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Oceans Policy Stocktake

Part 1 – Legislation and Policy Review

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1. Overview

This overview sets out the key findings of the report. It has two parts. First, it provides an overview of some of the strengths and weaknesses of the current approach to managing the oceans. Secondly, it summarises Section 3 of the report by considering key themes *across* the legislation reviewed as part of this stocktake.

Of necessity, the overview summarises what are often complex and contentious issues. More detailed explanation and context is included in the body of the report (and its appendices), including an identification of some of the key tensions *within* the principal oceans management legislation.

1.1. Strengths and Weaknesses

This review has identified some potential strengths and weaknesses in the overall legislative and policy landscape that applies to oceans management. Clearly some of the issues may fall under both “strengths” and “weaknesses”, depending on which aspect is under consideration. For example, the Treaty of Waitangi provides a framework for considering the relationship between indigenous rights and the Crown. However, this does not necessarily translate to clarity about aboriginal rights of title.

Likewise current allocative mechanisms for fisheries resources such as the Quota Management System (QMS) are relatively efficient but are weakened by gaps in the specification of rights for competing users of the marine environment. Also the relatively comprehensive *legal* framework for managing the oceans is undermined by the lack of a clear and comprehensive values-based *policy* framework for implementation of the statutory management regime, and a context within which to resolve inevitable conflicts and differences in policy emphasis.

Nevertheless, the “strength/weakness” lens does offer a useful perspective for drawing out key themes from this review. In-depth analysis of such issues falls outside the scope of this report and the following summary comments are therefore perhaps most useful as flags for areas that may warrant further investigation and analysis.

1.2. Strengths

- *Single, uncontested jurisdiction*

New Zealand is more fortunate than many countries in that it is not encumbered by state-to-state disputes over sovereignty (although there may be an issue to settle with Australia over the extent of our respective continental shelves) nor are there complicated constitutional arrangements dividing domestic jurisdiction between different levels of government (that is we do not have the complication of federalism). Parliament, the Judiciary and the Executive have clearly stated roles.

- *Comprehensive legal framework*

As noted above, jurisdiction is clear and uncontested and New Zealand has law in place to assert its sovereign rights in accordance with United Nations Convention on the Law of the Sea (UNCLOS). This review has highlighted few gaps in the legal ability for the Executive (or other management agencies) to take any management action likely to be required to exercise sovereign rights and meet international responsibilities. On the other hand, the ability to undertake the management function expeditiously, transparently and efficiently remains very much a live issue.

- *Some ability to create consistent regulatory regimes*

Although management functions are fragmented across many statutes, some opportunity exists to create seamless management regimes in respect of key issues. A good example is marine pollution. Other opportunities exist through the broad regulation making powers of the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act and the Continental Shelf Act.

- *Integrated Coastal Zone Management*

The management of resource use (bar fisheries) by a single statute (the Resource Management Act) and single agencies (regional councils) across the land water interface out to the 12nm limit is a major advantage over most other jurisdictions. With capacity building and greater inter-agency collaboration this model has the potential to address most coastal management issues.

- *Treaty of Waitangi*

The Treaty of Waitangi provides a formal framework for addressing and considering Maori rights and relationships with respect to the Crown's sovereignty and sovereign rights. The Treaty "base" has proved a key tool in determining and allocating certain marine resources (such as fisheries allocation under the QMS) within the Exclusive Economic Zone (EEZ)/Territorial Sea. It does this in two ways: a) by helping to define the appropriate parties, and b) by focusing attention as much on the "relationship" questions as the "rights" issues. This is a significant strength when contrasted with international jurisdictions that are struggling to address issues relating to indigenous rights.

- *Relatively efficient allocation mechanisms for fisheries*

The fisheries QMS provides a relatively efficient market mechanism for allocating access to fisheries resources, (although it is supplemented by regulatory tools that may compromise efficiency to some extent). Efficiency may also be compromised by the fact that only some of the fisheries resource is allocated through the QMS, and by the relatively poor specification of rights for competing users, from non-commercial fishers through to other extractive and non-extractive users (e.g. shipping, tourism, etc.).

1.3. Weaknesses

- *Absence of over-riding goal*

There is no explicit over-arching goal for managing the marine environment (e.g. a clearly articulated statement of “sustainability”, wise use” or other formula). Instead agencies are left to interpret and apply various key international marine management goals (e.g. UNCLOS, Agenda 21, etc.) or seek to apply the goals of non-statutory strategies such as the New Zealand Biodiversity Strategy. The absence of an over-arching goal risks decisions being taken by one agency that conflict with, or undermine, the efforts of others.

- *Inconsistent decision-making structures and opportunities for participation*

The marine environment is subject to different management regimes and decision-makers. Decision-making processes are inconsistent and the rights of parties to participate in those processes vary widely. As implied above, there is also inconsistency in the reasons for regulatory control and the outcomes sought. While differences are not necessarily problematic in themselves, the rationale for these differences is not obvious. Without a clear set of policy principles justifying and explaining inconsistencies across the marine environment the regime is open to criticism that it is the result of historical happenstance and sectoral preferences rather than rational policy making.

- *Inconsistent management of “like” activities (and potential effects), particularly beyond the territorial sea*

Management of non-living resources outside the 12 nautical mile zone of the territorial sea is largely “reactive” and somewhat “ad hoc”. There is little obvious integration with management of living resources. This means that there is a very little ability to ensure that like activities and their potential effects are managed consistently – between activities and across the 12 nm boundary.

Associated with this is an absence of key tools such as structured environmental impact assessment in the marine environment (even within the territorial sea for some sectors - for example fishing). Effective and consistent management of environmental effects from the utilization of non-living and living resources is largely reliant on officials giving effect to the regulatory regime in a way that recognizes “whole of government” interests and objectives. There seems to be no mechanism (other than Cabinet consideration) to resolve issues where there are clear and significant conflicts between these interests.

- *Treaty of Waitangi Act and aboriginal rights*

As noted in section 1.2 above, while the Treaty of Waitangi provides a framework for addressing and considering the nature and extent of Maori rights, and the Treaty of Waitangi Act 1975 provides an administrative mechanism for considering claims regarding prejudicial affect post-1840, there is still uncertainty about the potential scope of any aboriginal title/rights in relation to the oceans. Future decisions from the courts on the nature and extent of any such rights will be a significant issue for any oceans policy.

- *Ecologically arbitrary spatial management units and a general lack of integrated management*

Most management regimes are exercised according to UNCLOS's geospatially concentric and geological boundaries. These are intersected by extensions of terrestrial water catchment boundaries (to form management units for the purposes of the RMA). To the extent that this reflects sovereign rights the concentric approach to management makes sense. However, these boundaries almost certainly cut across ecosystem boundaries and processes. This makes managing activities in relation to their potential impacts on ecosystems difficult.

There is some ability to reconfigure and specify management boundaries within statutes but this is far from common practice and would, in any case, only partially address the issue. Hard edges to the regime representing the largely sectoral approach to fisheries management further frustrate the ability to adopt a truly coherent ecosystem management approach.

- *Lack of information*

Information about the marine ecosystems and the size of, or impacts on, these ecosystems is poor and incomplete meaning that decisions most often need be taken with incomplete or poor information. This is unlikely to change significantly in the short to medium term, or even in the long term for complex ecological processes. The various tools that are available for managing in the absence of information (e.g. the precautionary principle and risk management) are interpreted and applied inconsistently.

1.4. Across Acts Analysis

- *Purpose of Principles*

Arguably the RMA is the only statute that specifies *outcomes* through a comprehensive value-based purpose and principles section. The Fisheries Act 1996 also specifies outcomes, but more narrowly for the use and sustainability of fisheries resources, and the interface of fisheries resources with the aquatic environment. These “modern” Acts seek, through their purpose and principles sections to accommodate multiple objectives that operate in parallel (e.g. sustainability / utilisation / development / protection). Inevitably this produces tensions within the Acts and the resulting statutory and policy management frameworks.

- *Scope and Jurisdiction*

Spatial jurisdiction affecting oceans policy falls into five “zones”: land, foreshore, territorial sea (& internal waters), EEZ (or to the outer limit of the continental shelf where this exceeds 200 NM). The jurisdictional boundaries of UNCLOS and the spatial jurisdiction of key statutes are summarised in Figure 1.

- *Sustainability*

Potential tensions are created by the differing interpretations of the various statutes of core concepts such as “sustainability”, which is variously described or interpreted as sustainable management, sustainable development, sustainable populations, species

survivability, population management, sustainable yield, sustainability measures for fish stocks, etc.

Beyond the territorial sea “sustainability” applies only to the management of fishing activity in relation to fisheries resources. Even inside the territorial sea, differing interpretations of “sustainability” undermine the ability to apply consistent management regimes across sectors.

- *Management of Environmental Effects*

The requirement to monitor the state of the environment or the impact of various activities varies significantly. Only the RMA requires environmental impact assessment. There is a clear gap in the management of effects on the marine environment beyond the 12nm limit by activities other than fishing.

- *Ecosystem Based Management*

None of the statutes could, in isolation, be said to adopt an ecosystem-based approach to management of the oceans. All regimes divide the management of ecosystems either through their ecologically arbitrary spatial jurisdiction, or through their range of functions with the consequence that particular ecosystem effects fall beyond the reach of the statute.

- *Integrated Coastal Zone Management*

In contrast to most other jurisdictions, there is no institutional reason why New Zealand’s coastal zone issues should not be able to be effectively managed. The fact that problems persist (such as estuarine siltation, habitat loss, use conflicts and localised water quality issues) indicates that capacity issues remain.

- *Integration*

There are few formal mechanisms for achieving integration across statutes, and those that are in place are of limited effectiveness. Lack of integration is primarily the result of the absence of any statutory direction to this end, and/or a single overarching goal for managing the marine environment.

- *Rights and Responsibilities*

The legislation creates a complex set of rights and responsibilities for resource managers and users. Rights of resource users are specified variously and incompletely. Rights are granted through a variety of mechanisms and the strength and duration of rights is similarly variable.

- *Decision-Making*

Decision-making processes vary significantly across the statutes – although not all processes are well defined by statute. There is similarly a wide range of decision-makers. The RMA provides for appeals de novo – allowing reconsideration on issues of merit. In other cases, decisions may only be revisited through judicial review (and “appeals” are therefore limited to questions of process).

- *Participation*

Many of the management processes have statutory provision for public participation through formal consultation processes. In many cases significant discretion over who is to be consulted is retained by Ministers and administrative agencies. The RMA must be described as the most participatory with multiple opportunities for public participation guaranteed by statute.

- *Tangata Whenua*

Specific Treaty clauses are included in the RMA, Conservation Act, Crown Minerals Act and the Fisheries Act.

- *Tools*

A range of statutory planning tools and instruments is provided. Typically, tools fall into four categories: area-based reserves and sanctuaries; general or national policies; species and place-based management strategies and plans; and rights to individual activities (permits, certificates, licences, quota).

- *Compliance and Enforcement*

Extensive compliance and enforcement provisions are incorporated into statutes. However, there are questions around the ability to enforce these provisions.

2. Introduction

2.1. Purpose of this Report

The Ministry for the Environment, as lead agency for the Oceans Policy project, commissioned a study (“the stocktake”) in two parts:

- Part 1 is a review of the legislative and policy landscape that applies to the oceans, including the issues associated with implementation.
- Part 2 is a review of international and conceptual approaches that might have useful application to the future management of oceans and their resources.

The purpose of this report is to record the findings from Part 1 of that study. The Findings of Part 2 are contained in a companion report.

2.2. Background to the Stocktake

The purpose of the oceans policy stocktake is to identify and record information on current arrangements and practices to inform the policy development stage of the oceans policy review. In particular, the review of legislation and government policy will assist the Oceans Policy Secretariat to clarify issues associated with current management arrangements.

It is, however, important to note that the stocktake is *not* comprehensive. It has been undertaken on the basis of a list agreed with the Oceans Policy Secretariat. The fact that some matters of relevance to the oceans may be omitted from this stocktake is inevitable given the broad scope of many statutes and policies.

The terms of reference for the stocktake are provided as Appendix 1.

It is also important to appreciate that this stocktake is part of a broader suite of work being undertaken by the Oceans Policy Secretariat. As noted above, the stocktake is intended as a background resource only and has no specific end in itself. No recommendations are made.

The wider suite of work being undertaken by the Secretariat includes the establishment of various advisory groups and the preparation of a series of “issues papers”. Some of these papers may well draw on this stocktake amongst other resources.

2.3. Stocktake Methodology

The stocktake records information relating to:

- Relevant legislative frameworks;
- Relevant international legislation, agreements, conventions and obligations applicable to NZ;
- Policy frameworks and their application

The recording of this information has been undertaken through a combination of desk-top review of written documentation (principally the legislation, strategies and policies themselves¹) supplemented, as necessary, by:

- Discussions with stakeholders (including government officials);
- A review of any additional written commentaries (for example, official implementation guidance, and monitoring information) that might assist understanding;
- Commentaries on the basis of the reviewers' professional work experiences with the relevant legislation.

Relevant material was reviewed by the appropriate agencies in draft form, at the request of the Oceans Policy Secretariat. In some instances these agencies requested alteration to the draft text provided by the authors of this report. These revisions are reflected in the report.

Recording was undertaken on the basis of templates specified by the Oceans Policy Secretariat. These templates were used to develop tables for recording information in relation to acts, strategies and policies and conventions. These tables are included as Appendices 3 –5. The analysis presented in Sections 2-5 should be read in conjunction with the tables. Key guidance questions were also specified in the Terms of Reference for the project. These assisted in providing a structured approach to the review.

¹ The list was agreed with the Oceans Policy Secretariat. A summary list of the documents reviewed is provided as Appendix 2.

3. Context of the Oceans Policy Review

3.1. Drivers of Oceans Policy Reviews

Oceans policies are currently being developed in many jurisdictions around the world. There are many drivers for this activity. These include:

- The entering into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994 and the establishment of sovereign rights and responsibilities over the continental shelf (with nations needing to define the limits of “their” continental shelf and lodge these with the Commission on Limits to the Continental Shelf by May, 2009).
- The emphasis given to oceans and ocean issues in international fora, particularly Agenda 21 and the UN Commission on Sustainable Development (CSD) (and, more recently, the 2002 World Summit on Sustainable Development in Johannesburg) but also through other conventions such as the Convention on Biological Diversity (CBD).
- The increasing economic importance of the coast and the wider marine environment. (Globally, the past 2 decades have seen considerable increases in the population living in coastal areas as well growth in the oil and gas, transport, tourism and fishing sectors.) Increasingly efficient allocation and regulation in the marine environment is becoming central to economic performance.
- Greater understanding and acceptance of the limits and the fragility of the oceans’ resources through experiencing events such as the collapse of some European and North American fisheries, marine “dead zones” caused by pollution, marine oil spill events such as that of the Exxon Valdez, and loss of coastal habitat.
- Acknowledgement of the complexity of many environmental threats to oceans with new problems continuing to arise that science cannot fully explain (such as unidentified pathogens and algal blooms).
- Identification of new economic and scientific opportunities presented by both the living and non-living resources of the oceans coupled with emerging technologies that will allow these opportunities to be exploited – including future opportunities relating to bioprospecting.
- Greater recognition that domestic policy and regulatory regimes are fragmented in terms of oceans management. Most tend to have been developed over a period of time to address a limited range of activities and issues. Conflict resolution mechanisms are not well developed and domestic jurisdictional limits typically hamper effective policy responses.

As a result of its size, position and relative isolation, New Zealand has avoided some of the more extreme examples of oceans mismanagement - even though many of the international trends and pressures are experienced here as much as anywhere.

Already, those charged with managing human use of New Zealand's oceans have had cause to rethink the adequacy and appropriateness of existing arrangements.

While many of the issues and challenges are well understood, developing national responses is proving a difficult task. Several countries have been working on oceans policies for many years but still appear a long way off implementing new regimes. Many are struggling with historic management arrangements that strongly reflect different sectoral interests. Often the lack of progress is attributed to a lack of a constituency for change.

3.2. International Policy Framework for Oceans Policy Development

The United Nations Convention on the Law of the Sea (UNCLOS) is the overarching international policy framework for all oceans policies. 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 development of oceans policies in other jurisdictions is also clearly influenced by Chapter 17 of Agenda 21. Chapter 17 includes 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.

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.

Further details about UNCLOS, Agenda 21, the CBD and other relevant international conventions are provided as Appendix 5. (A more comprehensive list of international conventions and agreements that relate to the oceans is provided as Appendix 2.)

3.3. New Zealand’s Priorities for Oceans Policy

The policy process to date has identified a vision for the New Zealand’s oceans. This, together with an array of more specific objectives/challenges was set out in the report *Healthy Sea: Healthy Society*². These also emphasise the use of oceans resources but only within clear environmental limits. Considerable emphasis is placed on *restoring* the ocean’s natural values.

In response to the *Healthy Seas: Healthy Society Report*, Cabinet agreed that the 7 Key issues for Oceans Policy in New Zealand are:

- Holistic management
- Treaty of Waitangi
- Compliance and enforcement
- Models for integrated management
- Decision making models
- Information management
- Monitoring and measurement

These issues provide some of the organising themes of this report.

² Healthy Seas: Healthy Society, 2001. Oceans Policy Secretariat (on behalf of Ministerial Advisory Committee on Oceans Policy).

4. Analysis of Acts

The Stocktake review has addressed a wide range of statutes – 25 in all. These statutes were agreed with the Oceans Policy Secretariat as being the relevant statutes currently applying to the marine environment.

A detailed individual assessment of each statute is presented in tabular form as Appendix 3 to this report.

The statutes reviewed were:

1. Biosecurity Act 1993
2. Conservation Act 1987
3. Continental Shelf Act 1964
4. Crown Minerals Act 1991
5. Customs and Excise Act 1996
6. Driftnet Prohibition Act 1991
7. Environment Act 1986
8. Fisheries Act 1996
9. Foreshore and Seabed Revesting Act 1991
10. Hauraki Gulf Marine Park Act 2000
11. Historic Places Act 1993
12. Local Government Act 1974
13. Marine Farming Act 1971
14. Marine Mammals Protection Act 1978
15. Marine Reserves Act 1971
16. Maritime Transport Act 1994
17. NZ Bill of Rights Act 1990
18. Ngai Tahu Claims Settlement Act 1998
19. Resource Management Act 1991
20. Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
21. Trade in Endangered Species Act 1989
22. Treaty of Waitangi Act 1975
23. Treaty of Waitangi [Fisheries Claims] Settlement Act 1992
24. UN Convention on the Law of the Sea Act 1996

25. Wildlife Act 1953

4.1. Overview

The above statutes can be grouped in various ways. One such is by function in terms of administrative jurisdiction (e.g. UNCLOS, Territorial Sea etc, Resource Management, Environment); activity (e.g. Fisheries, Marine Farming, Crown Minerals); and protection (e.g. Marine Mammals Protection, Marine Reserves, Driftnet Prohibition, Trade in Endangered Species, Biosecurity). Such typologies are not precise but serve as a useful reference for analytical purposes. An alternative option is to arrange statutes chronologically or by “era”. However, for the purpose of this stocktake they have simply been arranged alphabetically.

Approaches reflected in statute tend to follow the scientific, management and political methodology and ideology of the period in which they were developed. For that reason resource-based statutes from the late 1980’s onward generally reflect a strong, conceptual policy framework. These are either deliberately values-based and participatory using international concepts such as *sustainability* (e.g. the RMA and the Fisheries Act), or are more analytical adopting the principles and discipline of expert systems such as *risk management* (e.g. HSNO Act and Biosecurity Act). Differences are also reflected strongly in the decision-making and administrative provisions of the Acts. More recent statutes generally make greater provision for participation in decision-making; have clearer justification requirements for regulation; and often include specific Treaty of Waitangi obligations.

To draw distinctions based on the period in which legislation emerged would, however, be both misleading and of limited value. More relevant is an examination of the effect these differences have, and the gaps and overlaps thereby created, for the efficient and effective management of the oceans. In this regard jurisdictional issues and boundaries are a further fruitful dimension for consideration – particularly as the closer the resource issues under management jurisdiction are to dry land, the more sophisticated and complex the framework (especially in terms of decision making and rights to participation). This sophistication is a reflection of a number of elements including sovereignty, risk, participation and property interests.

Interestingly, and with few exceptions, statutes generally do not fall into clear sectoral categories. Although specific regimes exist for marine transport (and its effects) and fishing, these are exceptions to an otherwise non-sectoral legislative framework. This contrasts with other jurisdictions whose regimes generally follow sectoral lines.

