wider spectrum of considerations relevant to reconciling different uses, and there is often unclear specification about the nature and security of rights and responsibilities. The 'first come, first served' nature of the consent process does not provide a comprehensive framework to allocate space for different activities and reconcile their clashes with other uses and users. The recent problems with the aquaculture 'goldrush' demonstrate that problems around competing uses are already occurring.

31 Aside from issues around the conflict of activities, the Resource Management Act is not geared toward maximising economic opportunities in the oceans. The Act focuses on environmental effects, and councils do not have the mandate, or the tools, to determine 'best value' uses of the oceans[8].

[7] A major exception is the applicability of the Fisheries Act to management of fish stocks
[8] Although the currently under-utilised provisions for coastal tendering could perhaps help establish a more market-based, 'best value' approach

32 There are also problems with the integration of different marine statutes, both with each other and with the Resource Management Act. The framework established by sector-specific legislation, such as the Fisheries and Crown Minerals Acts, does not necessarily interface with the considerations of other statutes. For example, a marine farm may impinge on some of the space a fishing boat has traditionally used to catch its quota, or a marine reserve may be established in an area desired for a telecommunications cable or petroleum pipeline.

Gaps in the legislative regime

33 Outside the territorial sea, policy frameworks are either vague or non-existent. The Continental Shelf Act and Fisheries Act do allow for some types of extractive activity (mining and bioprospecting, for example), but the decision-making processes in these Acts, with regard to permitting activities and assessing environmental effects, are unclear and not geared toward facilitating investment.

34 For example, two years ago an Australian company applied for a minerals prospecting license over a seamount. The Continental Shelf Act gives the Minister of Energy the authority to grant permits, but does not specify any considerations or timeframes for the decision making process. The seamount was subsequently closed off to fishing activity through protective mechanisms under the Fisheries Act, causing uncertainty as to what activities could proceed. The permit has only recently been granted following an ad hoc process of discussion among relevant officials. Such an uncertain process does not promote investment confidence.

35 The establishment of many new technologies described earlier in this paper will fall into a policy vacuum, with no relevant laws to govern their establishment. A recent aquaculture application in Canterbury is close to extending beyond the territorial sea, with no certain policies in place to approve its construction or assess environmental effects.

36 New activities in the exclusive economic zone also have to be assessed in relation to their effects on existing uses. The establishment of a wind or wave ‘farm’ beyond the jurisdiction of the Resource Management Act would require assessment of the effects on other activities such as shipping and fishing. Again, there are no formal processes in place to balance these competing interests. This creates an undesirable situation for existing and potential users, who are unsure of effects on their interests, and have no certainty about the timeframes, costs and considerations of the decision-making process.

Uncertainty and inconsistency around the assessment of environmental effects

37 This paper has already noted uncertainty around the assessment of environmental effects, especially outside the territorial sea. New technologies and intensified use of the oceans will raise new areas for effective environmental management. For example:

- As the quota management system deals with a wider range of species, the cumulative effect of harvesting of individual species will increasingly need to be understood in terms of the wider ecosystem.

- New fishing techniques will provide both challenges and opportunities in relation to impacts on the wider ecosystem. For example, new techniques to avoid by-catch could have positive environmental outcomes.
- Some new technologies will have poorly understood environmental impacts, making environmental impact assessment difficult. For example, tidal and wave power could alter tidal currents, affecting the habitat of seabirds and fish in the area. The exact nature and scope of these changes will be hard to predict until the technologies are implemented and monitored.

38 Uncertainty about the environmental implications of new activities will test the robustness of decision-making frameworks. Inconsistency in environmental management frameworks, particularly in the exclusive economic zone, could provide considerable uncertainty and cost for investors.

Role of technology in meeting these challenges

39 New technologies will present a new range of management challenges, but they may also provide some tools to help better manage competing activities and environmental integrity. In the future we may have:

- increasing abilities to monitor the natural fluctuations of the ocean environment
- increasing abilities to model the effects of environmental effects at the ecosystem level
- increasing abilities to accurately define and monitor the extent of different activities and interests in the oceans
- tools to make more accurate and robust decisions based on accurate information and modelling techniques, assuming that policy making frameworks are able to incorporate new techniques of information management and modelling
- technologies and management techniques that reduce environmental impacts.

Conclusions

40 The promotion of innovation and wealth creation in New Zealand's oceans may be held back by some features of the current management framework that present uncertainty and high transaction costs to business. Key issues are the lack of clear processes to establish and reconcile different uses, unclear decision making frameworks, particularly outside the territorial sea, and uncertain/inconsistent environmental impact provisions, particularly in relation to new, untested activities.

41 Problems with the status quo could worsen in the future, with an increased demand for marine resources, and new technologies changing and intensifying use patterns in the oceans. New technologies will, however, also provide opportunities to overcome some problems facing marine managers now and in the future.

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14 March 2003

OCEANS POLICY

INTERNATIONAL OCEANS ISSUES

Contents

Introduction

1 The scope of the Oceans Policy extends to the 200-nautical mile limit and the limits of the Continental Shelf beyond. However there are important links to be made between our domestic policy and our international work. This paper explores the connection between domestic and international oceans management, and issues arising. It is intended to be read in conjunction with Background Paper One: 'Setting The Scene: New Zealand's Oceans-Related Obligations And Work On The International Stage'.

2 In its role as an international citizen, and in the pursuit of its economic, strategic security and environmental objectives, New Zealand contributes to a wide range of international oceans management and policy initiatives. It has already achieved an impressive track record, including its contributions to oceans governance, biodiversity conservation and management, and Antarctic governance. In the light of this experience and in the context of newly emerging issues, a number of refinements have been identified which could assist New Zealand in playing a more effective role internationally. Addressing these would allow New Zealand to take a more proactive role in relation to its existing obligations, and to be better prepared for issues that may arise in the future.

3 It is important for New Zealand to continue to engage effectively in this work, as oceans issues are by nature transboundary, and therefore cannot be successfully addressed only by domestic action. Broader regional or global approaches to oceans management should influence the development of New Zealand's Oceans Policy. The relationship between New Zealand domestic Oceans Policy and international initiatives is, however, reciprocal. Future development of policy positions in the international context will need to be informed by New Zealand's domestic policy.