As already noted, arguably the most significant influence on marine law is the UN Convention on the Law of the Sea (UNCLOS), which NZ ratified on the 19th July 1996.

The following review presents some conclusions from the Stocktake with respect to some of the key questions asked.

4.2. Purpose and Principles

Arguably the RMA is the only statute that specifies *outcomes* through a comprehensive value-based purpose and principles section, and provides a framework for decision-making that acknowledges and seeks to reconcile divergent interests according to an overall policy direction.

This contrasts with statutes that contain no such integrating policy and are much more specific and functional in their focus - such as the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act and the Continental Shelf Act, whose long titles merely acknowledge the functional purpose of the Act - being to facilitate and control use. In these cases the means for reconciling differences is left unstated, with significant potential implications in terms of both transparency and certainty for resource users as well as those with wider interests.

Many other statutes have or import elements of purpose and principle, but tend to be either resource or activity specific. The Fisheries Act, for example, includes value-based principles within its purpose but adopts a more limited interpretation of sustainability than the RMA and retains a strong emphasis on (specific) use facilitation. Its conflict resolving mechanisms also appear limited in scope.

Protection-orientated statutes such as the Conservation Act and the Marine Mammals Protection Act have reasonably clear purposes but these have limited decision-making influence outside of specific issues. Furthermore, they tend to be confused by layers of interpretation surrounding concepts such as protection, preservation and conservation, and qualified objectives in terms of *promotion* (many of the early 1990s statutes adopted this long title / purpose approach to *promoting* objectives – e.g. the RMA, Conservation Act, NZ Bill of Rights Act, Historic Places Act, a convention that seemed to disappear after 1993).

Whether stating a purpose(s) and principles is helpful is a matter on which practitioners are by no means agreed. To some extent this is dependent on whether third party participation rights are extensive and open, and therefore subject to continual refinement and definition through caselaw. Certainly where critical purpose concepts, such as *sustainability*, are defined differently in statutes – as it is in the RMA and Fisheries Act for example – or have superficial resemblance to cognate terms such as *conservation*, which again has different meanings and implications under the Conservation and the Fisheries acts, then this sets up fundamental problems particularly where ministerial concurrence is required for decisions.

The potential tensions created by differing interpretations of the various statutes using core concepts such as “*sustainability*” could usefully be further examined. For example, “sustainability” is described or interpreted across the various statutes (and strategies) as: sustainable management, sustainable development, sustainable populations, species survivability, population management, sustainable yield, sustainability measures for fish stocks, etc.

Sustainable development is a notion that has particular currency in contemporary policy debates. Clearly, the need to consider and integrate environmental, economic,

cultural and social priorities in policy making has particular relevance in the oceans context. However, this may be thought of not as a new or separate imperative but the good public policy making that provides for use within environmental limits - and to that extent all the matters discussed in this report are integral to sustainable development.

4.3. Scope and Jurisdiction

Jurisdiction can be thought of in terms of two essential dimensions.

The first is the geographic application of statutory powers and functions; i.e. *spatial* jurisdiction.

The second is that of decision-making powers and functions; i.e. *administrative* jurisdiction.

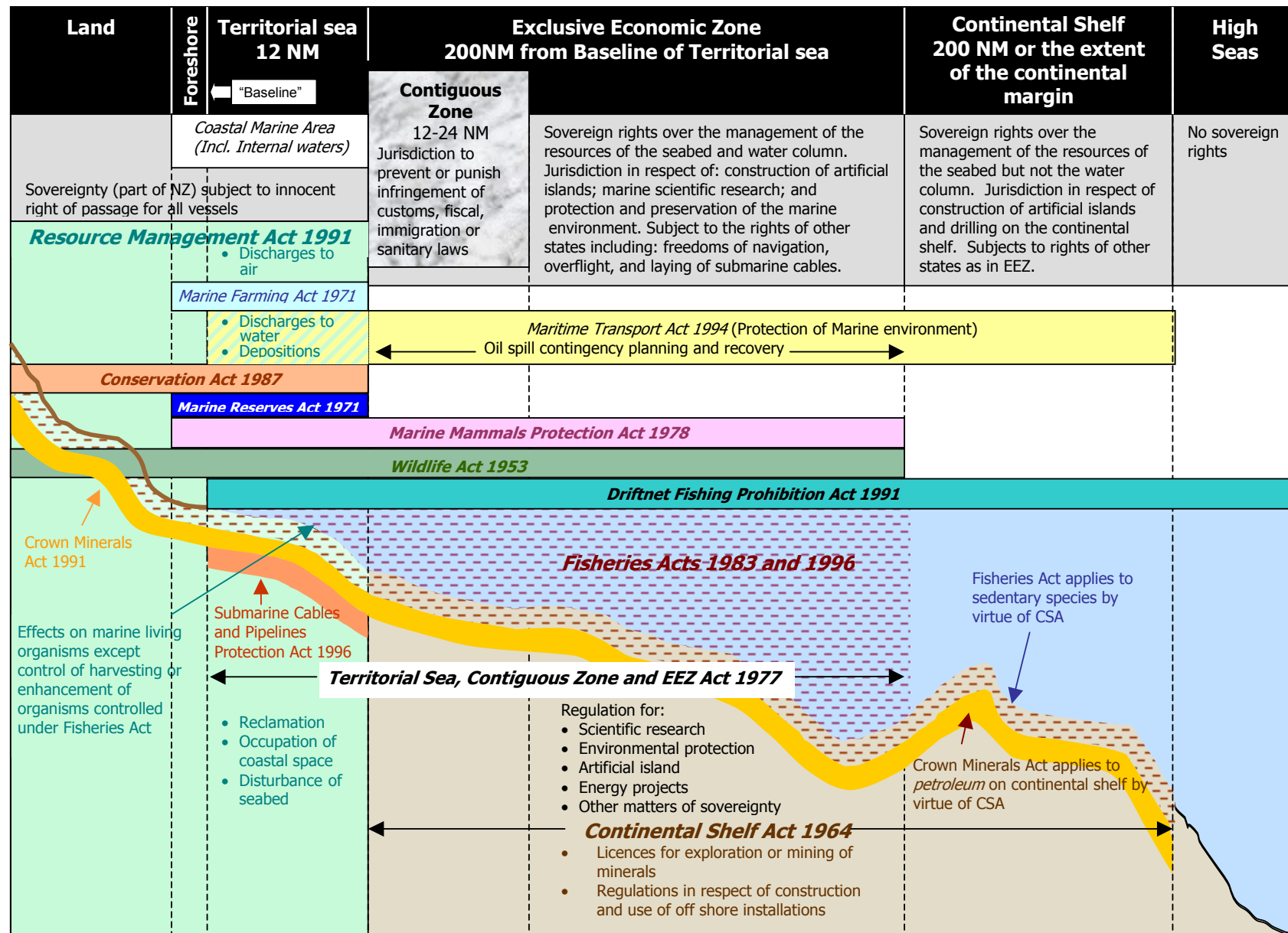
Spatial jurisdiction affecting oceans policy falls into five “zones”:

1. Land	Landward and above the line of MHWS (mean high water springs).
2. Foreshore	Seaward of MHWS to MLWS (mean low water springs) - generally the line of low water of the coast (i.e. the normally wet bits)
3. Territorial sea (& internal waters)	Seaward of MLWS out to 12NM - and including NZ's internal waters (essentially a terrestrial catchment jurisdiction except for certain bays, harbours, etc) to the line of MHWS - sometimes extended to include the foreshore (i.e. the mean springs inter-tidal area)
4. EEZ (or to the outer limit of the continental shelf where this exceeds 200NM)	Seaward of the outer limits of the territorial sea, including the contiguous zone (12NM seaward of the territorial sea marker), either to the outer limit of the EEZ or to the, as yet undeclared, limit of the continental shelf.
5. High Seas and the Area	Seaward of the outer limit of the EEZ and/or the continental shelf [where this is further].

The jurisdictional boundaries of UNCLOS and the spatial jurisdictional boundaries of key statutes are summarised in Figure 1.

Figure 1 – Schematic representation of jurisdictional boundaries of key statutes

(Note: the legislative landscape of the oceans is highly complex and, of necessity, has been simplified to present an overview of jurisdictional boundaries.)



4.4. UNCLOS and Spatial Jurisdiction

With respect to UNCLOS, there appears to be little dispute regarding:

1. NZ's Article 2 sovereignty over the area of the land and territorial sea, its resources, seabed, subsoil, air and water column;
2. NZ's Article 33 sovereign rights in the contiguous zone to prevent and punish infringements of its customs, fiscal, immigration or sanitary laws and regulations committed within its territory or the territorial sea;
3. NZ's Article 56 sovereign rights for the purpose of "... *exploring and exploiting, conserving and managing the natural resources ...*" and jurisdiction with regard to "...*the protection and preservation of the marine environment ...*" with respect to the EEZ beyond and adjacent to the territorial sea, and its Article 77 rights with respect to the continental shelf "... *for the purpose of exploring it and exploiting its natural resources*";
4. NZ's lack of sovereignty and/or sovereign rights over the Area (at least not once the continental shelf limits have been declared) and the High Seas.

There is certainly room for dispute on exactly what limitations are implied by the concepts of *sovereign rights* (Article 56(1)(a) of UNCLOS) or *jurisdiction* (Article 56(1)(b) of UNCLOS), seaward of and beyond the territorial sea up to the outer limits of the EEZ, especially with reference to the Article 56(2) UNCLOS requirement to "...*have due regard to the rights and duties of other states ...*".

This is particularly important from the point of view of the consideration and possible imposition of exclusion zones/reserves for *healthy ocean* protection reasons in the EEZ or the continental shelf where this exceeds 200 nm. In that respect Articles 61 (conservation of the living resources) and 62 (utilization of the living resources) are fundamental.

It also needs to be noted that while the outer limits of the EEZ are based on a 200nm measurement from the territorial sea baseline, the exercise of sovereign rights rather than sovereignty applies not to the 200nm but to the 188nm from the outer limits of the territorial sea [and by extension through the continental shelf where this exceeds 200nm].

Administrative jurisdiction affecting oceans policy falls into three zones:

1. Local government administration above the line of MHWS, with the exception of crown-owned resources such as wildlife, minerals and indigenous freshwater fish species, and to the outer limit of the territorial sea in the case of constructed structures (such as reclamations once formed). Central government administration above MHWS is primarily undertaken by DOC, which administers approximately one-third of the country for

conservation purposes – although this has limited relevance for the marine environment.

2. Regional council and central government jurisdiction in the Coastal Marine Area and territorial sea (the CMA is slightly wider than the territorial sea because it includes the area between MLWS and MHWS).
3. Central government jurisdiction in the contiguous zone, EEZ beyond and adjacent to the territorial sea, and the continental shelf.

While many agencies have an interest in the oceans there are no significant overriding special-purpose marine/oceans authorities in NZ.

4.5. Sustainability

As indicated above, only two statutes explicitly refer to the principle of sustainability (the RMA and the Fisheries Act). Other statutes embody cognate concepts such as sustainable populations (Marine Mammals Protection Act), species survivability (Trade in Endangered Species Act), and population management (Wildlife Act).

Beyond the territorial sea, sustainability only applies to fishing activity and only then within the, arguably narrow, construct of the Fisheries Act – although the Marine Mammals Protection Act applies to NZ Fisheries Waters and therefore to the EEZ.

The Fisheries Act 1996 in construct is closer to the UNCLOS requirement that sustainability is to serve the interests of optimum utilisation and maximum sustainable yield (albeit subject to management of living resources against over-exploitation and adverse effects upon dependent species). There is no such presumption with regard to non-living natural resources.

There is a clear gap in the management of effects on the marine environment beyond the 12nm limit from activities not controlled by the Fisheries Act.

Even inside the territorial sea, the different prescriptions for sustainability of the Fisheries Act and the RMA, together with the implementation of those acts being by different agencies, undermines the ability to apply sustainability in an integrated or ecosystem-based way. Furthermore the Fisheries Act maintains a utilisation approach within the territorial sea – even though this is not required under UNCLOS.

Minerals are not required to be managed “sustainably”, for the obvious reason of either non-regeneration or extremely slow regeneration. This mirrors the situation on land under the RMA, and might be argued to be consistent with UNCLOS’s omission of non-living organisms from the “optimum utilisation” imperative.

4.6. Management of Environmental Effects

A subset of the notion of sustainability is the management of environmental effects.

The basic principle of effects management is that like effects are treated in like ways (to the extent that an undesirable effect from one activity should be regarded as undesirable from *any* activity). This principle is rooted in concern for equitable treatment for resource users, maintenance of integrity in the management regime and economic efficiency (since favourable treatment to some activities and not others may distort resource allocation).

A distinction can be made between statutes that provide for environmental effects management in their purpose or principles and those that simply provide the means by which control should be exercised when required. Of these latter, few in fact recognise effects management as an explicit function.

For example, while minerals are not required to be managed sustainably on land or in the territorial sea, the environmental *impacts* of mineral extraction (and other forms of bed and sub-soil disturbance) are managed within those areas by virtue of the application of the Resource Management Act. Beyond the territorial sea the Resource Management Act ceases to apply (and the Crown Minerals Act only applies in respect of petroleum). Prospecting for and mining other minerals is controlled by licenses issued by the Minister of Energy under the Continental Shelf Act. That Act does not provide for sustainability or (explicitly) environmental protection and the extent to which these objectives are promoted is at the discretion of the Minister. On the other hand the Act does not limit the Minister's ability to take into account environmental effects in granting licences, and in the one case where a license for prospecting was issued, environmental impacts were part of the consideration and assessment. However, this relies on the good grace of the Minister and officials, and it seems that there is no ability to manage the effects of petroleum exploration and recovery except by special regulation under the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act and/or the Continental Shelf Act.

The tools of effects management vary greatly in sophistication. Only the RMA provides for environmental impact assessment.

The requirement to monitor the state of the environment or the impact of particular activities varies significantly. Accordingly the quality and quantity of information gained from the approval of such activities is equally variable. This is unhelpful in terms of gaining a fuller understanding of the marine environment in which certain activities do or wish to operate – although the quantum of such activity is admittedly quite small presently.

Effects assessment is not limited to the effects on the natural environment, but may also include impacts on other activities, such as shipping, oil and gas exploration, tourism and recreation. Such activities may compete for marine space

and resources. The lack of an EIA process removes a potential tool to manage these conflicts and make reasoned trade-offs.

4.7. Ecosystem-Based Management

Ecosystem-based management is about predicting, interpreting and distinguishing human influences from natural environmental or ecological fluctuations and managing our interventions (i.e. the effects of the former) on that basis. It is generally understood to require a holistic or integrated approach to management that recognises the complexity of marine ecosystems and processes, with management based on a sound ecological understanding.

Ecosystem-based management draws on various tools, including a structured geospatial approach to ecosystem classification, the precautionary principle, and an adaptive approach to management. Importantly, humans are acknowledged as ecosystem components and all members of the community are seen as having a role in environmental management.

To be effective an ecosystem-based management approach requires the ability and authority to plan and co-ordinate outcomes according to ecological processes and systems – i.e. across species and activities. This in turn relies, in part, on assessment, policy-making and decision-making at spatial scales that make sense in ecological terms. Arbitrary administrative boundaries that divide ecological systems make eco-system management difficult³.

For that reason none of the statutes could, in isolation, be said to adopt an ecosystem-based approach to management of the oceans. All regimes divide the management of ecosystems either through their ecologically arbitrary spatial jurisdiction, or through their range of functions with the consequence that particular ecosystem effects fall beyond the reach of the statute.

Within their respective jurisdictions it is *possible* to base one's approach on ecosystem management principles as a management tool⁴, but in very few instances can marine ecosystem outcomes be implemented – if for no other reason than the fact that the Fisheries Act applies throughout the marine zones and is focused more narrowly on ensuring the sustainable utilisation of fisheries resources. The environmental principles (s9) of the Fisheries Act do require

³ This principle cannot, of course, be taken to the extreme. Administrative efficiency requires boundaries to be drawn and all boundaries will to some extent cut across ecosystems (depending on the scale at which an ecosystem is identified). The point is, that to the extent practical administrative boundaries should respect or provide for ecosystem functioning.

⁴ For example the Resource Management Act allows for more than one regional coastal plan to be prepared and thus administration could be ordered to “fit” marine ecosystem boundaries – although there are few examples in practice. Further, Regional councils can prepare joint plans that should allow for scale to fit relevant marine ecosystems boundaries. Regional Pest Management strategies may be similarly prepared on a joint basis. However, an issue that deserves further exploration is the relevance of regional council sea boundaries – derived as they are from a seaward extension of land based water catchment boundaries – to marine ecosystem, or even marine resource management.

decision makers to take into account the principles of maintaining the long-term viability of “associated and dependent species”, the maintenance of aquatic biodiversity and the protection of “habitat of particular significance for fisheries management”. These “environmental principles” do fall within the broad concept of ecosystem-based management, however, they are not comprehensive and the primary driver remains the sustainability of fisheries resources.

4.8. Integrated Coastal Zone Management

The term integrated coastal zone management (ICZM) refers to the linkage of management across the land-sea interface. The state of the nearshore areas of the oceans is determined (in part) by land use practices and, consequently, land use management.

Internationally ICZM is a major policy issue. In many jurisdictions the constitutional distribution of power between federal, state and local governments (coupled with existing laws that pre-date the concept of ICZM) frustrates effective management across the land-sea interface. Many look to New Zealand as an example of how governance and policy structures might provide for more integrated management.

ICZM is facilitated in New Zealand by the Resource Management Act which charges regional councils with functions and powers in relation to soil and water management on land *and* marine environmental quality. Conceptually the RMA provides an optimal institutional arrangement where a single entity (in any one region) has the mandate to address coastal zone issues arising from land based activity. A national interest and direction is provided by the Department of Conservation and a national policy statement – the NZ Coastal Policy Statement.

Notwithstanding the conceptual appeal of the arrangement, ICZM problems persist. These include estuarine siltation, habitat loss, and localised water quality issues, as well as land planning issues relating to such issues as recreational boating and swimming, aquaculture and waste disposal conflicts.

This is likely a result of technical limitations on some powers to control land use, political issues associated with exercising the required level of control of particular land uses, technical issues associated with management of non point- source discharges and a lack of capacity in regional councils to deal effectively with the issue.

4.9. Integration

There are few formal mechanisms for achieving integration across statutes, and those that are in place are of limited effectiveness. A number of statutes contain formal obligations to take into account other statutes and management plans prepared under other statutes when developing management plans/policy, e.g. the RMA and the Hauraki Gulf Marine Park Act. However there is little evidence that these linkages have meaningful effect. In large measure this is because the

purpose, principles or objectives of the principal act inevitably dominate. Furthermore, such obligations are generally not reciprocal. For instance, there is no reciprocal obligation to take into account RMA objectives or plans when managing under other statutes such as drafting fisheries plans or setting the total allowable commercial catch for any quota management stock under the Fisheries Act, or drafting pest management strategies and plans under the Biosecurity Act. At best there is a requirement on the Minister of Fisheries to have regard to, among other things, any regional plan or policy statement prepared under the RMA, or any management strategy or plan under the Conservation Act, that the Minister considers relevant when setting or amending fish stock sustainability measures – and these plans and policy statements are specifically prohibited from dealing with certain fishery-related matters.

Similarly, the notion of value-neutral (enabling) Acts providing tools for agencies to use under other (value-based) legislation appears to have mixed success. The customs regime ostensibly operates effectively but much less confidence exists around the use of the Biosecurity Act. In the latter case the absence of a direction to use powers and a specific legislative justification (by way of a statutory purpose and principles) appears to limit its effectiveness.

Statutes contain a number of requirements for ministerial consultation and concurrence prior to the approval of planning measures (e.g. general policy and population management plans for marine mammal protection (Conservation and Fisheries), and marine reserves (Conservation, Energy, Transport and Fisheries)). On the other hand, even though there are no fisheries plans in place currently there is no similar requirement for ministerial concurrence or consultation with respect to these plans. The extent to which this is an issue will of course depend on the scope and jurisdiction of fisheries plans, which is as yet unclear.

In other cases, ministerial consultation (and concurrence) is a matter of *practice* rather than law. In some circumstances, such as co-ordination of regulation under the Fisheries and Continental Shelf Acts, non-statutory ministerial (and therefore inter-departmental) consultation is the only means to achieve integrated decision-making over, for example, protection of a seamount ecosystem.

Lack of integration is primarily the result of the absence of any statutory direction to this end, and/or a comprehensive, single ecosystem purpose across relevant statutes. However, it is also because of insufficient communication and collaboration between management agencies (at both central and local government levels).

4.10. Rights and Responsibilities

The legislation creates a complex set of rights and responsibilities for resource managers and users, including:

- Endowment rights to most of the foreshore and seabed were revested in the Crown by the Foreshore and Seabed Endowment Revesting Act 1991.

- Rights to use the foreshore and seabed (including sand) within the territorial sea are determined through the RMA by means of regional coastal plans and resources consents, and the Marine Farming Act.
- Rights to fish within the EEZ and the territorial sea are determined by the Fisheries Act.
- Rights of Maori in respect of fisheries are legislated for in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and Maori Fisheries Act 1989.
- Rights to exploit sedentary species in or on the continental shelf are determined by the Continental Shelf Act by means of the Fisheries Act.
- Rights to minerals (including petroleum) within the territorial sea are determined by the Crown Minerals Act. (Rights to petroleum outside the territorial sea are also allocated by the Crown Minerals Act.
- Rights to minerals (excluding petroleum) in/under the continental shelf are determined by licenses issued under the Continental Shelf Act.
- Rights to hunting and fishing are determined through the Wildlife Act – but marine species need to be scheduled before this applies (currently only three species are listed).

Behind many of these provisions lie unsettled Treaty of Waitangi claims and aboriginal rights questions. While fisheries claims have been and continue to be addressed, other significant generic claims with respect to rights to indigenous flora and fauna and to associated property and intellectual property rights, and non-fishery aquaculture (for example) remain to be resolved. (This is discussed further in section 4.13).

The list of responsibilities is extensive and reference should be made to the Tables in Appendix 2.

Responsibility for advancing ecosystem protection measures rests in varying degrees with the Ministers of Conservation, Fisheries, Energy, Transport and Biosecurity.

4.11. Decision-making

The decision-making process varies significantly across statutes – although all decisions are ultimately reviewable by the courts.

Decision-making processes also vary across the ocean's spatial zones and across functions – reflecting the Crown's presumption of resource ownership below the line of MHWS to the outer limits of the territorial sea.

At one end of the marine spectrum, the RMA is based largely on devolved decision-making by local government according to publicly debated regional and national policy. Applications are dealt with by local authorities and then through the Environment Court on appeal. The Minister of Conservation nominates a

representative to sit on hearings involving restricted coastal activities. Once the NZ Coastal Policy Statement and regional coastal plans are operative, the Crown's role is limited to decisions on those activities that are designated restricted coastal activities, and making submissions as a party to proceedings on individual applications.

At the other end, as for example with much of the Conservation, Maritime Transport, Territorial Sea etc Act, Continental Shelf Act and the Fisheries Acts, activity in the oceans is controlled through centralised regulation or other means of national rule making or licensing – with varying degrees of requirement for consultation with third party interests. A significant current debate in this respect concerns the ability of management strategies and plans, for example under the Conservation Act, to fetter the discretion of Ministers in deciding applications to hand (e.g. concessions). If strategies and management plans developed through a public process are not able to constrain ministers then their decision-making value is questionable. This debate remains far from conclusive.

The single exception to a national prescriptive approach to decision-making is provided by the Fisheries regime, which uses a mixed market/regulatory mechanism to determine fisheries allocation (after centralised catch limits and quota management systems have been established).

In a similar vein, declaration of a taiapure-local fishery or mataitai reserve under the Fisheries Act for customary fishing purposes or spiritual or cultural reasons (although these only apply in estuarine and littoral coastal water) permits local decision-making by Maori within the framework of the declaration. Under this framework customary fishing is managed by kaitiaki through the issuing of permits (see further comment in Appendix 3). This is the only practical example of *kaitiakitanga*, although departments are negotiating various codes of practice (for example with respect to stranded whales).

Decision-making by way of national regulation is arguably adequate when risks and opportunities can be seen (and known) well in advance or where it is necessary to provide for “one-off” activities. Similarly, decision-making through unspecific licensing processes is arguably adequate where decisions are required only on a “by-exceptions” basis. But as circumstances change and pressure on and competition for resources grows, more responsive and better prescribed processes are probably justified in order to provide greater certainty for all.

4.12. Participation

The term “participation” can mean many different things. Participation is provided in different ways by the statutes reviewed. However the Court of Appeal and High Court have both ruled on statutory interpretation with respect to “consultation” and this is now well articulated and understood at large.

Figure 2 below describes some different forms of participation – although it should be noted that the schematic placing of “consultation” in the diagram does not equate to the statutory interpretation as ruled by the Court of Appeal.

Figure 2 – Types of participation⁵

Type of Participation							
1	2	3	4	5	6	7	8
Informing	Consultation (tokenism)	Co-operation	Communication	Advisory Committees/ Councils	Management Boards	Partnership	Community Control
Community is informed about decisions already made, one-way communication between government agencies and the community	Start of face-to-face contact, community input heard but not necessarily heeded (usually involved late in the decision-making process); limitations of involvement continue to be set by the government agency	Community starts to have input into management, local knowledge is solicited, community members are involved at a low level as assistants or guides, still limited by management agency's agenda	Start of two-way information exchange; local concerns begin to enter management plans; joint management actions may take place without joint jurisdiction over the resource	Partnership in decision-making starts; joint action on common objectives, local communities have advisory powers only; decisions are non-binding	Community is given the opportunity to participate in developing and in implementing plans; local input plays more than just an advisory role	Partnership of equals; joint decision-making institutionalised and formally recognised; control delegated to the community where feasible	Aboriginal groups can make decisions independent of government or with very limited governmental involvement, most or all of the management power is formally delegated to the community for local resources

While there is no “right” level or form of participation it may be validly held that more participation is not just a question of the number of opportunities but of potential influence from those opportunities.

In that sense, the RMA clearly offers the most participatory decision-making regime. This is derived from statutory provision for submission and appeal rights on applications, policies, plans and other instruments. Significantly the RMA provides an appeal *de novo* enabling a reconsideration of the facts and merits of the case. These rights apply to the NZCPS and coastal plans to the outer limits of the territorial sea – although many matters relating to fishery management are explicitly excluded from consideration under the RMA.

Participation can, however, come at a cost. The RMA, whilst participatory, is argued to involve lengthy and costly processes. Particular concern is often expressed about the workload placed on the specialist Environment Court. That

⁵ De Paoli M L, May 1999, *Beyond Tokenism: Aboriginal Involvement In Archaeological Resource Management In British Columbia*, University of British Columbia.

[For further discussion of participation models see *Co-Management Options for Water Bodies*, A report for the Ministry for the Environment, Gerard Willis (HYC), May 2001]

said, research shows⁶ that the majority of applications under the Act are processed within 10 working days at minimal cost (albeit these are generally minor instances of resource use).

Many of the management tools available to conservation (conservation management strategies, management plans, concessions, proposed marine reserves, general policy, etc) have statutory provision for public participation through formal submission and hearing processes.

A statutory right of participation also exists under the Biosecurity Act. National and regional Pest Management Strategies are subject to consultation, and notification and submission - although no national or regional marine PMS is presently operative. Consultation with identified parties is also required in preparing Import Health Standards (such as the ballast water IHS).

The Fisheries Act also provides a statutory right of participation through its consultation provisions. These require the Minister to “consult” with representatives of the Maori, environmental, commercial and recreational interests in fisheries resources. This provision is clearly aimed more at the schematic “consultation” end of the participation spectrum, rather than providing for more active “co-management”. However other aspects of the fisheries management regime do provide for more significant input by some stakeholders, for example, the devolution of administrative functions to an industry owned company.

The fisheries regime also promises increased participation through fisheries plans – although this is not a requirement of the statute and the Minister is able to decide whether or not to adopt any particular fisheries plan. However, where no fisheries plans exist (as is the case currently) or when the Minister identifies gaps or inadequacies in the plan, decision-making defaults to centralised (and arguably less participatory) processes.

In all other cases public rights of participation are at the discretion of ministers and their departments. Often discussion documents and draft rules and regulations are released for public comments. However, no rights of appeal - other than of judicial review in due course⁷ - exist in such cases.

4.13. Tangata Whenua

Specific Treaty clauses are included in the RMA, Conservation Act (and by extension from s4 of the Conservation Act through to all those acts administered by the department and contained in the First Schedule), Crown Minerals Act and the Fisheries Act (specifically with respect to consistency with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992).

The Maori Fisheries Act 1989 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 provide for the full and final settlement of fisheries claims.

⁶ Resource Management Act, Annual Survey of Local Authorities 1999/2000, *Ministry for the Environment*

⁷ Judicial review of course only applies to matters of process not substance.

These Acts provided 20% of all quota species to Maori, as well as 20% of species introduced into the Quota Management System (a significant driver in terms of current reforms). This comprehensive settlement of Treaty of Waitangi fisheries claims has contributed to Maori now being the biggest player in New Zealand's commercial fishing industry, with a substantial interest in over 35% of commercial fishing quota.

In addition, responsibility for customary fishing is being returned to local Maori communities with the implementation of customary non-commercial fishing regulations throughout New Zealand. The Fisheries Act also provides for “input and participation” of tangata whenua into fisheries management decisions.

Specific provision is made for the participation of tangata whenua in the RMA and in the Biosecurity Act (insofar as their input is necessary to appreciate the effect implementing any proposed strategy might have on the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga).

The Marine Farming Act has no explicit Treaty clause but recent amendments to the RMA, providing for aquaculture activities, imports those Treaty matters – and provides explicitly for consideration of any relevant planning document recognised by an iwi authority affected by the plan.

4.14. Tools

A range of statutory planning tools and instruments is provided. Typically, tools fall into four categories:

1. Area-based reserves and sanctuaries for protection and/or scientific purposes, generally off-limit to exploitative activity.
2. General or national policy providing direction on activities, including policy statements, environmental management strategies, and regulations.
3. Species and place-based management strategies and plans, including population management plans, of one sort or another under departmental or local authority control.
4. Permits, certificates, licences etc for particular activities – including quota and non-quota permits.

The detail provided in statute or schedule varies considerably in terms of the specification and type(s) of information required or assessment criteria to be used. Many post-RMA application processes have adopted an “effects-based” approach to assessment.

In addition guidelines, explanatory brochures and general information is provided to raise awareness about general and particular issues – although these are not specified in statute.

4.15. Compliance and Enforcement

Extensive compliance and enforcement provisions are incorporated into statute. It is generally recognised that the provisions far exceed the on-the-ground ability to enforce, with the possible exception of the compliance and enforcement capacity of the Ministry of Fisheries.

4.16. Tensions within Acts

Sections 4.1 to 4.15 identify some of the themes that have emerged from this stocktake when statutes are considered as a body. However some issues have been identified as sources of internal tension (or potential sources of tension depending on premises about principles and outcomes that have yet to be agreed) that might provide lessons for an oceans policy. These are stated in the following section not as categorical conclusions but as matters to which attention should be paid as the goals and objectives for and of the oceans policy are more clearly defined and specified.

- *Resource Management Act 1991*

This Act is the leading example of a statute that sets out to provide a highly participatory process to resolve the inevitable tensions between different use-value sets within a framework of sustainable management. And yet it is roundly and consistently criticised for being overly bureaucratic and failing to deliver “results”. A complex Purpose statement with compound Principles has arguably added to the sort of disputes that are routine internationally with respect to private and public good debates and property rights issues.

Achieving consensus on the Purpose at the time of drafting may well have been aided by a certain amount of ambiguity. The true cost of that ambiguity is still being felt. On the other hand, the ability to manage a broad range of resources and issues under a single purpose has had some success and has been recognised internationally.

The complex network of instruments provided for within the Act has not been achieved. In particular national instruments are conspicuously absent. The reasons for this do not really matter for the purpose of this Stocktake, although it may be worth noting the tensions created by a promise of devolution *and* a expectation of national leadership and direction (not always from the same group). The critical point is that a systemic tension has been built into the statute. The absence of national instruments results in sub-national instruments (i.e. regional and district plans) having no policy context from a wider national perspective – and therefore becoming more dominant in the scheme and therefore, perhaps, litigated more strenuously. On the other hand, experience with the New Zealand Coastal Policy Statement (NZCPS) has not demonstrated a clear link between national instruments and reduced litigation. It would be unwise to draw firm conclusions, as monitoring information on the real effect of the NZCPS is limited.

The RMA does promote a number of conflict management mechanisms on land that do not apply in the coast (e.g. heritage protection orders, water conservation orders, and designations). However, the limited effectiveness of these instruments on land does not necessarily recommend them for wider application.

■ *Fisheries Act 1996*

As with other multiple purpose statutes, there is considerable tension between the dual objectives of the Fisheries Act: “providing for utilisation of the fisheries resource while ensuring sustainability”. Both “utilisation” and “sustainability” are described and interpreted in relation to fisheries resources, rather than to the wider marine environment. This tension within the Act’s purpose is increased by the lack of a clear policy framework for interpreting and applying the environmental principles of the Act in relation to the Act’s purpose. In particular, there appears to be a disjunction between the environmental principles (which focus on non-target species, aquatic biodiversity and habitat of significance for fisheries management) and the tools within the Act, which are largely based around managing specific fish stocks.

There is also some friction between the Act’s information principles (essentially a restatement of the precautionary principle) and the management tools within the Act, which require detailed information on fish stocks, which is often not available or subject to high levels of uncertainty. This problem is compounded by the majority of fisheries information being limited to stock assessment of the most commercially important species, with relatively little information on marine ecosystems.

The Fisheries Act has been subject to numerous reviews over recent years and the Fisheries Amendment Act 1999 has introduced a suite of reforms that aim to, among other things, provide for more fisheries management responsibility to be handed to fisheries rights holders and to simplify aspects of the QMS. To some extent this process is being frustrated the inevitable challenges of moving from the current, highly centralised decision-making processes prescribed within the Act to a more participatory model. The historically poor relationships between management agencies and fisheries stakeholders, which are characterised by a distinct lack of trust, may be a significant barrier.

The Act provides for allocation of the major commercial fisheries resources through the use of a mixed market/regulatory regime (after proportional individual transferable quota and centralised catch limits have been established). However, the integrity of the rights based management regime is compromised by the poor specification of recreational and customary rights to fish, as well rights to those commercial fisheries currently outside the QMS. The integrity of the rights based regime may also be compromised by an over reliance on regulatory tools to enforce the QMS.

The Fisheries Act (specifically the QMS) is a key tool for giving effect to the Treaty relationship between the Crown and Maori, through the application of the

Treaty of Waitangi (Fisheries Claims) Settlement Act, which has provided for a comprehensive settlement between the Crown and Maori. The Fisheries Act also provides for the responsibility for customary fishing to be returned to local Maori communities.

▪ *Biosecurity Act 1993*

The Biosecurity Act is commonly referred to as *enabling* - and risk based - legislation. That is, it enables functionaries to take action when the risks warrant action. However, it is also an example of legislation strongly influenced by the desire to ensure regulation (and public expenditure) is brought to bear only when benefits demonstrably exceed costs. (A public policy theme reflected in many statutes of the era including the RMA).

This has led to tension where poor information has made it difficult to justify action. This is a particular issue for the marine environment.

With some logic, the Act erects biosecurity not as an end in itself but as a *tool* to achieve other purposes – protection of public health, primary production and biodiversity (including marine biodiversity). The Act does not, however, spell out those purposes itself relying instead on agencies' functions and objectives under other legislation. This has caused tension as an agency's authority to take action to achieve particular ends can be contested.

The Act itself does not allocate roles to specific ministers or agencies. This has contributed to some uncertainty and complexity over who is responsible for what. Arrangements have been made to clarify the role of Ministry of Fisheries in marine biosecurity through a Memorandum of Understanding. Regional councils also have a role in marine biosecurity but this is not well defined or developed. There are no national pest management strategies in relation to marine pests. Existing regional pest management strategies have limited application in the marine environment.

▪ *Conservation Act 1987*

As currently drafted the Conservation Act seeks to accommodate preservation and protection activities on the one hand and recreation and tourism activities on the other. In the main these activities take place above the line of Mean High Water Springs (MHWS) with little direct application to marine ecosystems/habitat – although the Act does extend its influence into other oceans-based legislation such as the Marine Mammals Protection Act and the Marine Reserves Act.

The mechanism for managing this sometimes difficult tension [i.e. that between conservation and recreation/tourism activities] is through a series of publicly notified, participatory policy and planning instruments – although unlike some other jurisdictions there is considerable latitude regarding how frequently, if ever, these instruments are to be reviewed and resubmitted to the public for comment. However, in the final analysis the Minister and/or his/her delegate make the key decisions. There is little public opportunity for reviewing the merit of these

decisions, and continuing argument about the degree to which the planning and policy documents can limit or fetter any discretion. The public's direct ability to influence the direction of the Department in any particular area of interest, for example through the strategic business planning cycle, is also limited.

Furthermore, the Act does not establish formal requirements for systematic monitoring and public reporting with respect to the conservation estate – even though information of this sort may be required of concessionaires, and is routinely collected through a number of internal output class programmes. If “use” activities are to gain momentum they can only do so on the basis of agreed and shared knowledge about the state of the estate and its ability to accommodate activities. Where this knowledge is lacking, informed public debate on any particular issue is probably the next best option.

In the above ways the Act sets up potential and actual tensions between public objectives and expectations, without a clear participatory process for their resolution – where hearings are conducted these are essentially internal processes, and the merits of decisions are not normally reviewable.

If conservation legislation is extended more deliberately into the ocean, the consequences of insufficient and/or insufficiently available ecosystem knowledge, the “precautionary” management approach this then engenders, and the lack of thorough-going public processes will be a tension that can be guaranteed and will need to be addressed.

In the absence of determination and settlement of Wai 262 relating to indigenous flora and fauna, it is premature to speculate about what oceans policy implications this might have.

▪ *Continental Shelf Act 1964*

The Continental Shelf Act (CSA) addresses a vast (and potentially vaster) area of seabed seaward from the territorial sea. It licences prospecting and mining of minerals and petroleum (the latter by reference to the Crown Minerals Act) and imports the Fisheries Act to manage sedentary species. No processes are prescribed for the issuing of licences. The long title of the Act is simply to provide for the exploration and exploitation of the continental shelf. The construction and sophistication of the Act reflects UNCLOS and, perhaps, the extent of historical pressure on resource use on the shelf seaward of the territorial sea. However, should pressure on the non-living resources of the continental shelf increase in the future it is doubtful whether the CSA will be regarded as providing an adequate management regime.

The lack of opportunities for public participation, environmental assessment obligations, or monitoring requirements puts it at clear odds with the regime inside the territorial sea (notwithstanding that practice has been to provide for input by other government agencies).

The critical internal tensions of the Act are presented by:

- On the one hand, the purpose focusing on providing for resource exploitation but the absence of administrative or decision-making provisions that provide any certainty for business; and
- The assumption that may be taken that licences regulate for a purpose and the further assumption (based on UNCLOS) that this purpose includes environmental protection – but the lack of tools and information to provide for that protection.

A final tension (perhaps more theoretical than real) is the inability to manage the environmental impacts of petroleum exploration and exploitation except by specific regulation.

- *Crown Minerals Act 1991*

On land and within the territorial sea the Crown Minerals Act operates in conjunction with the Resource Management Act. The Crown Minerals Act concerns access to minerals (including petroleum) at two levels - access to the mineral resource requiring a permit issued by the Minister of Energy, and obtaining land access to prospect, explore or mine the resource requiring a land access arrangement from the land owner and occupier or other authorisation. The environmental effects of prospecting, exploration and mining are considered under the Resource Management Act. The effect of this is that while mineral resources themselves are not required to be managed sustainably, the effect of the activity of exploring, prospecting, or mining is to be sustainably managed.

The situation is slightly different in the coastal marine area where if a permit holder has secured the right under the Resource Management Act to exclusive occupation, an access arrangement is not necessary. In other words, the Resource Management Act effectively deals with the environmental effects and land access issues. This situation occurs because the Crown is the owner of the coastal marine area and the resource consent process involves the Crown through the Minister of Conservation.

However the Crown Minerals Act only applies in conjunction with the RMA as far as the outer limit of the territorial sea. Beyond that, the Continental Shelf Act applies. The Continental Shelf Act refers to the Crown Minerals Act in respect of petroleum without its companion RMA. A potential tension is created beyond the outer limits of the territorial sea because the RMA (particularly with respect to its requirements regarding environmental assessment and the rights of public participation) is absent and has no jurisdiction, and no similar statutory guidance is provided under the Continental Shelf Act.

- *Marine Reserves Act*

As with a number of other Acts the Marine Reserves Act is currently under substantial review. However a key tension has been the problem of the land/sea

interface – marine reserves commence/stop at MHWS. The ability to control activities and their adverse generated effects adjoining the reserve is thereby frustrated unless the land is secured by means of covenant or other reserve status. At the same time the exclusivity of purpose with respect to scientific study, and the lack of any significant discretion to permit limited take for other than scientific purposes, has created difficulties in establishing reserves.