Desired outcomes

4 The desired outcomes that would strengthen New Zealand's performance on international marine related issues, and provide clear links and complementarities between New Zealand's international and domestic oceans policy, might be:

- New Zealand having clear priorities and policy positions on international oceans issues which are developed through input from relevant domestic oceans management agencies and the public
- New Zealand playing an effective role on key emerging issues relating to global oceans management, and providing leadership with respect to regions of special importance to New Zealand (e.g. the Tasman, Pacific and Southern Ocean)
- New Zealand meeting its commitments under all international oceans management instruments that it has agreed to
- New Zealand acceding to those international oceans management instruments that deliver on its objectives, which it has not yet acceded to.

Current management

5. Background Paper One sets out details about:

- how international law is made and applied
- current activities under way in key international institutions with oceans responsibilities and functions
- oceans policy programmes in other countries and regions
- development of New Zealand's position on international oceans issues.

6 New Zealand has a strong record of achievement in international oceans management. It has played a leading role in the development of the principal oceans treaties, especially the United Nations Convention on the Law of the Sea, and Pacific regional fisheries agreements. Its advocacy of oceans affairs led to the establishment of a regular dialogue on oceans at the United Nations. It has made a strong contribution to strengthening the Antarctic Treaty System including through its efforts in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). New Zealand has also taken a high profile stance on whale protection issues internationally[1].

7 Examples of the type of work programmes of international institutions that New Zealand is engaged with are the programmes on illegal, unreported and unregulated (IUU) fishing, fisheries subsidies, fisheries incidental by-catch, marine protected areas, marine biosecurity, and whaling. The oceans within and beyond New Zealand's jurisdiction also provide the stage for many activities with other countries, such as:

- cooperation programmes for research
- ship visits, training and exercises
- enforcement of international obligations
- intelligence sharing.

Key issues arising for New Zealand

8 Issues have been identified under four main headings:

- New Zealand's priorities and policy positions on international oceans issues, with provision for input from relevant agencies and the public
- The extent to which New Zealand is playing an effective role internationally and leading in regions of special importance
- Whether New Zealand is implementing existing international obligations

[1] A large proportion of New Zealand's EEZ lies within the Southern Oceans Whale Sanctuary, with the remainder lying within the proposed South Pacific Whale Sanctuary. New Zealand has a clear international obligation to ensure that decisions affecting our oceans do not result in adverse impacts on the great whales, including impacts on their potential recovery from the currently depleted populations. Issues include entanglement in marine farms and other structures, boat strike, maintenance of healthy populations of food species, and the protection of sheltered coastal waters that formerly were important breeding grounds for great whales.

- Whether New Zealand has acceded to all international oceans management instruments that deliver on its objectives.

New Zealand's priorities and policy positions

9 Although there is no unified overarching policy direction at the national level to guide New Zealand's role in international oceans issues, standing policy and emerging policy debates – often with provision for input from government agencies and the public – shape New Zealand's participation in international forums. Central government (and other) agencies acting on the international stage take their cue from a wide range of themes, objectives, and outcomes described in international and domestic legal instruments, and high-level government policy statements and strategies. Differences between these themes and outcomes can arise, in which case there is a risk of some inconsistency unless messages are managed and delivered carefully in international oceans forums.

10 An example where there has been successful coordination on oceans policy issues is the recent Ross Sea and Southern Ocean review process (May 2002) which has provided clear, whole of government guidance for New Zealand's participation in the Commission for the Conservation of Antarctic Marine Living Resources.

11 There are some doubts about whether there has been sufficient prioritising to achieve effective New Zealand input into some other oceans forums. Some agencies do not have sufficient capacity to respond to international issues; this includes insufficient resources to work with other interested agencies and groups to develop agreed positions. Examples of forums or programmes that New Zealand has had patchy input to are:

- the Asia Pacific Economic Council (APEC) Marine Resources Working Group
- the United Nations Environment Programme (UNEP) Regional Seas (South Pacific) programme
- the Pacific Islands Regional Oceans Policy
- the Global Programme of Action on Marine Pollution from Land Based Activities.

12 These shortfalls can mean that New Zealand is not represented at all at some meetings, or that our representation is not adequately informed by experts or through the formulation of whole-of-government policy positions and briefings. This may contribute to a perception by non-governmental organisations that there is a lack of transparency in decision-making. Patchy uptake of opportunities in these areas also results in a lack of ownership of outcomes and of responsibility for implementing them.

13 These examples highlight the need for improved mechanisms for prioritising international issues across government, especially on emerging issues, and the provision of adequate resourcing to deal with them. An absence of these things means that there are more likely to be gaps in alignment between New Zealand's positions internationally, and the legal and policy context at home. For example, in relation to fouled ship hulls, New Zealand has no regulations or strategies in place, and there are

no international guidelines to aid domestic thinking about how to assess the relative priority of what appears to be an important issue.

14 In addition, new developments in certain marine-based sectors – such as recent growth in off-shore fishing activities – require ongoing assessment of priorities and positions. Proper consideration of how New Zealand's values and principles will be applied in new contexts requires full engagement by the range of interested agencies and stakeholders.

15 There is a feeling among non-governmental organisations and community groups that provision for their input into international marine-related negotiations is patchy, haphazard and difficult for them to understand. These groups can often experience difficulty in being involved on some issues, although consultation with non-governmental organisations is well-established in some areas of the Ministry of Foreign Affairs and Trade's (MFAT's) work. MFAT has a clear process for its various divisions to conduct outreach and communications work with the public as a part of country and issue-specific policy development.

The effectiveness of New Zealand's role internationally

16 As mentioned in paragraph 6 above, New Zealand has achieved much over the past decades to improve international oceans management, especially in the Pacific Ocean and in Antarctica. It continues to play leading roles in these areas.

17 New Zealand is also well-placed to continue to build on its strengths as they might apply to emerging issues. In the areas of oceans use and management, New Zealand is at the forefront of international best practice and is well-placed to demonstrate that improved management does not necessarily come at the cost of efficient use of the oceans environment. New Zealand's experience of state-of-the-environment reporting and methods for marine protection may also provide a useful focus to influence initiatives and directions in the international arena in a way that aligns with our own oceans management approach.

18 There are immediate opportunities for New Zealand to build on its position as a key player in addressing gaps and emerging issues, particularly in areas outlined in paragraph 11 and in the following areas:

- the sustainability of fish stocks
- the removal of damaging subsidies
- as a contributor to the proposed new global assessment of the state of the marine environment
- as a proponent of 'polluter pays' in the event of accidents at sea.

In addition, New Zealand could reinforce its involvement in the United Nations Informal Consultative Process on Oceans and the Law of the Sea, which is a key forum for promoting integrated oceans management at the global level, and which requires active participation of oceans experts from national agencies.