A second source of tension has been the requirement for concurrence with other Ministers (Fisheries, Energy and/or Transport depending on the issue). The lack of provision of statutory criteria for concurrence has arguably caused considerable difficulties for Ministers and their advisors.

▪ *Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977*

The long title of Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act suggests two purposes: the creation and demarcation of the territorial sea, contiguous zone and the exclusive economic zone (EEZ); and to provide for the exercise of sovereign rights and responsibilities within those zones. (Including providing for exploitation *and* – at the same time - conservation and management).

The only means by which the Act can promote this second “purpose” is by way of regulation – for which broad powers are conveyed. (Indeed there may well be some overlap with regulation making powers available under the CSA).

It is also worth noting that, notwithstanding the purpose, the ability to *authorise* exploration and exploitation of both living and non-living resources in fact sits outside the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act. It is difficult to conceive of how the Act’s regulation making powers would be used other than to *control* exploration and exploitation for environmental or other reasons.

The key point is that there are no regulations under the Act. That may be simply because no issues have arisen that warrant regulation at this point. It is, however, noteworthy that administration of the Act does not rest with an environmental agency⁸. (In fact environmental agencies have no direct regulatory powers outside territorial sea).

Perhaps the more significant question is whether regulation is the best way to provide for environmental protection and, in particular, whether regulation is a tool capable of being flexible and responsive enough to deal with more than occasional issues.

⁸ The Ministry of Foreign Affairs and Trade administer the Act.

5. Analysis of Strategies

The stocktake review has addressed a wide range of strategies and policies. These strategies were agreed with the Oceans Policy Secretariat as being relevant to current management of the oceans. A summary table with more detailed comment on these strategies is provided as Appendix 4⁹.

Group 1: Formal¹⁰ Government strategies

1. New Zealand Biodiversity Strategy 2000
2. Sustainable Development Programme of Action (& links to the Growth and Innovation Framework)
3. New Zealand Waste Strategy 2001
4. Sustainable Land Management Strategy 1988

Group 2: Other strategies & initiatives under development – specific initiatives by agencies not based on statutory authority

5. Environmental Performance Indicators Programme
6. Draft Marine Protected Areas Strategy
7. Draft MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment
8. Draft MFish Framework for Integrated Fisheries Plans
9. Draft MFish Seamount Strategy
10. Draft MFish Strategy for delivering ToW obligations
11. Draft Bioprospecting Strategy

Group 3: Policies / regulations prepared by central government agencies under specific statutory authority

12. New Zealand Coastal Policy Statement
13. EECA Strategy 2002
14. New Zealand Marine Oil Spill Response Strategy 1999/2000

⁹ The strategies listed here are those that have been reviewed in detail for the purposes of this stocktake. It is not intended to be a comprehensive list (or review) of all oceans-related strategies in place or under development. Other relevant strategies (such as the National Plan of Action on Seabirds) will be reviewed in separate papers to be produced by the Oceans Policy Secretariat as part of Oceans Policy development.

¹⁰ “Formal” refers to those strategies with Cabinet approval as ‘across Government’ Strategies. These are not documents required by statute although they may be required by international convention.

15. Marine Pollution Regulations (under the RMA and in accordance with MARPOL and the London Dumping Convention)

The stocktake review has addressed a disparate group of strategies, some more closely related to the marine environment than others and all with different purposes and processes. In some instances comparison across the strategies can provide useful information, but more often the strategies have different utilities, making direct comparison of limited value. Also, it is difficult to evaluate the overall operational effect of the strategies as most are relatively recent or still in draft form.

What is apparent is that the various strategies demonstrate a range of styles and processes and may be most useful in terms of illustrating alternative ways of putting together government strategies to achieve different purposes.

The following review focuses on these alternative approaches and the outcomes that they seek. The findings of the stocktake are considered according to the key questions in so far as they are relevant. This commentary follows the stocktake approach to grouping the strategies:

- Formal government strategies
- Other strategies and initiative under development (i.e. specific initiatives by agencies not based on statutory authority)
- Policies and regulations prepared by central government agencies under specific statutory authority.

5.1. Formal Government Strategies

(Biodiversity, Biosecurity, Sustainable Development, Waste & Sustainable Land Management Strategies)

These strategies have broad purpose statements that focus on giving effect to a vision that reflects various high level concepts such as “sustainable NZ”, environmental stewardship, Treaty obligations, equitable sharing of benefits, internalising of environmental costs, etc. Their stated goals are also fairly broad, high level statements about improving outcomes (e.g. protecting Treaty rights, increasing understanding, halting biodiversity decline, sound waste minimisation, etc).

While these strategies do not have formal domestic statutory authority, they have all been developed to meet commitments either under various international conventions and agreements (e.g. the Convention on Biological Diversity), or inherent in WTO agreements, Agenda 21, UNCLOS and the OECD Environmental Management Strategy for the First Decade of the 21st Century.

The Biodiversity and Biosecurity Strategies are directly relevant to Oceans Policy because effective implementation of their objectives and recommendations will alter the way many management activities are currently carried out – particularly for marine protected areas, information management, and biosecurity activities.

The Biodiversity Strategy provides a good example of an across government strategy that has enabled agencies to secure targeted funding to promote the

Strategy's desired outcomes. It is the most comprehensive and "across government" of the strategies, with its purpose spanning the full range of sustainable management - from responsible governance, Treaty obligations, collective responsibility, rights of access and meeting costs of impacts, through to environmental stewardship and precautionary decision-making.

The Biodiversity Strategy also presents a model for integrated, cross agency decision-making and accountability. The Green Package funded Biodiversity Strategy Implementation Programme has the most explicit decision-making framework of the strategies, with clear implementation responsibilities and accountabilities specified for specially convened Ministers, Chief Executives and Officials biodiversity groups.

The draft Biosecurity Strategy (dated 7 October 2002) is an example of a strategy that is more about co-ordination of operational relationships and the strategy can be seen largely as a systems review exercise. This has, however, resulted in the objectives for this strategy being phrased to focus on raising confidence in New Zealand's biosecurity system, rather than improving performance or outcomes.

The draft Biosecurity Strategy makes an important point when it notes that there have been problems with the governance structure of the Biosecurity Council. This council operates at the strategic rather than operational level and is comprised of Chief Executives and stakeholders. It has experienced significant difficulties relating to unclear accountabilities, communication and decision-making processes. This indicates that the joint public sector / stakeholder Council is not working as well as intended.

The National Energy Efficiency Conservation Strategy and the NZ Waste Strategy both provide examples of strategies that set high-level national targets and provide an over-arching strategic framework for driving towards these targets. The Waste Strategy is a joint central / local government initiative and as such provides a good example of using a strategy to drive better integration across these two sectors; although it is unclear to what extent local authorities, beyond Local Government New Zealand actively support the strategy.

The draft Sustainable Development Strategy has been developed with quite a different purpose in mind in that it is intended to be a strategy for Government, rather than a strategy for New Zealand. It is seen as more of a Government leadership strategy than an outcomes focussed strategy, paving the way for the wider adoption of sustainable development principles and the collaborative preparation of sector specific strategies. Its primary role is likely to be in driving integration at the central government level, although there is also a partnership dimension with local government and cities within the specific programmes of the Strategy (energy, water, etc.). The opportunity remains to drive towards a more collaborative sustainable development strategy for New Zealand.

5.2. Strategies & Initiatives Under Development – i.e. specific initiatives by agencies not based on statutory authority

(Draft Marine Protected Areas Strategy, MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment, MFish Draft Fisheries Plan Framework, MFish Draft Seamount Strategy, MFish Treaty Strategy, Bioprospecting Strategy, MfE Environmental Performance Indicators Programme)

The main driver for this group of strategies is the clarification of implementation issues not addressed or made explicit in the legislation – largely because these issues only become apparent as agencies seek to implement statutory management regimes. Some of the strategies have been developed as a response to an unclear and/or fragmented statutory framework – e.g. the Bioprospecting and Marine Protected Areas strategies.

Domestic statutory authority for these strategies is generally not explicit but inherent in the governing legislation and subject to interpretation. Agencies nevertheless cite the governing legislation as a mandate for the broader policy and implementation framework set out in the strategies.

In addition to their governing legislation, this group of strategies generally seek to derive mandate from obligations inherent in the Convention on Biological Diversity, Agenda 21, UNCLOS and the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). However, reference to these conventions within the various strategies is sometimes vague.

The various draft MFish strategies provide examples of the use of strategies/policies to interpret and guide implementation of the regulatory framework. The MFish strategies explicitly seek to improve real or perceived weaknesses in the statutory framework and its current implementation. See for example the Fisheries Plan Framework, which states that these strategies are required because the current statutory framework does not fully deliver environmental and other outcomes, while the Strategy for Managing the Effects of Fishing on the Aquatic Environment is about improving implementation of the statutory framework.

These draft MFish strategies are the most prescriptive of the strategies - primarily because they are operational strategies - with explicit references to decision-making processes within the Fisheries Act. For example, the Fisheries Plan Framework specifies a framework for stakeholders to provide advice directly to the Minister. It also seeks to prescribe what should be in a Fisheries Plan; however, the law is silent on this issue, which may pose some problems. Likewise, the draft Fisheries Strategy for Managing the Effects of Fishing on the Aquatic Environment is seeking to develop enforceable fisheries environmental standards, although it has not yet specified exactly what this will mean. The prescriptive nature of these strategies reflects the prescriptive and centralised decision-making framework set out in the Fisheries Act, as well as existing MFish processes and procedures.

The legal status to be accorded these strategies will be important, especially as a strategy is only a statement of government intention. There may be difficulties where policies and strategies are used to justify legal decisions under the law, when the policy and strategies have not been publicly “tested” through any statutory process, and are not themselves enforceable in law. There is also the possibility that some of these strategies may have potential inconsistencies amongst themselves, especially given that there are a number of potentially overlapping strategies currently in development

The draft MFish Treaty Strategy cites the Treaty of Waitangi and the Fisheries Settlement Act as providing statutory authority and is a deliberate attempt to provide an implementation framework for these. It is the only strategy with clear objectives based around the Crown’s partnership with Maori and developing a framework for a partnership approach to the management of fisheries.

Two of the draft fisheries strategies present examples of possible conceptual approaches that have the potential to inform wider non-sectoral management of the oceans. The draft Fisheries Strategy for Managing the Effects of Fishing on the Aquatic Environment adopts a fisheries risk assessment framework and the draft Fisheries Plan Framework is based around a proposed fisheries management planning framework, albeit around the management of fish stocks, rather than the wider marine environment.

The draft Bioprospecting Strategy has the explicit goal of establishing clear rules about access and management of environmental effects, as well as capturing benefits and meeting Treaty rights. This is a very significant new strategy, deriving from the Convention on Biological Diversity and addressing such difficult issues as intellectual and cultural property rights. It is at a comparatively early stage of development but potentially has significant implications for oceans policy.

The Environmental Indicators Programme is less of a strategy than a programme for the development of a national indicator framework that will provide an important tool for assessing and monitoring the state of the marine environment. It is unclear to what extent the indicators programme has effective linkages with other related marine information programmes, for example, the National Aquatic Biodiversity Information System programme (NABIS) currently being developed by MFish.

5.3. Policies / Regulations Prepared by Central Government Agencies under Specific Statutory Authority

(New Zealand Coastal Policy Statement, National Energy Efficiency Conservation Strategy, New Zealand Marine Oil Spill Response Strategy, Marine Pollution Regulations¹¹)

This group of policies and regulations seeks to promote standard national responses or guidelines or, in the case of the NZCPS and the National Energy Efficiency Conservation Strategy strategies, to provide national guidance for giving effect to umbrella legislation. The Marine Pollution Regulations establish national standards to meet international obligations, while the Marine Oil Spill Response Strategy promotes a standard New Zealand response to oil spills and is deliberately risk assessment based. All of these policies/regulations pay particular attention to environmental stewardship and protection.

These policies/regulations cite various international conventions (e.g. MARPOL, London Dumping Convention, etc.), and they also have explicit domestic statutory authority.

There have, however, been some difficulties with the implementation of the Marine Pollution regulations within the effects based RMA framework, where the RMA required an amendment to allow the international approach to fit with the domestic approach. The marine pollution regime does, however, provide a good example of tools under multiple statutes combining to provide a near seamless¹² management framework across jurisdictional boundaries (the tools being the Marine Pollution Regulations, the Marine Protection Rules and the Marine Oil Spill Response Strategy). These tools derive their enforcement regime from the Maritime Transport Act, with guidance from the MSA in the case of oil spill response offences. This is consistent with UNCLOS which directs coastal states to apply their environmental policies in other zones of jurisdiction.

In most cases, the effectiveness of this group of policies is limited by their governing legislation. For example, the NZCPS is limited by the scope of the RMA, (i.e. the RMA is limited to integrated management of resources controlled by the RMA and has no mandate to manage across all marine management functions).

The NZCPS also illustrates the potential tension between a “top-down” national instrument and the RMA’s devolved management framework. While regional and district councils are required by law “not to be inconsistent” with the NZCPS, the fact that the NZCPS has no regulatory effect in its own right, and is therefore

¹¹ The Marine Protection Rules under the Maritime Transport Act give effect to the same principles as the Marine Pollution Regulations. They are referred to in several places within this report but have not been addressed separately.

¹² Alignment will improve once the marine protection rule for sewage from ships is introduced outside the territorial sea

unenforceable, creates further tension. Furthermore, the NZCPS applies to the “Coastal Environment”, a term not defined by either the RMA or the NZCPS.

The National Energy Efficiency Conservation Strategy is of interest with its explicit framing of conservation goals alongside economic and social goals, including improving economic productivity, promoting industry development, improving economic resilience and improving health and welfare. The scope of the NEEC strategy is defined sectorally rather than spatially (i.e. to the transport, energy supply, industry, central and local government sectors).

5.4. Strategies Review Conclusion

It is clear that there is no unifying thread or theme across the various strategies. As stated at the outset, each has been developed for a different purpose and therefore has a different utility. However, even within this context one might have expected to see some commonality of high-level goals, for example, sustainable development or the precautionary principle. But this is not the case. The most that can be said is that at a very generic level all the strategies seek to promote protection of the natural environment from human activities, but even that is interpreted differently across the strategies.

The other observation that might be made is the lack of clarity about the *relationship* between the various strategies. As these strategies become operational it may well be that greater definition is required about whether, or to what extent, the direction of one strategy is subject to others.

Appendix 1 – Terms of Reference

Purpose and Terms of Reference: Oceans Policy Stocktake

1.0 Purpose

The purpose of the Oceans Policy stocktake is to identify and record information on current arrangements and practices to inform the policy development stage. This involves two work streams:

- (1) documenting the status quo in terms of existing arrangements
- (2) researching and recording actual and theoretical approaches (national and international) that could be applied.

The information collected through the first work stream will be critical for identifying and validating problems and opportunities that exist within our current institutional, legal, and administrative regimes. Although problems have already been identified in a broad sense, this information will provide a means to move ahead with the next phase of policy analysis. An important component of the first phase is determining the “practice” that influences our current management regimes. This will address the processes and practices that are not necessarily flagged in policy and legislation.

The information collected in the second work stream (e.g. international models) will be a helpful resource for those tasked with developing policy responses to the identified issues.

The information collected in both streams will be analysed against the vision and the policy goals and objectives. This subsequent “gap-analysis” exercise will help indicate whether the status quo is consistent with the vision and the policy goals and objectives, or how it differs, and why.

2.0 Context: The seven high-level policy issues

The information identified and recorded during this part of the stocktake should seek to inform the seven high-level policy issues identified by Ministers. These issues stem from the MACOP (Ministerial Advisory Committee on Oceans Policy) consultation report, and will be a key focus of the policy development phase. More specifically, the seven issues focus around the need to develop policy that can:

1. *Integrate* decision-making and administration across different activities, consistent with common objectives – e.g. vision and goals.
2. Take into account both:
 - (a) the *biophysical characteristics* of the marine environment and
 - (b) the *range of values* held by New Zealanders in relation to that environment
3. Determine when, how and by whom *decisions* are made and implemented
4. Build in *compliance and enforcement* models and encourage voluntary compliance
5. Address the Crown’s responsibilities under the *Treaty of Waitangi* in relation to the marine environment
6. Manage *information* about the marine environment and assist in identifying information needs
7. *Monitor* the implementation of the systems and make changes to it as required.

3.0 Key Guidance Questions

Where possible, the following questions should be kept in mind when recording information from both work streams. The questions also provide guidance on the type of information sought for the second work stream (actual and theoretical approaches).

- How are goals and principles identified and priorities for action set?
- What systems are there for managing the rights, entitlements, interests and responsibilities of different parties, e.g. with respect to access to space, access to information, access to or utilisation of resources, consultation, decision making, enforcement, Treaty obligations, and how are they defined and enforced?
- How does the approach try to integrate the different rights and responsibilities, across different activities or sector interests or management institutions?
- How does the approach promote stakeholder participation in management and decision-making?
- How does the approach promote Maori participation in management and decision-making?
- How are equity concerns amongst current participants, and between current and future participants, dealt with?
- How does the approach manage the relationships and inter-connections between species, habitats and ecosystems, and between the marine environment and other natural systems (air and land, including water run-off)?
- How are cost effectiveness and efficiency objectives dealt with?
- How is the allocation of costs across different activities or participants dealt with?
- What mechanisms are there to assess the accuracy of information used in decision-making, and how (and by whom) is the information collected, disseminated and managed?
- What steps are taken to monitor processes and service delivery and/or evaluate outcomes, and how are management responses linked to the information generated?
- How does the approach deal with conflicting objectives?
- What mechanisms/tools are used to implement the system/legislation (economic/market – regulatory and information), and what is the balance among them?

Part I: Documenting the Status Quo

New Zealand's legislative framework

Source: Legislation across sectors relating to the marine environment

Recording Guideline:

Record, and in doing so, try to answer the key guidance questions:

- Goals, Objectives, Purpose and Principles.
- Rights and responsibilities
- Spatial jurisdictions and rationale behind them.
- Functions and powers for undertaking them.
- Implementation measures (e.g. economic instruments, regulation, advocacy, information provision).
- Linkages to other legislation.
- Information gathering mechanisms, their nature and linkages to monitoring, decision-making, compliance and enforcement.
- Allocative processes (e.g. exclusive rights, limited occupation).
- Environmental assessment procedures.
- Decision making processes – (who makes what decisions, how, with what input, provision for stakeholder or public input, information requirements, ability to devolve responsibility).
- Mechanisms for dealing with conflict – formal and informal.
- Monitoring provisions and requirements.
- Compliance and enforcement provisions.

International legislation, agreements, conventions, obligations etc.

Source: Existing stock-take already conducted by MFAT.

Update existing information, and tailor material to meet the requirements of this exercise.

Policy frameworks

Sources: Government agencies (staff), government websites, articles

- Inter-agency strategies, policies and initiatives (e.g. NZCPS, Oil spill contingency plans, climate change).
- Agency strategies and initiatives (e.g. Fisheries Plans).
- Discussions with agency staff
- Uses and activities not covered by specific legislation (e.g. bioprospecting)

Recording Guideline

Record, and in doing so, try to answer the key guidance questions:

- Purpose.
- Scope and jurisdiction.
- Who is involved formally and informally and who isn't.
- Policy framework (e.g. matters to be included and how this is done).
- Legislative provisions that have not been implemented.
- Linkages and coordination between policy documents and responsible agencies.
- Direct relevance to Oceans Policy.
- Decision-making authority, stakeholder and public input, and delegations.
- Compliance and enforcement provisions.
- Sketch a picture of how the framework operates.

Appendix 2 – Multilateral Agreements

This appendix presents a list of the multilateral oceans-related agreements (treaties) that New Zealand is a party to. A subset of these is reviewed in the Stocktake of International Instruments set out in Appendix 5.

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 NZ¹
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			
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
United Nations Convention on the Law of the Sea [UNCLOS] 1982	1994	R 19.7.96	18.8.96
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 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
International Convention for the Prevention of Pollution of the Sea by Oil 1954 [OILPOL]	1958	R 1.6.71	1.9.71
Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil 1962	1967	R 1.6.71	1.9.71

Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil 1969	1978	R 27.4.76	20.1.78
Convention on the Continental Shelf 1958	1964	R 18.1.65	17.2.65
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
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

¹This 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.

Appendix 3 – Stocktake of Legislation

The statutes reviewed in this appendix were agreed with the Oceans Policy Secretariat as being the relevant statutes currently applying to the marine environment.

Statutes reviewed:

- Biosecurity Act 1993
- Conservation Act 1987
- Continental Shelf Act 1964
- Crown Minerals Act 1991
- Customs and Excise Act 1996
- Driftnet Prohibition Act 1991
- Environment Act 1986
- Fisheries Act 1996
- Foreshore and Seabed Revesting Act 1991
- Hauraki Gulf Marine Park Act 2000
- Historic Places Act 1993
- Local Government Act 1974
- Marine Farming Act 1971
- Marine Mammals Protection Act 1978
- Marine Reserves Act 1971
- Maritime Transport Act 1994
- NZ Bill of Rights Act 1990
- Ngai Tahu Claims Settlement Act 1998
- Resource Management Act 1991
- Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
- Trade in Endangered Species Act 1989
- Treaty of Waitangi Act 1975
- Treaty of Waitangi [Fisheries Claims] Settlement Act 1992
- UN Convention on the Law of the Sea Act 1996
- Wildlife Act 1953.

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
Long Title	An Act to restate and reform the law relating to the exclusion, eradication, and effective management of pests and unwanted organisms.	An Act to promote the conservation of New Zealand's natural and historic resources, and for that purpose to establish a Department of Conservation	An Act to make provision as to the exploration and exploitation of the continental shelf of New Zealand and for matters connected with that purpose	An Act to reform the law relating to the management of Crown owned Minerals.
Commentary	The Act provides a framework for central government, regional councils and industry groups to manage pests and unwanted organisms in New Zealand.		A review of the Act is identified in the MED work programme. That review is awaiting the outcome of the Oceans Policy review. Some of the reasons why a review is considered necessary are identified below	Importantly the Crown Minerals Act applies only to minerals owned by the Crown.
Purpose	The Purpose of the act is spelt out in Parts as follows: Part III – The purpose of this part is to provide for the effective management of risks associated with the importation of risk goods. Part IV – The purpose of this part of the Act is to provide for the continuous monitoring of New Zealand's status in regard to pests and unwanted organisms – (a) To facilitate the provision of assurances and certificates in relation to exports of organisms and their products; and (b) As a basis for the proper administration of this Act, including the institution of precautionary actions, emergency and exigency arrangements, and pest management strategies; and (c) To monitor the effect of pest management strategies; and (d) Otherwise to enable any of New Zealand's international reporting obligations and trading requirements to be met Part V – The purpose of this part is to provide for the effective management or eradication of pests and unwanted organisms. Part VII – The purpose of this part is to provide for the effective prevention, management, or eradication of unwanted organisms if emergencies or other exigencies occur.	Not specified	None specified	No explicit purpose section, but under s12 the purpose of minerals programme is to establish policies, procedures and provisions to provide for: a) The efficient allocation of rights in respect of Crown owned minerals b) The obtaining by the Crown of a fair financial return from its minerals.
Commentary	The purpose is functionally rather than outcome oriented. The lack of a single overarching purpose is the source of some criticism. The <i>purpose</i> of exercising the functions is a matter of dispute.	S6 outlines the functions of the department which includes managing all resources and land held under this Act - including sub-antarctic islands and Ross Dependency - for conservation purposes; and the preservation [indigenous] and protection [recreational] of	Establishes a regime to manage the natural resources of the continental shelf. Natural resources are defined to include minerals and non-living resources and living organisms belonging to sedentary species (being those that are immobile or under the seabed or	The Crown Minerals Act is concerned with the allocation and management of all Crown owned minerals. Before any person can prospect, explore or mine for Crown owned metallic or non-metallic minerals or industrial rocks or building stones in New Zealand, that person

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
	(For example, whether the emphasis is human health, protection of primary productive systems or the maintenance biodiversity - or all three - remains unspecified). The functional purpose contrasts with the value-based purpose of the RMA.	freshwater fisheries and habitats.	subsoil). The purpose or objective of this management is not specified and may be simply seen as an expression of the right bestowed by UNCLOS to exploit natural resources (in accordance with the duty to protect and preserve the marine environment). The Act reflects the sovereign rights prescribed by UNCLOS.	must have an appropriate permit authorising the activity. The Crown owns all petroleum, gold, silver, and uranium in accordance with s10 of the Act. (Note: the policy is that uranium is not available for permitting.) The Crown also owns a large amount of other minerals and industrial rocks and building stones as an incident of the ownership of land and through the reservation of Crown ownership of minerals in the alienation of land from the Crown (s11). As regards minerals in the ocean, the Crown has 100% ownership of minerals in the territorial sea (i.e. to 12nm). Beyond the 12 mile limit the Crown has jurisdiction via UNCLOS and the right to the minerals and petroleum out to the edge of the 200nm EEZ or continental shelf, whichever is the furthest.
Principles	None specified	s4. Act to give effect to Treaty of Waitangi: This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.	None specified	No explicit principles. Underlying principle is Crown ownership and allocation of rights through permits.
Commentary	A number of public policy principles are apparent in the provisions of the Act. These include: - Devolution (subsidiarity) - to the extent that regional councils are responsible for pest management regionally (national intervention can only be undertaken if the benefits outweigh the benefits of regional intervention); - Risk based management - An emphasis on meeting cost benefit tests before taking actions; and - The beneficiary and exacerbator pays funding principles.	While the Act does not specify principles as such, the requirement relating to the principles of the Treaty imports these same principles. The general purpose of conservation contains three implied principles in the definition of the word "conservation" – i.e. "Conservation" means: the preservation and protection of natural and historic resources for the purpose of: 1) Maintaining their intrinsic values; 2) Providing for their appreciation and recreational enjoyment by the public, and 3) Safeguarding the options of future generations.		
Spatial jurisdiction	New Zealand territory – defined by the outer limits of the territorial sea (in that obligations under Part III begin when a craft crosses the contiguous zone into NZ territory). However other powers extend into the contiguous zone.	Spatial jurisdiction is not stated and can therefore be presumed to apply to land [including foreshore], internal waters, and coastal waters and seabed within the outer limits of the territorial sea.	Continental shelf (as defined by the Act). This is as follows: S2(1): "Continental shelf" means the seabed and subsoil of those submarine areas that	The Crown Minerals Act applies to minerals on or under the surface of "land", which includes land covered by water, including the foreshore and seabed to the outer limits of the territorial sea (s2). The Continental Shelf Act applies

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	S4 states the Act does not impose importation controls on fish and marine mammals taken in the EEZ.		extend beyond the territorial limits of New Zealand, throughout the natural prolongation of the land territory of New Zealand, to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (as described in sections 5 and 6 [[and 6A]] of the Territorial Sea and Exclusive Economic Zone Act 1977) where the outer edge of the continental margin does not extend to that distance	beyond 12nm to the EEZ 200nm limit or to the outer edge of the continental shelf, whichever is the furthest. For petroleum the processes and policies of the Crown Minerals Act apply out to the EEZ 200nm limit or to the outer edge of the continental shelf, whichever is the furthest. For other minerals and coal the Crown Minerals Act applies to 12nm and then the licensing provisions of the Continental Shelf Act apply beyond there to the EEZ 200nm limit or to the outer edge of the continental shelf, whichever is the furthest.
Commentary	Regional pest management strategies (PMSs) may be prepared in respect of a <i>region</i> and it is clear that a region is that area over which an authority exercises functions powers and duties of a regional council.	The Act does not provide any jurisdiction over the water column above the seabed. The definition of "conservation area" clearly specifies "land".	In effect the definition applies to the seabed and subsoil seaward of the territorial sea boundary to the shelf edge. It does not include the water column or airspace above the seabed.	The Continental Shelf Act gives Crown rights to minerals and petroleum in the seabed and subsoil. The spatial jurisdiction of the Crown Minerals Act and the Crown Minerals programmes are currently under review, with the intention of ensuring that similar processes and policies apply to the territorial sea and beyond the territorial sea out to the EEZ 200nm limit or to the outer edge of the continental shelf, whichever is the furthest.
Rights and Responsibilities (of resource users)	Part III responsibilities Many responsibilities are implicit in provisions of Part III of the Act. These set out the responsibilities of those persons in charge of craft entering NZ territory and of people entering NZ. Responsibilities relate to notification of authorities, prevention of any risk goods from leaving the craft, obeying directions of inspectors and similar border control matters Part IV responsibilities Part IV sets out a variety of duties and responsibilities, These include: - Section 43 establishes a duty on certain persons to provide information on pests, pest agents or unwanted organisms. - Section 46 establishes a duty on every person to report notifiable organisms (being those organisms declared by regulation to be notifiable organisms). - Section 52 states that no person shall communicate or release any pest of	These are defined for the Minister, Director General, NZ Conservation Authority and Conservation Boards, Guardians of Lakes Manapouri, Monowai and Te Anau, NZ Fish and Game Council. Maori freshwater fishing rights are stated to be unaffected by the Act. Existing lawful rights able to be exercised on commencement of the Act in 1987 were saved under transitional provision 64.	The Act vests all rights that are exercisable by NZ with respect to the continental shelf and its natural resources in the Crown – the limits of the continental shelf are required to be submitted to the International Seabed Authority in 2009. Rights to mine for petroleum on the continental shelf are controlled by importing the relevant provisions of the Crown Minerals Act (except that section 10 of that Act - the vesting of petroleum in the Crown - does not apply). Rights to mine for minerals on the continental shelf may be granted by licence from the Minister of Energy. No rights exist unless the Minister has made such a grant. The Minister may impose conditions (i.e. limits and rights or impose responsibilities) as he/she thinks fits. The Act also ensures that those Fisheries Act provisions (and regulations) that apply to the	S8 sets out the duties and restrictions on prospecting, exploring or mining for minerals – effectively no person can prospect, explore or mine without holding a current permit under this Act (or is authorised by a current permit holder). All petroleum, gold, silver and uranium are the property of the Crown (s10). The ownership of other minerals is reserved to the Crown whenever land is alienated from the Crown and all reservations of minerals made in earlier enactments are upheld (s11). Broadly speaking this means that Crown-owned minerals include metallic minerals, non-metallic minerals, industrial rocks, building stones and precious stones as defined in section 2 of the Act.. Note, however, under the Ngai Tahu (Pounamu Vesting) Act 1997, pounamu in the territorial sea [including seabed and subsoil] adjacent to the takiwa of Ngai Tahu whanui vests in and becomes the property of Te Runanga o Ngai Tahu.

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
	<i>unwanted organism</i> (except as otherwise provided). Section 53 states that owners of organisms known to be, or to harbour, a pest or unwanted organism must not sell or propagate or breed that organism. Part V responsibilities Specific responsibilities on resource users (and to a lesser extent rights) may be determined by any rules included in any national and/or regional pest management strategy. Such rules (allowed by section 69B and 80B) may be made for a variety of purposes including requiring occupiers to take specific actions or to record and provide information etc.		taking of oysters within New Zealand and New Zealand Fisheries waters also apply over the continental shelf. However regulations can be made to modify those provisions including extending the provisions to cover other sedentary species.	No person may prospect for, explore for, or mine Crown owned minerals unless they hold a permit issued under this Act, or are authorised to do so by a permit holder (s8). Minister grants permits in respect of any specified minerals on such conditions as the Minister thinks fit (s25). The Minister may not grant an exploration or mining permit to minerals that are "privately owned" Permit holders have the right to prospect, explore or mine subject to the conditions stated on the permit, with which they must comply (ss30&33). Permit holders own all minerals lawfully obtained (s31). Minister may require financial return to Crown and specify this in permit (s34). Minister may revoke permits (s39). Permits do not give right of access to land (s47), but right of entry during daytime for minimum impact activity (s49) – reasonable effort must be made to consult owners of Maori land –s80 sets out access arrangements for Maori land. Access arrangements to land for other than minimum impact activities must be agreed in writing (s54). Sections 12-15 provide for the preparation of Minerals Programmes. Section 12 states that the Minister shall prepare one or more minerals programme that sets out policies, procedures and provisions for: - The efficient allocation of rights in respect of Crown owned minerals - The obtaining by the Crown of a fair financial return from its minerals. Where there is no minerals programme, the Minister must still have regard to (a) and (b) above (s22). S22 requires that permits and applications for permits be dealt with in a manner consistent with any relevant minerals programme. Minister may grant permit on "such conditions as the Minister thinks fit", including specifying as a condition of the permit the terms on which the Crown is entitled to prospect, explore or mine under the permit.

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Commentary	The Biosecurity Act is not an act that controls access to resources and therefore does not deal explicitly with rights issues. It focuses much more on <i>responsibilities</i> of agencies and individuals with respect to managing and responding to biosecurity risks. (Certain owner rights may be derived from the compensation entitlement provisions of section 86. These relate to circumstances when the owner of organisms might be entitled to compensation when deprived of income as a result of a PMS) The border protection responsibilities in Part III (Importation of Risk Goods) are difficult to apply to the main pathway for marine pest introduction being ships' ballast and hull fouling as these are not associated with importation of specific goods.			Management of Crown owned minerals, through minerals programmes, aims to provide clarity to investors as to the conditions under which permits to prospect, explore or mine for particular minerals may be granted. Minerals programmes detail the operating rules and investment parameters, including the right to subsequent permits and the payment to the Crown of any royalties. Minerals programmes apply to all Crown owned minerals and do not apply to private minerals, except insofar as a prospecting permit may be granted over Crown and privately owned minerals under ss25 & 30. There are three Minerals programmes for: • Petroleum • Coal • Minerals other than coal or petroleum.
Functions and Powers	Ministers Administering the Act including making appropriate responses to biosecurity threats A Minister may prepare a National Pest Management Strategy (NPMS) and has functions in relation to administering proposals by others for NPMSs Ministers also have wide powers in respect of enforcement, biosecurity emergencies and the recommending of the making of regulations Government Agencies Government agencies (or more particularly directors-general, chief technical officers and inspectors have a range of functions and powers. Administrative powers are set out in Part VI Local Government Regional councils have various powers including ▪ monitoring and surveillance of pests; ▪ preparation and implementation of pest management strategies ▪ providing for management or eradication of pests in accordance with a PMS	These are defined for the Minister, Director General, NZ Conservation Authority and Conservation Boards, Guardians of Lakes Manapouri, Monowai and Te Anau, NZ Fish and Game Council. Minister Declare conservation areas, etc; authorise exchanges of stewardship areas or marginal strips; approve freshwater fisheries MPs and sports fish and game MPs; grant concessions with or without conditions; declare any land or interest in land a conservation park, an ecological area, a sanctuary area, a wilderness area, for any other specified purpose or purposes, or for 2 or more of those purposes; reduce or increase the width of marginal strips; declare controlled dog area or an open dog area; receive covenants and agree Nga Whenua Rahui Kawenata; appoint NZCA, Conservation Boards etc. Chief Executive/Department Management of land and natural and historic resources for conservation purposes; benefit of present and future generations; indigenous and recreational freshwater fish/habitat; foster use	Minister Functions flow from the applicability of other legislation – namely the Crown Minerals Act and the relevant Fisheries Act provisions and regulations (insofar as they relate to oysters). The Minister of Energy also has the function of granting licences for the exploration or mining of minerals. Government also has significant regulation making powers to limit or modify the application of the Crown Minerals Act (section 4) or the Fisheries Act (section 5) or in respect of the construction, erection or use of the “installations or devices” in, on or under the continental shelf, including establishing safety zones and associated management controls (section 8). Regulation may prescribe measures to be taken to protect living resources of the sea and natural resources of the shelf from “harmless agents” – 8(f).	Minister Under s6 the Minister of Energy has the following functions: ▪ Preparation of minerals programmes ▪ Granting of minerals permits ▪ Monitoring of the effect and implementation of minerals programmes and permits. These powers can be delegated to CE (Ministry of Economic Development), except functions relating to decisions and recommendations on minerals programmes. Exercise of Ministers functions and powers in respect of permits and applications for permits shall be consistent with policies, procedures and provisions in any relevant minerals programme (s22). All persons exercising powers and functions under the Act “shall have regard to the principles of the Treaty of Waitangi” s4

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
	declaration of implementation of a small-scale management programme Territorial authorities also have powers to act in accordance with a pest management strategy (they may also request a pest management strategy and/or be a management agency) Special purpose authorities Management agencies may be specified to implement a pest management strategy. These may be government agencies or local authorities but they might also be any body corporate – including entities established specifically for the task. NGOs NGOs have no specific function or power in addition to those available to the public generally. Public Any person has the right or power to prepare, and under section 58 to request that a Minister notifies, a proposal for a national pest management strategy. A similar right exists in respect on regional pest management strategies under sections 71 and 74.	of resources for recreation and tourism; prepare CMSs, CMPs, freshwater fisheries MPs; administration of permits, licenses, covenants, easements etc.; manage the Taupo fishery; etc Other authorities NZCA – advise Minister on statements of general policy; CMS and CMP approval; general advice. Conservation Boards – Recommend CMS for approval; CMP approval; general advice. Lake Guardians – make recommendations on administration and management of lakes. Fish and Game Councils – prepare sports fish and game management plans		
Commentary	The functions and powers specified in the Act clearly characterise it as an <i>empowering</i> Act. It contains few <i>obligations</i> on public entities to manage risks, merely providing the tools to do so. The empowering approach – particularly in the absence on a clear purpose (see above) is considered by some as a significant weakness. In practice, the Act is administered by 4 government agencies with operational roles and by local government. The government agency with the largest role is MAF. The MAF Biosecurity Authority (est. 1999) has a broad mission to manage all risks Three other agencies have roles and specific biodiversity votes. These are MFish, DoC and MoH. MFish is the agency responsible for marine biosecurity. All agencies report to the Minister of Biosecurity. MoUs between these	In general only the Minister and DG have any functions and powers with respect to the marine environment - and these tend to relate to other special purpose Acts such as the Marine Mammals Act and the Marine Reserves Act.	Three regulations have been promulgated under the Act. These all relate to controlling safety on and around off shore installations. They are: (d) The Continental Shelf (Floating Storage, Productions and Off-Loading Safety Zone Regulations (e) The Continental Shelf (Maui A Safety Zone) Regulations (f) The Continental Shelf (Maui B Safety Zone) Regulations	

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	agencies help to clarify what is a complex and at times confusing governance structure. The lack of an agency with overall responsibility is a common criticism. MAF Biosecurity Authority nominally has the role of lead agency up to the point on initial incursion response. This does not apply for marine biosecurity except possibly for disease of marine commercial species. This role was formalised through a MoU. The co-ordination problem across the biosecurity agencies has been acknowledged for several years. To help co-ordinate that various players and priorities a Biosecurity Council was established in the late 1990's. It has no statutory authority. The Biosecurity Council operates at the strategic rather than operational level. Furthermore its effectiveness in achieving intergovernmental co-ordination is limited by duplicate roles of its membership. A Pest Management Advisory Committee also exists to advise the Minister for Biosecurity. The Ministry of Fisheries has prepared a risk management decision-making framework which is informing the preparation of a <i>Marine Biosecurity Operational Plan</i>. The framework sets out values and minimal and optimal levels of achievement in relation to those values. This plan seeks to achieve optimal allocation of MFish biosecurity resources by establishing priorities according to perceived risk.			
Implementation measures / tools	National Many of the procedures for managing risk goods are set out in the Act itself and administrative responsibilities allocated to government officials Import Health Standards may be issued by the Director-General (most are issued by MAF). These standards detail the conditions relating to transit, importation and quarantine that must be met by products entering New Zealand. They may require a permit to be issued for specific actions. (They may also require actions to be taken in the country of origin)	National Special land status General Policy Sub national Conservation Management Strategies Conservation Management Plans Freshwater Fisheries Management Plans Sports Fish and Game Management Plans Concessions [including leases, easements, permits and licenses] Dog Control permits Covenants [including Nga Whenua Rahui Kawenata]	Regulations as noted above. In addition, any licence granted outside 200 nm, is subject to a condition to pay Crown royalties [as is the case inside the EEZ].	National Permits are main implementation measure. Under s35 permits are normally for the following durations: (a) Prospecting – 2 years plus renewal for up to 2 additional years (b) Exploration – 5 years plus renewal for up to 5 additional years (c) Mining – 40 years.