19 Greater clarity in respect of New Zealand's overall priorities for ocean management, including the prioritisation of inputs and resources, would allow New

Zealand to play a more effective role internationally and regionally. For this to happen, more work may be needed across relevant government agencies to develop a cross-government strategy for our international involvement.

Implementation of New Zealand's international obligations

20 Further work could be done to ascertain New Zealand's performance under the international marine-related law it has agreed to, and potential agreements it may be interested in agreeing to in the future. Any such work would involve consultation with government departments, non-governmental organisations, industry, and other stakeholders. OECD[2] country reporting would also be a key source in gauging New Zealand's performance.

21 However, there are strong suggestions in other areas that New Zealand's work to implement international frameworks could be improved. A recent report by the Auditor-General[3] finds, in relation to New Zealand's commitments under the RAMSAR agreement[4], that domestic agencies need to give more attention to measures to arrest the continuing degradation of wetlands. In the context of an Oceans Policy, it is significant that wetlands under the RAMSAR agreement include coastal lagoons and estuaries.

22 Looking ahead, it is clear New Zealand could improve its performance in all of the areas identified in paragraphs 11 and 18, given adequate resourcing and prioritising. In addition, there are a few gaps in New Zealand's adherence to international treaties that deliver on core oceans interests: for example, the Convention on the Protection of the Underwater Cultural Heritage awaits attention. New Zealand has signed this convention, but has not yet decided whether to accede to it. The Ministry of Culture and Heritage proposes to investigate the implications of the Convention for domestic law, and requirements for accession.

23 It is useful to conclude this section by highlighting four elements set out in the Auditor-General's report that would increase the chances of successful implementation and ongoing compliance with international agreements. These are:

- specific enabling legislation for each agreement
- clear mandates, roles and accountabilities for departments and agencies responsible for the agreement in New Zealand
- well-defined working and reporting relationships between the departments and agencies responsible for implementing the agreement
- close and effective consultation and liaison with people and organisations most affected by the domestic implications of the agreement.

24 The issues raised in this paper suggest that these criteria are not being met consistently in the context of New Zealand's international oceans involvement.

[2] Organisation for Economic Cooperation and Development
[3] *Meeting International Obligations*
[4] Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971

Conclusions

25 New Zealand has a strong record of achievement in oceans management and has taken a leading role in developing the foundation instruments of international oceans policy such as the United Nations Convention on the Law of the Sea. A number of New Zealand's domestic policy approaches are at the forefront of international oceans management practice.

26 For New Zealand to improve its contribution on international oceans issues, work needs to be focused on:

- setting clear priorities and policy positions on international oceans issues. The mechanisms by which domestic agencies coordinate and develop positions New Zealand wishes to pursue in regional and international forums should be improved. This should include the development of mechanisms to ensure that the views of relevant non-government stakeholders are considered
- playing a more effective role on key emerging issues relating to global oceans management (especially the management of marine and coastal waters, invasive and alien species and biodiversity), and providing better leadership with respect to regions of special importance to New Zealand (e.g. the Tasman, Pacific and Southern Ocean)
- meeting commitments under all international oceans management instruments that New Zealand has agreed to
- acceding to those international oceans management instruments that deliver on New Zealand's objectives, and which it has not yet acceded to.

OCEANS POLICY SECRETARIAT

BACKGROUND PAPER ONE
14 March 2003

OCEANS POLICY

SETTING THE SCENE: NEW ZEALAND'S OCEANS-RELATED OBLIGATIONS AND WORK ON THE INTERNATIONAL STAGE

Contents

Introduction

This paper is a companion background paper for Working Paper 11 'Issues arising for New Zealand under the international framework for oceans management'.

How international law is made

International law is created by sovereign states. In theory, a state is only bound at international law to the extent that it has consented to be bound. Most international law is created either by the establishment of international agreements, which create rules that are legally binding on those states that sign on to them, or by customary rules, which evolve from consistent state practice generally recognised as requiring compliance.

Over the past few decades, international environmental law-making has been prolific. A large number of agreements for the protection of the environment have been negotiated and adopted by the international community - many of which relate to management of the marine environment. In addition to the number of international legal agreements adopted, however, there has been a far larger number of other instruments and documents generated by the international community which provide important, non-legally-binding statements and guidelines on generally-accepted policy and practice for environmental protection. These non-binding documents do not of themselves create legal obligations. They are sometimes known, however, as "soft law", in order to recognise the role they play in influencing the direction of international legal development and the political value states place on acting in accordance with them.

How international law is applied in New Zealand

In New Zealand, the power to take on a new international treaty obligation lies with the Executive. In 2000, New Zealand adopted a new process to ensure greater transparency before legally-binding treaty obligations are adopted. The new formal process requires that any multilateral treaty be tabled in Parliament and afforded the opportunity for consideration by Select Committee before a binding treaty action is taken by New Zealand.

Treaties presented in the House for consideration must be accompanied by a National Interest Analysis (NIA). The NIA must explain, among other things, what new obligations the treaty would impose on New Zealand and the legislative, administrative and other measures that would need to be adopted to implement the treaty in New Zealand.

Jurisdictions

In the context of oceans management, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) defines the comprehensive governance framework for management of marine spaces. UNCLOS sets down in international law the extent of jurisdiction of a coastal state over the waters and continental shelf surrounding its land

territory and their resources. Understanding the scope of these jurisdictional maritime zones is critical to proper management of our oceans environment.

The jurisdictional zones defined by UNCLOS are set out in Annex 3.

New Zealand's legally-binding obligations under international instruments

The United Nations Convention on the Law of the Sea (UNCLOS) – ratified by New Zealand on 19 July 1996 – is the overarching international policy framework for oceans globally. Countries that have ratified are bound by its 320 articles and 9 annexes. This is critical as the convention itself establishes a key policy principle in its objective of providing for the optimum utilisation of living resources (among other objectives) and access to them in terms of specified rights according to the spatial dimensions of the territorial sea, contiguous zone, exclusive economic zone, continental shelf and area beyond the EEZ.

While the concept of "optimum utilisation" is not explicitly discussed in UNCLOS, it is clear that states are obliged to *provide* for the utilisation of living resources and that attention must be paid to how this might be best achieved having regard to the future of the resource and the maximisation of benefit. Articles of the convention that refer to states' *environmental* responsibilities would seem to suggest that optimisation may include both the notion of sustainable yield and broader consideration of marine environmental values. (That is, long run commercial use and non-commercial values). It is of note that the principle of "optimum utilisation" does not apply to non-living resources (although when exercising sovereign rights over non-living resources states have obligations in terms of environmental protection).