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	National pest management strategies may be issued by a Minister (including rules or specific actions to be taken by authorities or management agencies). Emergency powers – and the ability to make emergency regulations -are also provided for (section 145). These enable a Minister to do whatever is necessary to respond to the emergency. Sub national Regional pest management strategies (including rules or specific actions to be taken by local authorities or management agencies) Wide powers exist under Part VI to enable implementation and enforcement of a pest management strategy. Declaration of a small-scale management programmes by a regional council. This procedure enables a regional council to undertake small-scale management notwithstanding that there may be no pest management strategy empowering it to take the required action. Regulatory National and regional rules may be applied through pest management strategies to implement or safeguard the efficacy of a strategy Financial Bonds may be taken to secure compliance with importation of risk goods (Part II). Pest management strategies may be funded by a levy (but only if authorised by regulation under the Act). Regional Councils may fund regional PMSs from rates. Services and functions provided by the Department may also be funded by a levy.	Regulatory Regulations Financial Royalties		
Commentary	The Pest Management Strategy tool is often criticised on two counts:	Most of these implementation tools provide for public notification and participation by means of		

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	- They are costly and complex to prepare - They are species based – not ecosystem or area based, which allows agencies to manage pest species but not to manage particular sites or systems in an integrated way. The Biosecurity Act is enabling rather than prescriptive and PMSs are not mandatory. Agencies (particularly local government) are restricted in what they can do in the absence of a PMS. Currently there are only two NPMSs (the Bovine TB strategy and the American Foulbrood strategy). A further NPMS is being considered for the Varoa mite. There are no NPMSs that apply to risks in the marine area. (Work was being undertaken on a NPMSs for Undaria however this work has been discontinued. With Undaria declared an unwanted plant, and levying stakeholders unrealistic, the marginal benefit of a NPMS was considered too low to warrant the effort). While each of the regional councils has at least one regional pest management strategy, the focus on marine biosecurity is limited (mainly to surveillance). A project funded under the Biodiversity Strategy focuses on raising capacity to address marine biosecurity at the regional level.	submissions and opportunities to be heard. No appeal rights are provided – other than the normal recourse to judicial review of decision.		
Decision-making processes	National Most of the decisions made under Part III (importation of risk goods) are administrative decisions made by officers of government agencies. No particular decision-making processes apply. Other decisions (such as designating quarantine areas) are made by notice in the Gazette. Decision-making processes for national PMSs are lengthy, although a Minister may decide that a proposal does not comply or has no merit (s 59). If, however, a proposal is to be taken forward it must be publicly notified (s.62) and submissions invited. A Board of Inquiry is	Decisions under the Act follow functions - involving all parties mentioned above - unless delegated under sections 57 [Minister] or 58 [DG]. Decision-making processes are generally open to public participation and submission. Where provided, reviews of decisions are both direct and via the courts.	No decision-making processes are prescribed by the Act. The issuing of licenses to explore or mine is at the discretion of the Minister of Energy. Decision-making under the Crown Minerals Act and the Fisheries Act is in accordance with the processes established by those Acts	National Centralised decision-making – Minister grants permits and prepares minerals programmes Delegations Minister may delegate granting of permits to CE, but not decision-making relating to minerals programmes (s6).

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
	established (unless the Minister considers a BoI unnecessary) which may hold hearings and make a recommendation to the Minister. If the Minister considers that the proposed PMS should be approved a recommendation is made to the Governor-General that an order in Council be made to make a national PMS (s.68). On the recommendation of a Minister the Governor-General may declare a biosecurity emergency (triggering the ability to use emergency powers). There is little process prescribed although criteria are specified (s.144). Sub national The process for approving regional PMSs 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. Specific and extensive criteria for guiding decisions on PMSs are set out in the Act (these focus on ensuring benefits exceed costs and funding costs are appropriately apportioned). Delegations and transfers The administrative provisions of Part VI set out various forms of delegations and authorisations (including for example, the appointment of Chief Technical Officers, Inspectors and other authorised persons). Most of these delegations relate to Part III functions although many are applicable to the implementation of PMSs (and the exigency actions of Part VII). Under Part III the CTO for MFish can only recommend to DG re issuing of an IHS. Border functions are delegated to inspectors who can only be appointed by DG of MAF (s103(1)(a)) While most functions can be transferred between local authorities, the Act does not permit the transfer of the decision-making function with respect to regional PMSs.			

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
	Non-public authorities Management agencies may make management decisions consistent with the PMS for which they are responsible Public participation There is a general obligation on the Director-General to consult “persons representative of those classes of persons having an interest prior to recommending an Import Health Standard. Public participation is provided for in the preparation of PMSs (s.73) – including rights to make submissions and be heard once a PMS is notified. The public also has the right to propose a PMS The Minister is also required to consult (“to the extent practical”) before recommending that a biosecurity emergency be declared Tangata Whenua There is no “Treaty Clause” in the Act. There is a specific requirement to consult tangata whenua in the preparation of a regional PMS. Potential effects on matters related to Maori is specified as a reason why a PMS (national or regional) might be notified (s.57 and s.72). Appeals Decisions on regional PMSs (only) may be appealed to the Environment Court.			
Commentary		Two broad sorts of decisions are made under the Act: 1) Relating to management strategies and plans; and 2) Relating to concessions. Both are made internally [i.e. by the Minister or the Department] - although non-departmental staff might be used to hear submissions or review applications. Decisions made on strategies and plans have rarely been appealed to the courts.	(See comment under “allocation processes”)	

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
Information gathering mechanisms	Public Authorities Information on biosecurity risks is gathered in a variety of ways. Obligations exist under: - Part III for importers to keep records; and (more particularly) - Part IV (Surveillance) for persons to provide information (s.43) and report notifiable organisms (s.46). (Wide powers to require information are further provided in section48). Information is also gathered through the provisions of Part V that allow PMS rules relating to the keeping of records and provision of information. In addition, the Minister has a general power to require information from any regional council or management agency (s.12) Local authorities are empowered to gather information (s.13 and s.14).	Not specified in detail, although Part IIIB relating to concessions provides for this activity as a condition of application and approval.	None specified	Surveys (ss29 & 42), and a requirement for permit holders to keep detailed records and reports in respect of all prospecting, exploration, and mining activities. S105 provides for ad hoc regulations that may, among other things, prescribe the information to be supplied with permits.
Commentary	The Crown and regional councils fund active and passive surveillance programmes in a number of sectors and regions and in some cases these are complemented by industry activities. <i>Information from MAF website:</i> MAF's surveillance programmes have involved substantial contracts with 3rd parties for the supply of surveillance information, which has been underpinned by government owned reference laboratories that specialise in diagnostics of animal and plant pests and diseases. In addition there are some key databases (e.g. PPIN) that support surveillance activities. Over the last few years the government has recognised the need to expand its traditional "agriculture" focus of its surveillance programmes to not only cover indigenous flora and fauna, but also the marine environment. (MAF's surveillance does not cover the marine area.) In addition concerns about increasing risks from	There is no requirement under the Act for the Department to report on the state of NZ's conservation estate, although this is done in passing through the Annual Report to Parliament and other management releases. It does have a broad function under s6 to prepare, provide, disseminate, promote, and publicise educational and promotional material relating to conservation.	Information is required in making applications for mining licenses but what is to be covered is not specified.	

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	"environmental" pests have resulted in more surveillance activity focused on finding such pests arriving via trade routes, ships etc such as snakes and ants, and many marine invaders. The Ministry of Fisheries (MFish) has commenced its surveillance programme to detect organisms new to New Zealand's marine environment. In 2001 it implemented surveillance regime in selected high-risk locations, including ports and other high-risk points of entry, and areas adjacent to these types of locations. Additional surveillance coverage is provided by the public and other marine enthusiasts (e.g. dive clubs) supported by various MFish awareness initiatives. MAF Quarantine inspectors and regional councils also undertake surveillance roles in relation to marine biosecurity. Overall MFish is taking a staged approach to implementing these initiatives over the next four years The MoH, DoC and regional councils also have surveillance programmes. An independent review of these surveillance systems has recently been undertaken partly in response to public concern over the need to detect unwanted organisms early enough to introduce eradication programmes. It is generally accepted that surveillance capacity needs to be increased; a view confirmed by the review (although the review did find the MFish surveillance programme to be exemplary).			
Monitoring	State of the Environment The biosecurity surveillance programmes operated by Government departments aim to detect "new to NZ" organisms, and verify the health status of animal and plant populations. Functions and performance Minister is responsible for the administration of the Act but no specific duty to monitor functions or performance is stated.	Monitoring is not specifically identified as a function. It may be imposed as a condition on a concession under Part IIIB.	No monitoring obligations are specified under the CSA	Monitoring – s20 Minister shall review minerals programme within 10 years by preparing a replacement minerals programme

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
Commentary	A requirement for SoE or actual and potential "impact" reporting might be considered <i>implicit</i> in Part V. Sections 57 and 72 specify effects on environment as a reason justifying a PMS. That said it should be noted that the test is only that an organism "is capable of causing...adverse and unintended effect...". Marine biosecurity indicators are being developed in the Environmental Indicators programme. (See separate review of the indicators programme.)	Through the Annual Report and its various scientific and other publications the Department summarises its monitoring activities for public record.	The monitoring of any licenses issued under the CSA might be a condition of the license but this is not explicitly stated.	
Legislation linkages	Specific linkage is established with a range of legislation (including the Fisheries Act, Conservation Act, Trade in Endangered Species Act etc) by Section 7. This section states that those Acts are not affected by the Biosecurity Act (with some exceptions). Section 7A sets out aspects of the relationship with the RMA. It basically provides for the possibility of an exemption from controls under the RMA that might restrict the actions required under the Biosecurity Act to eradicate an organism	The Act links to all other acts administered by the Department, referred to and included as the First Schedule. One of the more important linkages is to apply s4 of the Act relating to the obligation to give effect to the principles of the Treaty of Waitangi to all scheduled acts to the extent that it is relevant - this has been confirmed by Court rulings.	Linkage is made to the Crown Minerals Act stating that the Act applies to the continental shelf. Linkage is also made to the Mining Act and the Coal Mines Act stating that licences granted by the Minister of Energy may include conditions requiring compliance with provisions of those Acts.	S9: "Compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, bylaws and rules of law." Nothing in the Land Transfer Act 1952 shall limit or affect rights under permits or rights of access (s85). Part 2 specifies that existing privileges under the Mining Act 1971, Coal Mines Act 1979, Petroleum Act 1937, Iron and Steel Industry Act 1959 continue under this Act (and the RMA). Minister may appoint and authorise enforcement officers under the RMA in relation to compliance with a permit (s7). Prospecting, exploring or mining for Crown owned minerals in the internal waters of the Coromandel Peninsula is a prohibited activity. The Crown Minerals Act does not address environmental and health and safety matters relating to prospecting, exploration and mining. These matters are provided for in the RMA and Health and Safety in Employment Act. The Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977 and Continental Shelf Act 1964 import the relevant provisions of the Crown Mineral Act for the purpose of dealing with applications for mining etc within the EEZ / and continental shelf.
Commentary		The key acts listed in the schedule include: Marine Mammals Protection Act 1978; Marine Reserves Act 1971; National Parks Act 1980;	The linkage with the Crown Minerals Act is potentially problematic. The Crown Minerals Act (see separate review) applies only to the	

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
		Sugar Loaf Islands Marine Protected Area Act 1991; Trade in Endangered Species Act 1989; Wild Animal Control Act 1977; Wildlife Act 1953.	territorial sea. The legality of importing a statute to apply outside its specific jurisdiction has yet to be tested. The absence of broader linkages may also be a problem. The recent decision to close certain sea mounts to fishing has raised questions about the linkage to the CSA since it is theoretically possible that sea mounts can be closed to fishing but made available for minerals prospecting or mining under the CSA. This possibility was highlighted by a recent case and demonstrates that lack of integration and overall policy framework.	
Allocative processes	N/A	Not stated.	Licences in respect of mining (as noted above) and the Crown Minerals Act process with respect to petroleum, oysters, other shellfish and sponges subject to allocative process of fisheries legislation.	- Any person may apply for permit, whether or not there is a minerals programme for the mineral (s23). - Allocation of permits by public tender, unless a minerals programme expressly states otherwise (s24). - Where there is no minerals programme, the applicant whose application is received first has a priority right over all other applicants (s26).
Commentary		Through Part IIIB concessions can be granted for particular purposes and are one of the main processes by which allocations of activity [e.g. harvesting] and space are made.	While a licensing process is enabled by the CSA the detail of this process is unspecified. It is understood that there has only been one license issued at this point (a prospecting license issued to Neptune Resources). In issuing that license MED devised a process involving the applicant providing an environmental statement that was circulated to government agencies for comment. Conditions placed on the licences reflected agency comments. The absence of any specified process for minerals (other than petroleum) does little to assist business confidence in minerals exploration outside of the territorial sea.	
Environmental assessment procedures	Not stated.	EA procedures are applied under Part IIIB relating to concessions applications.	Not stated.	None required as Crown Minerals Act operates inside the territorial sea in tandem with the Resource Management Act. Where the Crown Minerals Act is used to issue licenses for petroleum prospecting, exploration and mining outside the territorial sea could be

	Biosecurity Act 1993	Conservation Act 1987	Continental Shelf Act 1964	Crown Minerals Act 1991
				required
Commentary	The requirements to consider costs and benefits of taking action via a PMS might well require a proponent to consider the environmental impact of taking or not taking action.	The EA specifications are contained in the standard operating procedures for concessions developed by the Department, not in the legislation.	The licensing regime is unclear. It seems that it is broad enough such that a Minister may require EIAs or otherwise take environmental matters into account but there is no requirement to do so in the statute itself.	Within the EEZ, regulations may be made to protect the marine environment under the Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act. While no such regulations currently exist regulations could presumably be promulgated to apply to mining activities. There may also be power to promulgate environmental regulations under the Continental Shelf Act (CSA) but this seems less clear (See review of CSA)
Conflict resolving mechanisms	Disputes over the imposition of levies (for the funding of PMSs) may be resolved by arbitrators (s.96). Disputes over the content of regional PMSs are resolved by the Environment Court. Disputes over the imposition of levies (for the funding of services of functions performed by the Department) may be resolved by arbitrators (s 142).	Opportunities for articulating conflict matters exist throughout the various processes for plan development. Once plans are adopted, mechanisms for variations must be used.	The civil and criminal justice system applies to installations or devices on the continental shelf, unless a regulation states otherwise.	Arbitration (s99)
Commentary		As decision-making under this Act is essentially internal to the Minister and Department, clear operating protocols are required to ensure that any relevant conflicts of interest are properly addressed.	The process for issuing of licenses may resolve conflicts though how it might do so is at the discretion of the Minister	
Compliance / Enforcement	Section 154 sets out an array of offences against the Act. Prosecutions may be brought against those committing offences. Penalties are specified in section 157 (and vary according to the nature of the offence). Inspectors may also issue infringement notices for minor offences (\$200 dollar fine) Enforcement may be carried out by inspectors, and other authorised persons in accordance with the administrative provisions of Part VI. . Penalties for eg: ignoring a direction are relatively low - \$1,500 and for corporations \$15,000.	S40 provides powers for warranted officers. Proceedings are taken under the Summary Proceedings Act 1957. The Act adopts the doctrine of strict liability.	Section 7 applies criminal and civil law to actions or omissions occurring in relation to any installation of device on the continental shelf as if those actions occurred in New Zealand. Powers of search and arrest etc apply	Every person commits an offence who contravenes section 8 (which imposes duties and restrictions) – s100. Act sets out penalties and legal proceedings, liability, etc. ss101-104. Minister may appoint and authorise enforcement officers under the RMA in relation to compliance with a permit (s7).
Commentary				

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
Long Title	An Act to – (a) Reform the law relating to customs, excise, and other duties; and (b) Provide for the administration and enforcement of Customs controls at the border; and (c) Repeal the Customs Act 1966; and (d) Provide for related matters	An Act to prohibit driftnet fishing activities and to implement the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific.	An Act to - (g) Provide for the establishment of the office of Parliamentary Commissioner for the Environment (h) Provide for the establishment of the Ministry for the Environment (i) Ensure that, in the management of natural and physical resources, full and balanced account is taken of— (i) The intrinsic values of ecosystems; and (ii) All values which are placed by individuals and groups on the quality of the environment; and (iii) The principles of the Treaty of Waitangi; and (iv) The sustainability of natural and physical resources; and (v) The needs of future generations	An Act (a) To reform and restate the law relating to fisheries resources; and (b) To recognise New Zealand's international obligations relating to fishing; and (c)) To provide for related matters
Commentary		Act implements the 1989 Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific		The Fisheries Act has been subject to numerous reviews over the years. The most recent review, the Hartevelt Review recommended that: ▪ The roles of Government and fisheries stakeholders be fundamentally realigned. ▪ Transparent, integrated consultation and decision-making processes be implemented. ▪ The Quota Management System (QMS) be simplified and made less prescriptive. ▪ Some responsibility for fisheries management be handed to fisheries rights holders. These recommendations are in the process of being implemented through a suite of reforms introduced through the Fisheries Amendment Act 1999. The reforms include measures such as fisheries plans, replacing criminal penalties with civil penalties for balancing regime offences and some minor infringements where instant fines can now be issued, and other measures, some of which are commented on below.
Purpose	No purpose beyond the long title.	Widespread prohibitions on fishing with long driftnets (i.e. > 1km) and related activities (e.g. transportation, processing, etc. of fish taken by driftnet.)	Purpose specified in long title	1) The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability. 2) In this Act - "Ensuring sustainability" means-

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
				(a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and (b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment: Utilisation" means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural well-being.
Commentary	In essence, the purpose of the Act is to provide the border management infrastructure, specifying where people, craft and goods can legally cross the physical border and requiring a declaration to be made about the nature of any transaction. Agencies other than the Customs service benefit from the provisions of the Act that prohibit the entry or exit of risk, goods, craft and people. (Over 20 government agencies use border and excise management as part of their overall strategy for managing risks to government outcomes).	The Act is very narrowly focussed on specifying prohibitions, powers of enforcement, offences, etc. relating to driftnet fishing.		There is considerable tension between "utilisation" of the fishery resource and "ensuring sustainability", which under the Act is defined as sustainability of the target fish stock (i.e. stocks are fished to a level described as "maximum sustainable yield"). This tension has resulted in vigorous debate between the commercial fishing industry, which argues that sustainable "utilisation" is the primary purpose; while, environmental groups argue that "sustainability" should be interpreted more widely, and take precedence over "utilisation". This difference of interpretation is not helped by the lack of clearly articulated framework within the Act, or in policy, for integrating the environmental principles (s9) with fish stock sustainability measures. Consequently the Minister and MFish must resolve issues on a case-by-case basis, and stakeholder sometime sees this as ad hoc implementation of the purpose of the Act.
Principles	None stated	None stated.	None stated. However, the matters listed in the Long Title and the criteria listed under "decision making" both have the characteristics of principles.	s9. Environmental Principles: All persons exercising or performing functions, duties, or powers under this Act shall take into account: (a) the maintenance of the long-term viability of associated or dependent species (b) the maintenance of aquatic biodiversity and (c) the protection of habitat of particular significance for fisheries management s10 Information Principles: All persons exercising or performing functions, duties, or powers under this Act, are required to (a) base decisions on the best available information

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
				(b) consider any uncertainty in the information (c) be cautious when information is uncertain, unreliable, or inadequate (d) Not use the absence of, or any uncertainty in, any information as a reason for postponing or failing to take any measure to achieve the purpose of this Act. While S5 does not appear in Part 2 of the Act, which sets out the Principles, it does require that all persons exercising functions, duties and powers under the Act "shall act in a manner consistent with" (d) NZ's international fishing obligations, and (e) The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
Commentary				There appears to be a disjunction between the environmental principles and the tools within the Fisheries Act, which are largely based around managing specific fish stocks rather than managing non-target species, aquatic biodiversity and habitat. There is also some friction between the information principles and the management tools within the Act, which require detailed information on fish stocks, which is often not available or subject to high levels of uncertainty. Consequently decision makers are frequently required to make decisions in the absence of "good" or "certain" information, and there is much debate about what is "certain" or "uncertain". There is considerably more information relating to specific fish stocks than the environmental principles. MFish has developed policy definitions for both principles to assist in their interpretation and application; however, fisheries stakeholders debate these definitions. The extent to which fisheries managers and decision-makers take account of these principles is also unclear. Beyond the policy definitions (which are used and interpreted variously) there is no framework (or criteria) for applying the principles consistently with the result that fisheries stakeholders argue that the principles are applied in an ad hoc manner through the sustainability measures process. MFish is now developing an Environmental Management Strategy (EMS), which could provide a framework for more consistent application of the environmental principles, however, it is unclear when and exactly how the EMS will be implemented.
Spatial jurisdiction	Defines New Zealand as "the land and the waters enclosed by the outer limits of the territorial sea of New Zealand", including the contiguous zone for certain sections of the Act.	Applies to all vessels in New Zealand fisheries waters, and any NZ vessel fishing in Convention Area (i.e. high seas between 10°N and 50°S, and all waters under fisheries jurisdiction of any party to Convention).	Applies to NZ environment and environmental legislation including Continental Shelf Act and Antarctic legislation.	NZ internal waters, territorial sea, EEZ and High Seas. S5 requires that the Act should be interpreted and applied in a manner consistent with New Zealand's international fisheries obligations. Part VI sets out the requirements for fishing on the High Seas and specifies the compliance regime.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
				The Act also refers to "New Zealand fisheries waters", which are defined as: (c) All waters in NZ's EEZ (d) The territorial sea (e) All internal waters of New Zealand, and (f) All other fresh or estuarine waters within NZ where fish, aquatic life, or seaweed that are indigenous to or acclimatised to NZ are found". Compliance powers of NZ fishery officers extend beyond NZ fishery waters into the high seas.
Commentary				For management purposes the EEZ has been divided into 10 Fishery Management Areas (FMAs). Quota Management Areas (QMAs) have also been established for each QMS species - QMAs comprise one or more FMAs depending on the geographical distribution of each fish stock. Within the QMAs there are 52 Statistical Areas (in the Territorial Sea) authorised under S20 of the Fisheries (Reporting) Regulations 1990, plus an additional 748 non-authorised statistical areas in the EEZ. Statistical areas are used for reporting purposes. Jurisdictional issues are most significant for the nearshore marine environment where the Fisheries Act intersects with the RMA. Section 6 of the Fisheries Act states that no provision in any regional plan or coastal permit under the RMA is enforceable to the extent that it provides for preferential allocation of access to one or more fishing sectors of fisheries resources in the coastal marine area; or the conferral on any fisher the right to occupy land in the coastal marine area, if that right would exclude any other fisher from that area.
Rights and Responsibilities (of resource users)	N/A.	Removes right to fish with driftnet in South Pacific.	N/A.	Rights of resource users are provided under the quota management system (QMS), for those species within the QMS. Under the QMS individual transferable quotas (ITQs) provide secure tradeable rights in perpetuity to fish commercially for QMS species. Quota shares in a fish stock represent a proportional amount of the total allowable commercial catch for the

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
				stock. ITQ or quota holders can fish their quota, sell it, or lease it to another fisher. They do not own the fish in the sea, just the right to fish it and the lawful catch itself. The Fisheries Act provides less well-defined rights to recreational and customary Maori fishers, to the extent that section 21 provides for a share of the total allowable catch. Area management tools for customary maori fishing, including mātaiai and taiapure are also provided for. Commercial fishing of non-QMS stocks is managed through permits and regulations for species, areas and methods. With a few exceptions, notably tuna, beachcast seaweed and spat, the right of access to these fisheries was determined by the catch history held by fishers in September 1992 (s93). (The permit moratorium was implemented in 1992 to prevent significant increase in fishing outside QMS and any consequential conflict with the 1992 Treaty of Waitangi [Fisheries Claims] Settlement Act.) Non-QMS fishers have the responsibility to report catch and comply with catch, method, and other restrictions. Responsibility for quota registry has been devolved to an industry owned approved service delivery organisation.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
Commentary	Various parties have responsibilities – such as providing advance notice of arrival in NZ - but these are not germane to oceans issues.			There are approximately 50 species currently managed under the QMS, with more than 100 commercially fished species management outside QMS. Most of the significant species (by value and volume) are within the QMS; however, there are poorly specified rights, responsibilities and management frameworks for those species that remain outside the QMS. Over recent years there have been a number of cases before the courts relating to catch allocation in non-QMS fisheries. While the Crown has mostly successfully defended these cases, the decisions have sometimes been very critical of MFish decision-making processes and advice to the Minister. Species outside the QMS do not form part of the Treaty of Waitangi Fisheries Settlement and Maori remain excluded from access to nonQMS species. MFish are currently working to introduce a further 50 species into the QMS over the next five or so years, in an effort to address this issue. However there are also significant issues (allocation, equity, etc) relating to introducing species into the QMS. It is possible that these difficulties may encourage the Crown and Maori to explore options for delivering on the Deed of Settlement outside the QMS, especially for minor species. Rights for recreational fishers are currently poorly specified. MFish, following a Cabinet directive, are currently developing a management framework for the recreational fishing sector, which will better specify their rights in relation to the commercial and customary sectors.
Functions and Powers	Governor-General Making of regulations Appointment of Customs Appeal Authority Chief Executive Has various functions and powers For example: ▪ Designation of customs places ▪ Licensing of customs controlled areas ▪ Giving customs rulings (on the applications of tariffs) ▪ Issuing penalty notices ▪ Appointment of customs officers	MAF Director General has power to deny entry & supply to driftnet fishing vessels Enforcement officers (Navy, Armed Forces, and Fisheries Officers) have widespread powers (see compliance below)	Commissioner for the Environment The functions of the Commissioner shall be – (a) With the objective of maintaining and improving the quality of the environment, to review from time to time the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources, and to report the results of any such review to the House of Representatives and to such other bodies or persons as the Commissioner considers	Extensive functions and powers to Governor General, Minister and Chief Executive. Key powers include: Governor General GG may alter QMAs. Regulations for nonQMS fishing set and levies for purpose of cost recovery imposed by GG by Order in Council. GG may declare taiapure-local fisheries for customary Maori fishing. Minister

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
	- To summarily deal with petty offences (s.223) - Make rule for certain matters (s.288) Customs officers The Act gives customs officers considerable powers and discretion to act. These powers include powers to: - Patrol - Search - Question - Seize - Detain, - Assess duty - Enter premises		appropriate (b) Where the Commissioner considers it necessary, to investigate the effectiveness of environmental planning and environmental management carried out by public authorities, and advise them on any remedial action the Commissioner considers desirable (c) To – (i) Investigate any matter in respect of which, in the Commissioner's opinion, the environment may be or has been adversely affected, whether through natural causes or as a result of the acts or omissions of any person or body, to an extent which the Commissioner considers warrants investigation; and (ii) Advise, where necessary, the appropriate public authority and any other person or body the Commissioner thinks appropriate of the preventive measures or remedial action which the Commissioner considers should be taken; and (iii) Report the results of the investigation to the House of Representatives (d) At the request of the House of Representatives or any select committee of the House of Representatives, to report to the House or committee on any petition, Bill, or other matter before the House or committee the subject-matter of which may have a significant effect on the environment. (e) On the direction of the House of Representatives, to inquire into any matter that has had or may have a substantial and damaging effect on the environment, and to report the results of the inquiry to the House. (f) To undertake and encourage the collection and dissemination of information relating to the environment (g) To encourage preventive measures and remedial actions for the protection of the environment	The Minister of Fisheries sets sustainability measures / catch limits for QMS species. Minister to set standards and specification for (approved service delivery organisations - ASDO) – the administration of QMS registry has been devolved to the ASDO "Fish Serve", which is owned by the fishing industry. Minister approves mataitai reserves. Chief Executive MFish CE may amend, suspend, revoke, vary, etc nonQMS fishing permits; responsible for reporting and compliance / appointing fishery officers, who have powers of entry, search, summons, arrest and to seize property. MFish fishery officers may exercise their powers within and outside NZ fishery waters. CE may contract/transfer any agency or corporation to perform specified functions and powers e.g. to the ASDO "Fish Serve". Kaitiaki Kaitiaki are nominated by tangata whenua and appointed by the Minister. Under Kaimoana fishing regulations only kaitiaki have power to authorise customary fishing in their area.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
			Ministry for the Environment a) To advise the Minister on all aspects of environmental administration, including— (i) Policies for influencing the management of natural and physical resources and ecosystems so as to achieve the objectives of this Act (ii) Significant environmental impacts of public or private sector proposals, particularly those that are not adequately covered by legislative or other environmental assessment requirements currently in force: (iii) Ways of ensuring that effective provision is made for public participation in environmental planning and policy formulation processes in order to assist decision making, particularly at the regional and local level b) To solicit and obtain information from any source, and to conduct and supervise research, so far as it is necessary for the formulation of advice to the Government on environmental policies: c) To provide the Government, its agencies, and other public authorities with advice on— (i) The application, operation, and effectiveness of the Acts specified in the Schedule to this Act in relation to the achievement of the objectives of this Act (ii) Procedures for the assessment and monitoring of environmental impacts (iii) Pollution control and the co-ordination of the management of pollutants in the environment (iv) The identification and likelihood of natural hazards and the reduction of the effects of natural hazards (v) The control of hazardous substances, including the management of the manufacture, storage, transport, and disposal of hazardous substances (d) To facilitate and encourage the resolution of conflict in relation to policies and proposals which may affect the environment. (e) To provide and disseminate information	

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
			and services to promote environmental policies, including environmental education and mechanisms for promoting effective public participation in environmental planning. (f) Generally to provide advice on matters relating to the environment.	
Commentary				Implementation of the Act relies largely on extensive centralised decision-making by the Minister on advice from MFish. Decisions are frequently challenged in the court with judgements, mostly up- holding decisions on point of law but often commenting on poor decision-making processes.
Implementation measures / tools	The primary implementation tools are the powers and the operational activity of the customs service. Regulations may be made under sections 38, 286 and 287 to address a broad range of matters (relating to the use of customs controlled areas, duties, associated administrative matters and fees and charges). Customs rules relating to a range of administrative matters (s.288)		The Environment Act essentially establishes central government's governance arrangements for the environment and associated administrative powers. It is not a management statute in the regulatory or operational sense. The only tools that might be relevant are the tools of inquiry, recommendations, monitoring and advice.	National At the national level the QMS provides the management framework for those commercial fisheries in the QMS. Sub national Minister makes decisions on specific sustainability measures for QMS species, allocation of catch limits amongst commercial, recreational and customary sectors, and the nature and costs for fishery services which are recovered through industry levy. There is little integration between the various decisions. Provision for decision making through multi stakeholder fisheries plans for individual fisheries has been introduced to provide for increased stakeholder participation and more integrated decision-making. Customary fishing regulations provide for customary Maori fishing. Regulatory Non-QMS fisheries are managed by regulations. Recreational fishing is managed under the amateur fishing regulations that set catch limits, size restrictions, etc. Financial The fishing industry is levied for fisheries research and the conservation services levy.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
				Market Individual transferable quota in QMS species is fully tradeable – see rights and responsibilities above and allocative processes below.
Commentary	One regulation has been promulgated - The Customs and Excise Regulation 1996 which sets out the core administrative detail to allow the Act to be implemented.			As yet there are no fisheries plans in force, possibly because they are proving difficult and expensive for stakeholders, but also because MFish has yet to finalise the fisheries plan framework/policy. In the absence of fisheries plans, the default management regime is Minister's centralised decision making processes.
Decision-making processes	National Regulations may be made by the Governor-General Licenses may be issued (for customs controlled areas), rules made and rulings issued by the Chief Executive. Decision-making processes are not specified (although see <i>conflict resolution</i> for detail on appeals). (All other decisions under the Act are operational in nature).		Not applicable in a regulatory sense. However, in undertaking functions specified the Commissioner and the Ministry have to consider the following: (a) The maintenance and restoration of ecosystems of importance, especially those supporting habitats or rare, threatened, or endangered species of flora or fauna; (b) Areas, landscapes, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic, and scientific value (c) Any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of the heritage of the tangata whenua and which contribute to their wellbeing (d) The effects on communities of people of— (i) Actual or proposed changes to natural and physical resources: (ii) The establishment or proposed establishment of new communities: (e) Whether any proposals, policies, or other matters, the consideration of which is within the Commissioner's functions, are likely to— (i) Result in or increase pollution; or (ii) Result in the occurrence, or increase the chances of occurrence, of natural hazards or hazardous substances; or (iii) Result in the introduction of species or genotypes not previously present within New Zealand (including the territorial sea); or	Centralised decision-making processes by either Governor General or Minister (on advice from MFish) or Chief Executive. See comments under functions and powers, and implementation measures above.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
			(iv) Have features, the environmental effects of which are not certain, and the potential impact of which is such as to warrant further investigation in order to determine the environmental impact of the proposal, policy, or other matter; or (v) Result in the allocation or depletion of any natural and physical resources in a way or at a rate that will prevent the renewal by natural processes of the resources or will not enable an orderly transition to other materials (f) All reasonably foreseeable effects of any such proposal, policy, or other matter on the environment, whether adverse or beneficial, short term or long term, direct or indirect, or cumulative (g) Alternative means or methods of implementing or providing for any such proposal, policy, or matter in all or any of its aspects, including the consideration, where appropriate, of alternative sites.	
Commentary				Majority of decisions relate to specific commercial fish stocks and are poorly integrated. Impacts on other fish stocks, fish by-catch, and aquatic environment are not taken into account in any structured way. Decisions usually relate to catch limits, method or area restrictions and have significant commercial impact.
Information gathering mechanisms	Information may be gained from patrolling wharfs and the foreshore and surveillance and the physical checking of vessels and goods. Customs service operates the <i>Hawk</i> launch for inshore patrolling. A <i>Coastwatch</i> programme also operates as a volunteer service designed to alert customs officers to unusual arrivals of craft in remote areas		Section 19 states - 1) (1)The Commissioner may from time to time require any person who in the Commissioner's opinion is able to give any information relating to any matter which is being investigated or inquired into by the Commissioner to furnish to the Commissioner any such information and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter and which may be in the possession or under the control of that person 2) The Commissioner may summon before the Commissioner and examine on oath any person who in the Commissioner's opinion is able to give any such information, and for that purpose may administer an oath. Every such	Public Authorities - Commercial fishers are subject to stringent reporting requirements and required to provide detailed information on catch to MFish. - Research planning, stock assessment and stakeholder fishery assessment working groups are the main information gathering mechanisms. Fisheries observer programme used to collect information for research, management and enforcement. - Industry fisheries conservation services levy for research on conservation impacts of fishing - administered by DOC. - Reporting requirements are significantly more stringent for QMS species than nonQMS species, where they are relatively ad hoc.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
			examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). Although the Ministry has the function of gathering information, it has no specific information gathering powers or mechanisms specified under the Act	Private entities The Seafood Industry Council has science capacity and is increasingly looking to gather information on behalf of the commercial fishing industry. Other stakeholders, such as WWF, also gather and pay for research into impacts of fishing. Funding Fisheries research relating to commercial fisheries is provided for through cost recovered industry levy. The Crown also funds research in areas such as marine biodiversity, recreational fishing, etc.
Commentary	New Zealand's civil and military requirements for maritime patrol were recently assessed in the 2001 <i>Maritime Patrol Review</i>. This review assessed customs needs and the needs of fisheries, resource management, conservation, pollution, immigration, maritime safety, search and rescue and defence. The review concluded that a Maritime Co-ordination Centre should be established to collect information and manage civilian and military surveillance tasks. Other conclusions related to the operational capability to be maintained. The on-going need for long range maritime surveillance to meet civil needs was noted. The review and recommendations were endorsed by Cabinet the National Maritime Surveillance Centre is in a 1 year pilot period. Other operational decisions on ship and aircraft capability have been taken. A Maritime Forces Review is implementing the military dimensions of the 2001 Review.			To date the majority of fisheries information is limited to stock assessment of the most commercially important species, with relatively little information on marine ecosystems, ecological interactions, etc. Poor use is often made of research data, which could be better interrogated for integrated management purposes. The various fisheries stakeholders often hotly contest information.
Monitoring	Does not apply		Monitoring is a key function of both the Commissioner and the Ministry under the Act.	Fishers are required to report catch information, which is used for monitoring purposes. Fishers are also required to land catch in predetermined ports and sell only to licensed fish receivers - together with reporting and record keeping this establishes a fish paper trail. The focus is on auditing catch returns. There is additional monitoring through MFish and DOC observer programmes with observers placed on

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
				commercial fishing boats.
Commentary				The reporting framework is complex and resource intensive. Monitoring is more successful for QMS than nonQMS species.
Legislation linkages	The use of the Customs and Excise Act 1996 links to fulfilling the purposes of the following oceans-related legislation: Biosecurity Act 1993 Copyright Act 1994 Hazardous Substances and New Organisms Act 1996 Maritime Transport Act 1994 New Zealand Bill of Rights Act 1990 Trade in Endangered Species Act 1989 Also links to at least 16 international conventions (e.g. CITES)		Links to a range of environmental / resource use legislation specified in the Schedule to the Act. (This schedule includes the Fisheries Act, the Continental Shelf Act and other Acts that apply in the marine area.	RMA - Section 6 of the Fisheries Act states that no provision in any regional plan or coastal permit under the RMA is enforceable to the extent that it provides for preferential allocation of access to one or more fishing sectors of fisheries resources in the coastal marine area; or the conferral on any fisher the right to occupy land in the coastal marine area, if that right would exclude any other fisher from that area. Marine Farming Act - aquaculture requires marine farming permits under FA (and resource consent under RMA) – currently subject to review. Links to Marine Mammals Protection Act and Wildlife Act - Minister of Fisheries may take measures to mitigate effects of fishing on marine mammals. Minister of Fisheries has concurrence role under Marine Reserves Act, and for mining rights to seabed and foreshore. S5 requires that all persons exercising functions powers and duties shall act in a manner consistent with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This Act specifies 20% of quota in new species introduced into the quota management system be provided to TOKM, etc. Submarine Cables & Pipelines Protection Act 1996 creates a no-fishing exclusion zone around Cook Strait cables.
Commentary				Marine Farming and Marine Reserves Acts are currently under review to improve integrated decision-making.
Allocative processes	N/A	N/A	N/A.	Commercial allocation is by quota shares / proportional individual transferable quota for QMS species, i.e. tradeable property rights. Fishing permits for nonQMS species, and an allowance of the total available catch to recreational and customary fishers. See comments under rights and responsibilities, and functions and powers above.

	Customs Act and Excise Act 1996	Driftnet Prohibition Act 1991	Environment Act 1986	Fisheries Act 1996
Commentary				See comments above.
Environmental assessment procedures	N/A	N/A	At the broad level, the Act is aimed at ensuring that environmental assessment is undertaken in the management of resources.	No specified or structured environmental assessment procedures. Sustainability measures are set on basis of (largely) commercial fish stock specific research. Environmental information is taken into account where it is available.
Commentary				Both industry and environmental stakeholders sometimes claim that sustainability measures are set on ad hoc basis. They also contest the information base for making these decisions.
Conflict resolving mechanisms	Customs rulings by Chief Executive on application of a tariff. Customs Appeal Authorities (with powers of a district Court) in relation to appeals as are authorised by the Act or any other Act against assessments, decisions, rulings, determinations, and directions of the Chief Executive. Decisions of the Authority may be appealed to the High Court and the Court of Appeal.	N/A	The Ministry is required to resolve conflicts but no specific process are provided.	Part 7 of the Act sets out dispute resolution process, and provides for fisheries dispute commissioner, and contains appeal processes for issues such as catch history. Conflict frequently resolved through the courts.
Commentary				Dispute resolution process as provided for in the Act is rarely used and conflicts are more usually addressed through the courts.
Compliance Enforcement	Long list of offences specified in part XIII of the Act relating to failure to comply with Act and directions of a customs officer. Prosecutions taken in the Courts.	Enforcement officers (Navy, Armed Forces & Fisheries Officers) have widespread powers of search, arrest, seizure of property, and custody.	It is an offence to hinder the work of the Commissioner or to fail to comply with a request. A fine not exceeding \$1000 is payable on summary conviction.	QMS has a rigorous compliance regime with warranted fishery officers who have extensive powers of entry, search, arrest, etc within and beyond NZ waters. Offences against the QMS are treated as commercial fraud. A catch balancing regime, where fishers are required to pay "deemed values" to the Crown for fish caught in excess of quota, is used to provide disincentive to over fishing. Compliance regime for nonQMS species is less rigorous.
Commentary				The compliance regime appears to be rigorous and effective. In some areas, such as the recovery of deemed values for fish caught in excess of quota, the Crown has difficulty enforcing the management regime.