The Convention on Biological Diversity (CBD) also provides important international policy context. The CBD calls for "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits…". Obligations include *inter alia* the *sustainable use* of components of biodiversity, environmental *impact assessment* of projects that are likely to affect biodiversity and the facilitation of *access to genetic resources*. All of these obligations have direct relevance to contemporary and future oceans management.

A list of international oceans-related agreements (treaties) to which New Zealand is a party is attached as Annex 1. A subset of these is analysed in detail in the Stocktake[1], Appendix 5.

New Zealand's non legally-binding obligations under international instruments

The soft law instruments outlined below do not represent the full extent of international soft law associated with oceans issues, rather they are key pieces of soft law relevant to the New Zealand Oceans Policy process. Numerous examples of soft law also exist in each of the specific sectors associated with the management and use of the oceans.

[1] Oceans Policy Stocktake – Legislation and Policy Review, November 2002. See www.oceans.govt.nz/resources/publicdoc.html.

United Nations General Assembly (UNGA) Resolutions

Each year the United Nations General Assembly negotiates a number of Resolutions associated with oceans and the Law of the Sea. The Resolutions serve as an affirmation by Member States' of various existing international instruments and other commitments relating to oceans management and the law of the sea. They also identify areas where additional international cooperation or domestic action is required. A number of significant international initiatives such as the 1992 United Nations Conference on Environment and Development (UNCED), and the UN Conference that negotiated the 1995 United Nations Fish Stocks Agreement have been mandated by UNGA via these resolutions.

The Rio Declaration and Agenda 21

The Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro from 3-14 June 1992, provides a statement of principles and the context for the specific proposals and actions outlined in Agenda 21. Agenda 21 provides the blueprint for action for global sustainable development into the 21st century. Chapter 17 of Agenda 21 sets down the programme of action for achieving sustainable development of oceans, coastal areas and seas. It provides three important principles that underpin the ecologically sustainable development of ocean resources - that management of such development must be integrated, precautionary and anticipatory. It also sets out 7 programmes that have formed major themes in the development of comprehensive and integrated oceans policy elsewhere. The themes are:

- Integrated management and sustainable development of coastal and Marine Areas
- Marine environmental protection
- Sustainable use and conservation of the marine resource of the high seas
- Sustainable use and conservation of the marine resources under national jurisdiction
- Addressing critical uncertainties for the management of the marine environment and climate change;
- Strengthening international, including regional, cooperation and coordination;
- Sustainable development of small islands.

Further analysis of Agenda 21 is provided in Appendix 5 of the Stocktake.

WSSD Declaration

The World Summit on Sustainable Development (WSSD) held in Johannesburg in August 2002 adopted the WSSD Declaration, which among other things reaffirms the commitments made by states to the principles contained in the Rio Declaration. Associated with the WSSD Declaration is the WSSD Plan of Implementation. The Plan is intended to build upon the achievements made since UNCED and to expedite the realization of the remaining goals. The Plan includes a specific section that addresses issues associated with the sustainable development of the oceans. Areas covered include: sustainable fisheries including the restoration of depleted fish stocks;

promotion of integrated multidisciplinary and multi-sectoral coastal and ocean management; development of programmes to halt the loss of marine biodiversity, protection of the marine environment from land-based activities, and enhancement of maritime safety and protection of the marine environment from marine pollution and environmental damage caused by ships.

Legislation that codifies international obligations

New Zealand has implemented UNCLOS jurisdictional provisions via the Territorial Sea, Contiguous Zone and Exclusive Economic Act 1977.

Marine protection rules promulgated under the Maritime Transport Act (MTA) work in combination with marine pollution regulations under the Resource Management Act to give effect to New Zealand's obligations under MARPOL and the London Dumping Convention. Marine pollution regulations under the RMA give effect to these obligations *within* the territorial sea, and marine protection rules under the MTA give effect to these same obligations *beyond* the territorial sea to the limits of the exclusive economic zone - and in some cases, to the limits of the continental shelf. In addition, marine protection rules cover the design, construction and equipment requirements, and shipboard operational and emergency procedures relating to the prevention of pollution from boats, both within the territorial sea and beyond.

Another example of domestic implementation of an important multilateral oceans-related treaty is the 1991 Driftnet Prohibition Act, which ensures New Zealand compliance with the obligations of the 1989 Driftnet Convention.[2] Other examples of legislation that codifies obligations under international treaties are:

- Continental Shelf Act 1964
- Trade in Endangered Species Act 1989
- UN Convention on the Law of the Sea Act 1996.

Strategies that help implement international obligations

A large number of strategies are developed domestically at least in part to meet commitments under international instruments such as the Convention on Biological Diversity and the 1992 Rio Declaration on Sustainable Development. Many of these are discussed in detail in the Stocktake (see Appendix 5).

Current activities underway in key international institutions with oceans responsibilities and functions

Oceans issues are by nature transboundary, and therefore cannot be successfully addressed only by domestic action. Broader regional or global approaches to oceans management should influence the development of New Zealand's oceans policy. The relationship between New Zealand domestic oceans policy and international initiatives is however not a one-way street. Future development of policy positions in the international context will need to be informed by and be consistent with New Zealand's domestic policy.

[2] The full title of the Driftnet Convention is the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989.

The following is a brief description of some of the main international institutions with a mandate in the oceans area.

United Nations Informal Consultative Process On Oceans And The Law Of The Sea (UNICPOLOS)

Following the review in 1999 by the Commission on Sustainable Development of the sectoral theme of 'oceans and seas' the General Assembly decided in GA res. 54/33 (1999) to establish an open-ended informal consultative process to facilitate its annual review of developments in ocean affairs. The Oceans Process is open to all states as well as intergovernmental organisations with competence in ocean affairs. Discussion panels allow the input from representatives of the major groups identified in Agenda 21.

The Process is to consider the Secretary-General's annual report on Oceans and the Law of the Sea and carry out three interrelated tasks:

- To study developments in ocean affairs consistent with the legal framework provided by the Convention on the Law of the Sea and the goals of Chapter 17 of Agenda 21
- Against the backdrop of overall developments of all relevant oceans issues, to identify particular issues to be considered by the General Assembly, and
- While identifying such issues, to place emphasis on areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

The mandate for UNICPOLOS was renewed by the General Assembly at its fifty-seventh session.

International Seabed Authority (ISA)

The International Seabed Authority was established under UNCLOS to provide a management framework for seabed resources found beyond the boundaries of state jurisdiction – that is, in the deep seabed. The principal organs of the Authority are the Assembly, the Council, and the Secretariat. The Authority has 138 members. All States Parties to the Convention are ipso facto members of the Authority.

International Tribunal For The Law Of The Sea

The Tribunal is an international court, made up of 21 elected members or judges, that deals with the peaceful settlement of disputes relating to use of the ocean and its resources. It was established in 1996 by UNCLOS.

The Tribunal can deal with cases submitted to it by States Parties to the Convention, other states, international organisations and other entities in accordance with the Convention, including cases concerning the international seabed area, and all matters specifically provided for in any other international agreement which confers jurisdiction on the Tribunal.

The Seabed Disputes Chamber of the Tribunal has certain compulsory jurisdiction with respect to disputes arising out of the exploitation and exploration of the seabed and ocean floor beyond the limits of national jurisdiction, which is also known as the International Seabed Area.

The Seabed Disputes Chamber can also give advisory opinions at the request of the Assembly or Council of the International Seabed Authority on legal questions arising within the scope of their activities.

Commission On The Limits Of The Continental Shelf

The Commission on the Limits of the Continental Shelf was also established by UNCLOS. The Commission was established to consider submissions by coastal states on the outer limits of their continental shelves where they extend beyond 200 nautical miles from the coastline. The Commission will make recommendations on the outer shelf limits, and can provide scientific and technical advice to coastal states if requested.

The Commission is composed of 21 elected members who are experts in geology, geophysics or hydrography.

The Food And Agriculture Organisation (FAO)

The FAO of the United Nations has a subsidiary body, the Committee on Fisheries (COFI). COFI is the only global inter-governmental forum where major international fisheries issues are examined from a technical perspective.

The two main functions of COFI are to review FAO work programmes in the field of fisheries and aquaculture and their implementation, and to conduct periodic general reviews of international fishery and aquaculture issues.

The International Maritime Organisation (IMO)

The IMO Convention entered into force in 1958 and the Organisation met for the first time in 1959. The purposes of the Organisation are to enable technical cooperation among Governments in the regulation and practices of shipping by vessels engaged in international trade. The IMO also facilitates adoption of the highest standards in maritime safety, navigation, and prevention of marine pollution from ships. New Zealand's Maritime Safety Authority has close involvement in the IMO's work, and can implement a wide range of international marine protection and navigational safety obligations through IMO enactments (e.g. designation of an 'Area to Be Avoided' for Poor Knights Island).

United Nations Environment Programme: Activities In Marine And Coastal Areas

Key oceans-related activities of the United Nations Environment Programme (UNEP) include the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities (GPA). The GPA aims to prevent the degradation of the marine environment from land-based activities by facilitating state compliance with the duty to preserve and protect the marine environment.

The Regional Seas Branch of UNEP fosters regional cooperation in relation to the marine and coastal environment. It has accomplished this by encouraging the creation of Regional Action Plans. These include a series of regional Conventions - unique legal instruments designed to protect shared environmental interests.

UNEP also produces the UN Atlas of Oceans. This Internet-based Atlas provides users with continuously updated strategic data on the state of the world's oceans,

maps, development trends and threats to human health from the deteriorating marine environment. It is the result of extensive cooperation in the UN and with leading scientific agencies. It is designed to be an encyclopedic resource but also the world's foremost information clearinghouse and online forum for experts in ocean issues.

The Commission on Sustainable Development (CSD)

The CSD was established by the United Nations General Assembly after the Rio Earth Summit (1992). Chapter 17 of Agenda 21 addresses high seas fishing issues, sustainable use and conservation of marine living resources, and the sustainable development of small islands. CSD provides political impetus and an institutional focal point for the implementation of Agenda 21, co-ordinates and catalyses action on issues related to sustainable development; and provides a forward-looking forum for emerging sustainable development issues.

The New Zealand Minister for the Environment was the Chair of the Seventh Meeting of the CSD (CSD VII) in 1999, which had ‘oceans and seas’ as its main theme. The need for improved co-ordination and co-operation in the way the UN system deals with the oceans was a focus of the meeting. An outcome of the meeting was the CSD’s recommendation that “an open-ended informal consultation process” be established to provide focus for the General Assembly’s annual debate on Oceans and to provide a genuine impetus for improved inter-agency co-ordination.

World Trade Organisation & Committee on Trade and Environment

New Zealand plays a close role in the work of the WTO and CTE. The Ministry of Foreign Affairs and Trade can provide details of extensive work programmes currently in train.

Regional institutions with oceans mandates

In addition to the various international institutions, there are a number of regional organisations whose work is relevant to the oceans policy process in New Zealand. South Pacific regional institutions with an oceans mandate include the Secretariat of the Pacific Community (SPC), the South Pacific Applied Geoscience Commission (SOPAC), the Forum Fisheries Agency (FFA) and the South Pacific Regional Environment Programme (SPREP). New Zealand has had some involvement in the work of the APEC Marine Resources Working Group, which is based in Australia. A secondee from Fisheries and Oceans, Canada is working within Environment Australia as the chair of the APEC Marine Resources Working Group, and is also involved in the development of Australian Oceans Policy. New Zealand has also taken a lead role in the work of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Oceans policy programmes in other countries and regions

Below is a description of key approaches to oceans policy development taken by other countries and regions.

Australia

Australia has proceeded down a policy (versus legislative) pathway towards implementation of an oceans policy. The oceans policy establishes an overarching framework for integrated and ecosystem-based planning and management across

Australia's marine jurisdiction. The policy builds on, rather than replaces, existing sectoral and jurisdictional mechanisms.

The core tool used is "Regional Marine Plans". These are based on large marine ecosystems or biogeographic regions and are pluralistic in nature, incorporating multiple values. Regional plans adopt a risk assessment framework for identifying and responding to threats to the marine environment. No regional plans have been implemented to date.

A "multiple use" management approach aims to achieve an integrated allocation of resource access and use to achieve an acceptable balance of outcomes across the full range of oceans uses. Adaptive management[3] is employed to respond to adverse environmental changes or changes in social, cultural and economic values.
A key issue with the Australian Oceans Policy is that it is a Commonwealth only policy, because the State governments have yet to endorse the policy. This has obvious implications for the implementation of the policy, which is reliant on inter-jurisdictional regional plans. The Australian Commonwealth government is aiming for a national approach by the end of 2003.

Canada

The Canadian *Oceans Act 1997* establishes the framework for cross-sectoral integrated management through the implementation of a national Oceans Strategy. The Act is based on the principles of *Agenda 21* and the United Nations Convention on the Law of the Sea [*UNCLOS*]. The Act establishes the Minister of Fisheries and Oceans as the Minister responsible for leading and facilitating the development and implementation of the Strategy.

The Canadian model is based on the concept of Integrated Management Planning (IMP), which provides for stakeholder input in decision-making processes. IMP is based on the principles of ecosystem-based management, sustainable development, the precautionary approach, conservation, duty in shared responsibility, flexibility and inclusiveness. Ecosystem-based management objectives are to be set for what are described as Large Oceans Management Areas, with Coastal Marine Areas nested under these. IMP collaborative management forums are to be established, but it seems that no such forums are yet in place in a formal sense.

South Pacific

There is currently no South Pacific Oceans Policy as such, although through the various regional organisations [and collaboratively through the Council of Regional Organisations in the Pacific – CROP] oceans issue, and particularly those relating to straddling stocks, sea level rise / climate change, and marine biodiversity [including bioprospecting], are being co-ordinated.

A large number of individual ocean/marine management and research initiatives occur throughout the Pacific, reflecting the number of regional, bilateral and multilateral aid

[3] Adaptive management approaches have various forms but generally rely upon a time-based, sequencing approach to development with clear outcomes, milestones and trigger points, and close monitoring of effects and impacts, before progressing between identified stages. The phrase "learning by doing" is increasingly associated with adaptive management.

donors operating and sponsoring projects – and the disproportionately large Exclusive Economic Zones of many of the region's small island states.
The main regional bodies involved include the Pacific Islands Forum Secretariat [PIFS], South Pacific Regional Environment Programme [SPREP], South Pacific Applied Geoscience Commission [SOPAC], Forum Fisheries Agency [FFA], University of the South Pacific [USP], and the Secretariat of the Pacific Community [SPC].

NZAid is a significant contributor to regional organisations and projects.

South Africa

The South African Policy review is a coastal management review, rather than a fully-fledged oceans policy review. The policy focuses on achieving inter-coastal zone management with specific objectives for management of land. No new institutions are proposed in the short-term, although the policy does propose a new *Coastal Management Act* but the exact nature of the legislation is yet to be determined.
The policy currently has no statutory effect and simply provides the framework for development of more detailed proposals. The policy displays a strong commitment to increasing participation and exploring co-management arrangements, but there are no specific proposals at this stage.

United Kingdom

In the United Kingdom *"Safeguarding Our Seas: A Strategy for the Conservation and Sustainable Development of Our Marine Environment"* was developed in 2001. The strategy promotes an ecosystem-based approach, underpinned by the principles of sustainable development, integrated management, conservation of biological diversity, robust science, the precautionary principle and stakeholder involvement.
The Strategy is very high level and essentially sets out a vision, provides a compilation of what is already being done to promote the vision and sets out a series of high-level initiatives to further promote the vision. Emphasis is placed on "working together more effectively" and improving co-ordination of Government".
Many groups, particularly NGOs, are impatient with progress under the strategy and are calling for an Oceans Act to be developed to provide a stronger legislative basis to an oceans policy.

United States of America

An *Oceans Act 2000* has the single purpose of establishing an Oceans Commission, which is tasked with undertaking a detailed review of existing and planned US oceans and coastal programmes. So far the Commission has produced a mid-term report which sets out a framework for developing the final report and recommendations. There have been a number of delays getting to this point, which are blamed on the lack of a constituency in the US for an oceans policy, along with very strong sectoral interests.

Frustration with the slow progress of the Oceans Commission has led to the establishment of a parallel Pew[4] Oceans Commission, which is described as "an

[4] The Pew Charitable Trusts support non-profit activities in the areas of culture, education, the environment, health and human services, public policy and religion. Based in Philadelphia, the Trusts make strategic investments that encourage and support citizen participation in addressing critical issues

independent group of American leaders conducting a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters". After reviewing scientific information and speaking with people from around the country, the Commission will make its formal recommendations in a report to Congress in early 2003.

Other management approaches

This section looks at two further management approaches that may offer some useful insights for a New Zealand oceans policy.

Great Barrier Reef Marine Park Authority (GBRMPA)

This provides a useful example of multiple use management in a highly sensitive marine area. The overriding goal is to provide for the "*protection, wise use, understanding and enjoyment of the Great Barrier Reef in perpetuity*…" There are a further 12 subordinate aims that are to be read in conjunction. Two of these are of particular interest. One is the subsidiary aim of providing for conservation and "reasonable use" in such a way that the natural values are protected, while opportunities are provided for sustainable use and enjoyment. The other is the aim of providing for the recognition of Aboriginal and Torres Strait Islander traditional affiliations and rights in the management of the Marine Park.

The principle tools are the GBRMPA, a single independent management agency, and zoning plans supported by management plans. These plans must consider the precautionary principle, world heritage site values, and involve the people who use, and activities related to, the Reef. The GBRMPA provides the sole example of an operational management agency with a specific focus on multiple use.

Great Lakes

The Council of the Great Lakes Governors is one attempt to provide co-operative integrated management over the largest body of freshwater in the world (estimated as containing one fifth of the earth's freshwater resource). The Council comprises the eight US Governors and two Canadian Premiers whose states/provinces border the five central lakes (Superior, Michigan, Huron, Erie, and Ontario). It is an executive rather than a management agency.

The primary focus of the Council has been on the quality and quantity of water in the watersheds. This has recently been extended quite deliberately into a concern for the associated water-dependent natural resources.

The Council operates by means of the 1985 Great Lakes Charter and the more recent Great Lakes Charter Annex 2001.

The central mission of the Council is to encourage and facilitate environmentally responsible economic growth.

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and effecting social change, and have established several Commissions.

Development of New Zealand's position on international oceans issues

All engagement in international policy debates is ultimately the product of ministerial direction. Long standing strategic, political, economic and environmental policy settings guide the approach that New Zealand delegates are to adopt in international debates on oceans policy. Where new policy is under development, or where there may be financial, political, or significant economic consequences, ministerial views are sought as a final check against standing instructions. This may take the form of Cabinet approval.

Detailed preparations for engagement on specific issues, or the development of new policies, are likely to differ slightly among departments. But the key elements are similar. Various government agency experts are engaged where policy cuts across agency lines. In addition, departments work together with stakeholders on specific issues in order to feed their views into the policy-making process.

A recent example of the international policy making process at work was the formation of New Zealand's approach to oceans debates at the World Summit on Sustainable Development. The Ministry of Foreign Affairs and Trade convened an "Oceans Contact Group" comprising government departments with oceans interests, the National Institute of Water and Atmospheric Research (NIWA), and non government representatives.[5] The group was briefed on policy issues under discussion and its views were sought on policy options. Those views were factored into recommendations to ministers which were finally approved by Cabinet. Following the Summit, the group was reconvened to review outcomes and plan follow up work.

[5] Non government representatives were The Council for International Development; the World Wide Fund for Nature and the Sea Food Industry Council.

ANNEX 1 - Multilateral Oceans-related Agreements

This Annex presents a list of the multilateral oceans-related agreements (treaties) that New Zealand is a party to.
A subset of these is reviewed in Appendix 5 of the Stocktake. Further discussion of key instruments is also contained in Annex 2 of this paper.

Multilateral agreements relating to the oceans which are in force in New Zealand	**Year treaty entered into force**	**Date of NZ's signature (S) ratification(R) or accession (A)**	**Date treaty came into effect in NZ[1]**
Antarctica			
The Antarctic Treaty 1959	**1961**	R 1.11.60	23.6.61
Convention on the Conservation of Antarctic Marine Living Resources 1980 [CCAMLR]	**1982**	R 8.3.82	7.4.82
Protocol on Environmental Protection to the Antarctic Treaty 1991 [Madrid Protocol]	**1998**	R 22.12.94	14.1.98
Atmosphere and Space			
United Nations Framework Convention on Climate Change [FCCC] 1992	**1994**	R 16.9.93	21.3.94
Protection of the Marine Environment and Resources			
United Nations Convention on the Law of the Sea [UNCLOS] 1982	**1994**	R 19.7.96	18.8.96
Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea 1982	**1996**	R 19.7.96	28.7.96
International Convention for the Prevention of Pollution from Ships 1973/78 (MARPOL)			1998
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 [London Convention]	**1975**	R 30.4.75	30.8.75
International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties 1969	**1975**	A 26.3.75	6.5.75
International Convention on Civil Liability for Oil Pollution Damage (as amended) 1969	**1975**	A 27.4.76	26.7.76
Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1992			
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992			
Protocol [to SPREP*] for the Prevention of Pollution of the South Pacific Region by Dumping 1986	**1990**	R 3.5.90	22.8.90
Protocol [to SPREP*] concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region 1986	**1990**	R 3.5.90	22.8.90
Convention on the Continental Shelf 1958	**1964**	R 18.1.65	17.2.65
International Convention on Oil Pollution Preparedness, Response and Cooperation 1990			
Fishing			
Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific 1989 [Wellington Convention]	**1991**	R 17.5.91	17.5.91

Convention for the Conservation of Southern Bluefin Tuna 1993	**1994**	R 9.5.94	20.5.94
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995	**2001**	R 18.4.01	11.12.01
Whaling			
International Convention for the Regulation of Whaling 1946	**1948**	R 2.8.493	15.6.76
Protocol to the International Convention for the Regulation of Whaling 1956	**1959**	R 21.6.574	15.6.76
Hazardous Substances			
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989	**1992**	R 20.12.94	20.3.95
Conservation of Natural Resources			
Statutes of the International Union for the Conservation of Nature and Natural Resources 1948	**1948**	R 6.5.74	6.5.74
Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES] 1973	**1975**	A 10.5.89	8.8.89
Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Fauna (Art XI) 1979	**1987**	A 10.5.89	8.8.89
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage 1972	**1975**	R 22.11.84	22.2.85
Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 [Ramsar Convention]	**1975**	S 13.8.76	13.12.76
Protocol to the Convention on Wetlands of International Importance... 1982	**1986**	S 9.2.87	9.2.87
Amendments to Art.s 6 & 7 of the Convention on Wetlands of International Importance especially... 1987	**1994**	R 7.7.93	1.5.94
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 [SPREP]	**1990**	R 3.5.90	22.8.90
Convention on Biological Diversity 1992 [CBD]	**1993**	R 16.9.93	29.12.93
Arms Control and Nuclear Pollution			
Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water 1963	**1963**	R 10.10.63	10.10.63
South Pacific Nuclear Free Zone Treaty and Protocols 1985 [SPNFZ]	**1986**	R 13.11.86	11.12.86
Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Techniques 1976	**1978**	A 7.9.84	7.9.84
Treaty on the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Sea Bed and the Ocean Floor and in the Subsoil Thereof 1971	**1972**	R 24.2.72	18.5.72

[1]This was the later of either the date the Treaty came into force, or the date it came into effect in New Zealand.

*The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region - see **Conservation of Natural Resources** heading.

ANNEX 2 - Significant international instruments that New Zealand is a party to

- The *United Nations Convention on the Law of the Sea (UNCLOS)* – ratified by New Zealand in 1996, UNCLOS is a comprehensive treaty codifying the law of the sea. It recognises, amongst other things, sovereignty over 12 nautical miles of territorial sea, and sovereign rights over the resources in the EEZ and on the continental shelf. It imposes obligations on states to protect and preserve the marine environment to the defined limit of its continental shelf. Under this convention, New Zealand may gain exclusive rights to explore and exploit mineral resources (but no further rights to fisheries resources) of the continental shelf beyond the EEZ. Under the convention, New Zealand is required to define the outer limits of its continental shelf and submit its claim by May 2009.

- The *International Convention for the Prevention of Pollution from Ships 1973/78* (MARPOL) - The legislation necessary to enable New Zealand to become a party to MARPOL was passed in 1998. MARPOL is now binding in New Zealand. The annexes are prevention of pollution: by oil (I); by harmful substances carried by sea in packaged form (III); by sewage from ships (IV)[6]; by garbage from ships (V); and control of pollution by noxious liquid substances in bulk (II). A further annex (Annex VI) considers air pollution from ships. This annex is not yet in force internationally. Regulations under the Resource Management Act and marine protection rules under **t**he Maritime Transport Act have been developed to control discharges of pollutants specified under MARPOL.

- *Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal*. New Zealand ratified this in 1995. The convention aims to both reduce the amount of waste being produced by signatories and regulate the international traffic in hazardous wastes (especially to developing countries).

- The *Convention on the Prevention of Marine Pollution by Dumping*[7] *of Wastes and Other Matter* 1972 (the London Convention). Ratified and implemented initially by the Marine Pollution Act 1974[8]. The Maritime Transport Act rules and Resource Management Act regulations that enable New Zealand to implement the 1996 Protocol to the London Convention came into force in 1998. New Zealand ratified the 1996 Protocol on 30 August 2001.

- The *Convention on Biological Diversity* (CBD). New Zealand has signed and ratified this convention and is currently developing its Biodiversity Strategy (see above). The CBD requires New Zealand, as a party, *inter alia*, to take action to protect components of coastal and marine biodiversity within its jurisdiction. It also requires co-operation to achieve conservation and sustainable use of biodiversity outside its national jurisdictions, on the high seas and on the deep-sea

[6] At this time, New Zealand does not accept Annex IV except in relation to the Antarctic Special Area.
[7] Dumping is the deliberate disposal of waste carried on board for the purpose of disposal. It does not include operational discharges, such as sewage, which are addressed by MARPOL
[8] The Marine Pollution Act 1974 was repealed on 20 August 1998 and was replaced by the Maritime Transport Act 1994.

bed. The draft New Zealand Biodiversity Strategy has a chapter on marine biodiversity.

- *Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986* (SPREP). New Zealand ratified this convention in 1990. It provides for the control and prevention of marine pollution in the South Pacific region and has Protocols on Combating Pollution Emergencies and Prevention of Pollution by Dumping.

- *International Convention on the Regulation of Whaling 1946* (ICWR). New Zealand ratified this Convention in 1949. It provides for the regulation of whaling activities. A moratorium on commercial whaling has been in place since 1982.

- *UN Convention on the Management of High Seas Migratory Fishes and Straddling Stocks*. New Zealand has signed but not ratified this agreement. The Government has approved ratification and legislation (amending the Fisheries Act) which will implement this is being drafted. The legislation necessary to enable New Zealand to become party to this Convention is under preparation. Ratification will oblige New Zealand to protect biodiversity in the marine environment, apply the precautionary approach, and take into account the interests of artisanal and subsistence fishers etc. The Agreement provides for implementation through regional management arrangements. It gives participating states strong enforcement powers.

- *Convention for the Conservation of Southern Bluefin Tuna* (CCSBT). New Zealand has signed and ratified this convention. The objective of the convention is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna.

- *Convention on the Prohibition of Fishing with Long Drift Nets in the South Pacific* (Wellington Convention). New Zealand ratified this in 1991. It bans the use of driftnets over 2.5 kilometres long in the South Pacific.

- *Convention on the Conservation of Antarctic Marine Living Resources* (CCAMLR). New Zealand has signed and ratified this convention. The Convention's objective is to safeguard the environment and protect the integrity of the ecosystems of the seas surrounding Antarctica, and to conserve Antarctic marine living resources. The Ministers for the Environment, Conservation, and Food, Fibre and Biosecurity have recently expressed concerns about the illegal and unregulated fishing of Patagonian toothfish in the Southern Ocean.

- The *Convention on Wetlands of International Importance especially as Waterfowl Habitat* (the Ramsar Convention). New Zealand ratified the convention in 1984. New Zealand has five sites listed as wetlands of importance under the Convention.

- UN *Global Action Plan on Marine Pollution from Land Based Sources.* New Zealand contributed to the development of this Plan. Its prime focus is on regional seas initiatives, such as those promoted by the South Pacific Regional Environmental Programme. It also led to a process which may culminate in a convention controlling the use of persistent organic pollutants.

ANNEX 3: New Zealand's jurisdictional boundaries and maritime zones as defined by UNCLOS

Zone/boundary	Location	Area	Rights/obligations under UNCLOS
The Baselines	Normally the line of mean low water springs (MLWS), but with exceptions for rivers, bays, islands, fiords, harbour works etc.		
Internal waters	Waters on the landward side of the baseline of the territorial sea.		Part of New Zealand's '**sovereign territory**', which means that New Zealand has full '**sovereignty**' over its internal waters .
Territorial sea	Seaward of the baseline out to 12NM		New Zealand has full '**sovereignty**' over its territorial sea, subject to the rights and duties established in the Convention and to other rules of international law. Other states have rights such as 'innocent passage' of their vessels.
Contiguous zone	Between the outer limits of the territorial sea (12NM) to 24 NM.		In addition to '**sovereign rights'** conferred over this area as part of the EEZ, New Zealand may exercise such control as is necessary to *prevent* and *punish* infringements in its territory or territorial sea of its customs, immigration, tax and sanitary laws.
Exclusive Economic Zone	Seaward of the outer limits of the territorial sea, including the contiguous zone, to an outer limit of 200NM from the baselines (ie., breadth of the EEZ is normally 188NM).	New Zealand's EEZ is the fourth largest in the world, with an area of 405 million hectares. This amounts to more than 15 times the area of our land mass.	New Zealand has '**sovereign rights**'– a more limited jurisdiction than sovereignty – for the purposes of exploring and exploiting, conserving and managing natural resources of the waters, seabed and subsoil. It also has '**jurisdiction**' with regard to the establishment of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment. NZ must also have due regard for the rights of other states. Other states have certain freedoms including navigation, overflight, laying cables in the EEZ.
Continental shelf	The seabed and subsoil of submarine areas beyond the territorial sea (12NM) to the outer edge of the continental margin or to 200NM from the baselines (whichever is greatest).	Although the outer limits of New Zealand's continental shelf are not yet finalised, the area that extends beyond New Zealand's EEZ to the limits of our continental shelf is likely to include up to 1.5 million square kilometres or more. This area alone equates to about six times the area of our land mass.	**'Sovereign rights**' (as for the EEZ) for the purpose of exploring and exploiting the natural resources of the seabed and subsoils (including immobile organisms which live on or under the seabed/subsoil). In areas where the continental shelf extends beyond 200NM from the baselines, the water itself above the continental shelf is not within New Zealand's jurisdiction and is part of the high seas.
High Seas	Water column beyond the outer limits of coastal states' EEZs		Open to all states, subject to due regard for the interests of other states. All states have '**freedom of the high seas**' which includes freedom of navigation, overflight, laying of cables and pipelines, construction of artificial installations, fishing and scientific research.
The Area	Seabed and subsoil beyond the limits of national jurisdiction (i.e. seaward of the outer limit of the continental shelves.		Vested in humankind as a whole and administered by the International Seabed Authority. No state can claim or exercise sovereignty or sovereign rights over the Area.