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
Long Title	An Act to revoke certain endowments of foreshore and seabed, and revest those endowments in the Crown	This Act is the Hauraki Gulf Marine Park Act 2000	An Act- (a) To promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand; and (b) To continue the New Zealand Historic Places Trust and the New Zealand Historic Places Board of Trustees with the functions and powers necessary for the full and proper attainment of the objectives of this Act; and (c) To establish the Maori Heritage Council; and (d) To amend and consolidate the Historic Places Act 1980	An Act to consolidate and amend the law relating to the reorganisation of the districts and functions of local authorities, to make better provision for the administration of those functions which can most effectively be carried out on a regional basis, and to make provision for the establishment of united councils, regional councils, district councils, district community councils, and community councils, and to consolidate and amend the Municipal Corporations Act 1954, the Counties Act 1956, the Local Authorities (Petroleum Tax) Act 1970, and provisions of other Acts of the Parliament of New Zealand relating to the powers and functions of regional councils, united councils, and territorial local authorities.
Commentary				It should be noted that the Local Government Bill, which will rewrite this Act, is currently before the House and is due for second reading following its report back at the end of November 2002. The Act has very limited application in the coastal marine area primarily through extension of regulatory district to low water mark [district otherwise defined to the outer limits of the territorial sea].
Purpose	No purpose beyond the long title.	The Purpose of this Act is to – (a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments (b) establish the Hauraki Gulf Marine Park (c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments (d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands (e) establish the Hauraki Gulf Forum In addition, other “purposes” are spelt out in section 7 – Recognition of the Hauraki Gulf. Section 7 makes the Gulf and the life supporting capacity of the Gulf a matter of	S4(1): The purpose of this Act is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.	37K. Purposes of local government- The purposes of local government in New Zealand are to provide, at the appropriate levels of local government,- (a) Recognition of the existence of different communities in New Zealand: (b) Recognition of the identities and values of those communities: (c) Definition and enforcement of appropriate rights within those communities: (d) Scope for communities to make choices between different kinds of local public facilities and services: (e) For the operation of trading undertakings of local authorities on a competitively neutral basis: (f) For the delivery of appropriate facilities and services on behalf of central government: (g) Recognition of communities of interest:

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
		national significance. 2) Life supporting capacity includes the capacity – (a) to provide for (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and (ii) the social, economic, recreational, and cultural well-being of people and communities: (b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation: (c) to maintain the soil, air, water, and ecosystems of the Gulf. Also relevant are the management objectives specified in section 8. These are: (a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments: (b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments: (c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship: (d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources: (e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand: (f) the maintenance and, where appropriate,		(h) For the efficient and effective exercise of the functions, duties, and powers of the components of local government: (i) For the effective participation of local persons in local government.

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
		the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.		
Commentary		The Act is the first attempt to provide a statutory mechanism for the integration of resource management and fisheries management over a defined spatial marine area.		
Principles	None specified	Section 6 states that the Principles of the Treaty of Waitangi apply as follows: (1) Subject to subsections (2) and (4), the provisions of Part 3 relating to the Park must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). (2) Subsection (1) does not apply in respect of any area of the Park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai. (3) When carrying out its functions under Part 2, the Forum must have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). (4) Nothing in Part 1 or Part 3 or Part 4 limits, affects, or extends the obligations any person has in respect of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) under any of the Acts listed in Schedule 1, and those obligations must be fulfilled in accordance with those Acts.	S4(2): In achieving the purpose of this Act, all persons exercising functions and powers under it shall recognise- a. The principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and b. The principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should- (i) Take account of all relevant cultural values, knowledge, and disciplines; and (ii) Take account of material of cultural heritage value and involve the least possible alteration or loss of it; and (iii) Safeguard the options of present and future generations; and (iv) Be fully researched, documented, and recorded, where culturally appropriate; and (c) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.	
Commentary				
Spatial jurisdiction	Section 4 states 1) This Act applies to all land that— (a) Was formerly alienated from the Crown and vested in a Harbour Board or a local authority, whether by or under the authority of any enactment or otherwise; and (b) At the commencement of this Act, either— (i) Is foreshore or seabed, and is vested in a local authority (whether as a	The Act applies to the Hauraki Gulf, its islands and catchments	S2: Archaeological site means any place in New Zealand that- (a) Either- (i) Was associated with human activity that occurred before 1900; or (ii) Is the site of the wreck of any vessel where that wreck occurred before 1900; and ▪ Is or may be able through investigation by archaeological methods to provide evidence	The outer limits of the territorial sea of New Zealand.

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
	successor or otherwise); or (ii) Is land that has been reclaimed from the sea unlawfully. (Certain exclusions apply)		relating to the history of New Zealand. Historic place means a place that lies within the Territorial limits of NZ.	
Commentary		These terms are all defined in the Act and a map of the jurisdiction (i.e. the Marine Park) is provided in Appendix 3		
Rights and Responsibilities (of resource users)	All the land to which the Act applies is revested in the Crown (section 5). However, all lawful rights, licences, leases, permits etc continue	Not directly affected by the Act although implementation of the Act may cause rights to be redefined under other legislation. Section 14 of the Act specifically preserve all ownership rights and any right to make a claim against resources of the Gulf	There is a presumption that significant modifications should only occur subject to approval.	
Commentary				
Functions and Powers	None	Ministers All function that would otherwise be exercised in the Hauraki Gulf but subject to section 7 and 8 Government Agencies All function that would otherwise be exercised in the Hauraki Gulf but subject to section 7 and 8 Local Government All function that would otherwise be exercised in the Hauraki Gulf but subject to section 7 and 8 Special purpose authorities The Hauraki Gulf Forum has the following functions: (a) to prepare a list of strategic issues, determine a priority for action on each issue, and regularly review that list: (b) to facilitate and encourage co-ordinated financial planning, where possible, by the constituent parties: (c) to obtain, share, and monitor information on the state of the natural and physical resources: (d) to receive reports on the completion and implementation of deeds of recognition: (e) to require and receive reports from	Minister NZHPTTrust to provide Minister with Annual Report [S81] Special purpose authorities NZ Historic Places Trust – broad functions stated in s39; broad powers stated in s54 Maori Heritage Council - broad functions stated in s85; broad powers stated in s86 Power of delegation provided to the NZHPTTrust Board by s55	Minister of Conservation: 37RA. Minister of Conservation to have certain powers of regional council and territorial authority- 1) The Minister of Conservation- (a) Shall have, in respect of the coastal marine areas of the Kermadec Islands, the Snares Islands, the Bounty Islands, the Antipodes Islands, the Auckland Islands, Campbell Island, and the islands adjacent to Campbell Island, the functions, duties, and powers that a regional council would have under section 30 (1)(d) of the Resource Management Act 1991 if those coastal marine areas were within the region of that regional council. Regional Councils [650B. Appointment of harbourmasters, enforcement officers, and honorary officers- (f) A regional council may appoint such harbourmasters and enforcement officers (including honorary enforcement officers) as it thinks necessary for the purposes of this Part S684B Regional council may make bylaws for various purposes including navigation and

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
		constituent parties on the development and implementation of policies and strategies to address the issues identified under paragraph (a): (f) to receive reports from the tangata whenua of the Hauraki Gulf on the development and implementation of iwi management or development plans: (g) to prepare and publish, once every 3 years, a report on the state of the environment in the Hauraki Gulf, including information on progress towards integrated management and responses to the issues identified in accordance with paragraph (a): to promote and advocate the integrated management and, where appropriate, the sustainable management of the Hauraki Gulf, its islands, and catchments: (h) to encourage, share, co-ordinate where appropriate, and disseminate educational and promotional material: (i) to liaise with, and receive reports from, persons and groups having an interest in the Hauraki Gulf and business and community interests to promote an interest in the purposes of the Forum: (j) to commission research into matters relating to the functions of the Forum. NGOs/ Tangata Whenua / Public The Forum is made up of representatives from the government Ministry's and local authorities whose jurisdictions/functions are affected by the Park. Six tangata whenua are also appointed by the Minister and two others appointed by the ARC.		safety, use and management of ships, regulating and controlling nuisance, regulating anchorages, etc.
Commentary		The Forum's ability to achieve the purpose specified is limited. The forum's powers are largely advisory and recommendatory, and include the ability to consider issues, commission and receive reports, make recommendation etc.		
Implementation measures / tools	None	National The matters specified in sections 7 and 8 are accorded the status of <i>national policy statements</i> under the RMA - to be treated as a NZ Coastal Policy Statement - section 10.	National S22: The NZHPTTrust is to maintain a register of historic places, historic areas, wahi tapu, and wahi tapu areas. The Maori Heritage Trust determines waahi tapu and wahi tapu areas registration.	

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
		Section 7 and 8 also have the same effect as a statement of general policy approved under the following specified sections: (a) Wildlife Act 1953, section 14C: (b) Marine Reserves Act 1971, section 6: (c) Reserves Act 1977, section 15A: (d) Wild Animal Control Act 1977, section 5: (e) Marine Mammals Protection Act 1978, section 3B: (f) National Parks Act 1980, section 44: (g) Conservation Act 1987, section 17B: (h) New Zealand Walkways Act 1990, section 4. Forum Section 11 (2) of the Fisheries Act – matters a Minister must have regard to before introducing any sustainability measures – was amended to include reference to section 7 and 8 of the HGMP Act. There is also a general duty for those exercising function under any of the following acts to have regard to section 7 and 8 of the HGMP Act: ▪ Biosecurity Act 1993 (Part V) ▪ Conservation Act 1987 ▪ Fisheries Act 1983 ▪ Fisheries Act 1996 ▪ Foreshore and Seabed Endowment Revesting Act 1991 ▪ Harbour Boards Dry Land Endowment Revesting Act 1991 ▪ Historic Places Act 1993 ▪ Local Government Act 1974 ▪ Marine Farming Act 1971 ▪ Marine Mammals Protection Act 1978 ▪ Marine Reserves Act 1971 ▪ National Parks Act 1980 ▪ Resource Management Act 1991 ▪ Trade in Endangered Species Act 1989 ▪ Wild Animal Control Act 1977 ▪ Wildlife Act 1953 The Hauraki Gulf Forum to integrate management and co-ordinate functions	S57 – NZHPTTrust must adopt a statement of general policy for the management, administration, control, and use of all historic places owned or controlled by the Trust or vested in it; S58 – NZHPTTrust may adopt a conservation plan for any historic place owned or controlled by the Trust or vested in it. <i>Local</i> Heritage Orders Heritage Covenants Applications for authority to destroy, damage, or modify archaeological sites - specific [s11] & general [S12] Contracts/Deeds [S59] Bylaws [61]	

	Foreshore and Seabed Endowment Revesting Act 1991	Hauraki Gulf Marine Park Act 2000	Historic Places Act 1993	Local Government Act 1974
Commentary		In essence, the Act takes effect by providing high level goals to act as overarching principles in the implementation of legislation that might effect the environment of the Hauraki Gulf; and by establishing a Forum to co-ordinate statutory authority planning and decisions		
Decision-making processes	None	The regulatory and management decisions taken under the Acts specified above are influenced by sections 7 and 8 of the Hauraki Gulf Marine Park Act.	New Zealand Historic Places Trust (Pouhere Taonga) Maori Heritage Trust	
Commentary				
Information gathering mechanisms	None	Public Authorities None specified other than the Forum's ability to commission reports		
Commentary				
Monitoring	NA	State of the Environment the Forum's functions and powers include a requirement to develop strategic directions and monitor. Functions and performance Not specified	NZHPTrust to provide records to territorial authorities.	
Commentary				
Legislation linkages	NA	Many linkages to other Acts as specified above		N/A
Commentary				
Allocative processes	NA	NA	N/A	N/A
Commentary				
Environmental assessment procedures	NA	No explicit reference of although section 7 and 8 may serve to promote environment assessment of activities that potential effect the gulf.	Assessment of the significance of sites/areas is provided for with respect to applications for authority to destroy, damage or modify archaeological sites, or for the purpose of classification for entry on the Register under Part II.	N/A
Commentary				
Conflict resolving mechanisms	NA	The Forum itself is a form of conflict resolving mechanism.	S20: Appeals to Environment Court are provided	N/A
Commentary				
Compliance / Enforcement	NA	NA	S21: rights of entry to employees of the NZHPTrust Part V: various offences are stated.	N/A in marine area.
Commentary				

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
Long Title	An Act to consolidate and amend the law relating to the establishment and development in New Zealand waters of an industry for the farming of sea fish, shellfish, oysters, and marine vegetation, the leasing and licensing of marine farms, and the marketing of fish, shellfish, and oysters reared and marine vegetation cultivated in marine farms.	An Act to make provision for the protection, conservation, and management of marine mammals within New Zealand and within New Zealand fisheries waters	An Act to provide for the setting up and management of 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.	An Act (a) To continue the Maritime Safety Authority of New Zealand; and (b) To enable the implementation of New Zealand's obligations under international maritime agreements; and (c) To ensure that participants in the maritime transport system are responsible for their actions; and (d) To consolidate and amend maritime transport law; and (e) To amend the law relating to the health and safety of seafarers; and (f) To protect the marine environment; and (g) To continue, or enable, the implementation of obligations on New Zealand under various international conventions relating to pollution of the marine environment.
Commentary	This Act is currently under review and a significant amendment to the RMA relating to aquaculture management areas has been passed.	S2 – "Marine mammal" includes- a. Any mammal which is morphologically adapted to, or which primarily inhabits, any marine environment; and b. All species of seal (Pinnipedia), whale, dolphin, and porpoise (Cetacea), and dugong and manatee (Sirenia); and c. The progeny of any marine mammal; and d. Any part of any marine mammal:	The key concept here is "areas" of the sea and foreshore, "natural state", and "for scientific study". The Marine Reserves Bill, which completely revises this legislation, is currently with Select Committee.	The Acts provides for the Maritime Safety Authority (MSA). MSA is a Crown entity whose principal objective is to undertake activities that promote a safe maritime environment and provide effective marine pollution prevention and an effective marine oil pollution response system, at reasonable cost.
Purpose	No specific purpose beyond the Act's long title.		3(1) It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.	No explicit purpose section beyond long title.
Commentary			While this section is not specifically entitled "the Purpose", it clearly specifies a purpose and can be used accordingly. "Marine life" means any species of the plant or animal kingdoms which at any time of the life of the species inhabits the sea or foreshore; and includes any specimen of the species whether	The act is very wide ranging and sets out the law in respect of (broadly) shipping, MSA (marine safety) and marine pollution as follows: ▪ Health and safety of ships (Part 2) ▪ General duties of maritime activity (Part 3) ▪ Regulation of maritime activity through maritime rules (Part 4)

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
			alive or dead, and any part of any specimen, and the seed, spores, eggs, spawn, young, fry, and offspring of the species [S2] <u>Note: The Marine Reserves Bill is currently before the House and has as its purpose the following:</u> S7. Purpose: The purpose of this Act is to conserve indigenous marine biodiversity in New Zealand's foreshore, internal waters, territorial sea and exclusive economic zone for current and future generations, by preserving and protecting within marine reserves – - representative examples of the full range of marine communities and ecosystems that are common or widespread; and - outstanding, rare, distinctive, or internationally or nationally important marine communities and ecosystems; and - natural features that are part of the biological or physical processes of the marine communities and ecosystems referred to in paragraphs (a) and (b), in particular those natural features that are outstanding, rare, unique, beautiful, or important. This new purpose dispenses with the existing Act's emphasis on scientific study.	- Duties of Director of Maritime Safety (Part 5) - Offences relating to maritime activity (Part 6) - Liability of ship owners (Parts 7 & 8) - Wreck, salvage of ships & aircraft (Part 9) - Construction, survey, equipment, loads, etc (Part 10-11) - Safety at sea (Part 12) - General provisions relating to shipping, carriage of goods, salvage (Parts 13-17) - Maritime pollution and protection of marine environment from harmful substances, hazardous ships, dumping, etc (Parts 18-21) - Marine protection documents (Part 22) - Marine oil spills (Parts 23-24) - Civil liability for marine pollution (Part 25) - Compensation for oil spills (Part 26) - Maritime protection regulations (Part 27) - General offences (Part 28) - Maritime Safety Authority (Part 29)
Principles	No explicit principles. Underlying principles is that of the relationship in law between lessor and lessee.	While not a stated principle, this section 3F effectively sets a sustainable population threshold. S3F Determining maximum allowable levels of fishing-related mortality – In determining the maximum allowable level of fishing-related mortality for threatened species or any other marine mammals ..., the Minister, - a) In the case of any threatened species, shall determine a level of fishing-related mortality which should allow the species to achieve non-threatened status as soon as reasonably practicable, and in any event within a period not exceeding 20 years; b) In the case of any other marine mammal, shall determine a level of fishing-related mortality which should neither cause a net	S3 indicates what are effectively principles for the management and administration of MRs, being that: (a) They shall be preserved as far as possible in their natural state: (b) The marine life of the reserves shall as far as possible be protected and preserved: (c) The value of the marine reserves as the natural habitat of marine life shall as far as possible be maintained: (d) Subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the marine life or for the welfare in general of the reserves, the public shall have freedom of access and entry to the reserves, so that they may enjoy in full measure the opportunity to study, observe, and record marine life in its	No explicit principles beyond long title (i.e. user pays, protect marine environment, comply with international obligations, etc.)

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
		reduction in the size of the population nor seriously threaten the reproductive capacity of the species.	natural habitat.	
Commentary			Protection and preservation of marine life are the key principles against which all activities are to be assessed.	
Spatial jurisdiction	The sea bed vertically below an area of the surface of the territorial sea, the internal waters of NZ, the foreshore of NZ's coast (s2).	S1(3)(a) - Within New Zealand or New Zealand fisheries waters	Applies to the seabed below Internal waters out to the edge of the Territorial Sea Foreshore including waters Boundaries may be marked	Generally the Act applies to New Zealand waters [i.e. internal waters, territorial sea, all inland waters and rivers]. Part XIX, XX and XXI relating to the protection of the marine environment - applies to the sea and seabed to the EEZ and/or the Continental Shelf of NZ Part XXIII – oil spill contingency - relates to NZ marine waters [i.e. to EEZ]
Commentary		S2 - "New Zealand fisheries waters" has the same meaning as in section 2 (1) of the [Fisheries Act 1996]	As presently drafted the Act does not apply to "dry" land apart from the foreshore. All existing MRs are essentially coastal in nature, and none presently exist in the deep ocean or more than c.1km from surface land.	
Rights and Responsibilities (of resource users)	Establishes a framework of marine farm leases and licences. All marine farming tenures granted before 1991 (RMA) were issued by way of a lease or licence from the Crown. The RMA revoked the MFA for new leases and licences, but provided for all leases and licences under the MFA to continue in force with same conditions and effect.	S1(3)(c) – Subject to section 26(2) of this Act [this Act applies to] any act or omission by any person who is a New Zealand citizen, wherever that person may be. Requirement to consult before making General Policy - the Director-General of Agriculture and Fisheries, the [Chief Executive of the Ministry of Transport], and the Secretary for the Environment S3H – concurrence required with Minister of Fisheries for Population Management Plan. S4 – s9 covers the restrictions on taking marine mammals and specifies the permit regime for importing and exporting marine mammals, including exemptions to requirements for permit. Permits are required to hold marine mammals in captivity, take marine mammals alive or dead from its natural habitat or any other place. However, permits are not required to collect bones, teeth, ivory, etc that have already naturally separated from the mammal, or in respect of ornaments derived from parts of marine mammals.	S4 states that any area under Marine Farming Act lease or licence is not to be declared a MR; area within jurisdiction of Harbour Board requires concurrence; Mining interest subject to concurrence with Minister of Energy; S5 states rights to make application; decision to declare MR requires concurrence with Ministers of Transport and Fisheries; special consideration given to those holding or having existing rights in or to adjoining land, navigation, commercial fishing or recreation. Subject to regulations, the public's right of entry, access and navigation is unaffected.	Participants in the maritime transport system are responsible for their actions. They must comply with maritime law and regulations and meet the costs of any pollution, etc.

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
		S17- purse seine nets require escape panel/aperture for dolphins/porpoise.		
Commentary	Most marine farms are operating under the MFA, which was introduced <u>prior</u> to the fisheries QMA (1986), the RMA (1991), the settlement of Treaty of Waitangi fisheries claim (1992) and HSNO (1995). Currently aquaculture operates under 5 different types of occupation and harvest right (variously issued under MFA, RMA & FA1983 by either Crown, regional council, or MFish). These are: ▪ Marine farm lease ▪ Marine farm licence ▪ Marine farming permit & resource consent ▪ Spat catch permit & resource consent ▪ Freshwater fish farm licence & resource consent. The overlap between MFA, RMA, and FA1983, plus the variety of occupation and harvest rights is complex, difficult to administer and comply with. Better integration of these 3 Acts and the aquaculture management regime is the goal of the Aquaculture Reform Bill due to come before the House late in 2002 – and partly foreshadowed in the RMA (Aquaculture Moratorium) Amendment Act 2002. This latter requires regional councils to provide for Aquaculture Management Areas in regional coastal plans.	The State assumes the responsibility and right to allocate manage interactions with marine mammals for any purpose through the Ministers of Conservation and Fisheries [primarily].	The requirement for concurrence, and especially the need to secure the commitment of tangata whenua, has resulted in significant delays to the processing of MR applications. IN CA124/00 [CRA3 Industry Association Inc and Minister of Fisheries anors] the CoA [para 2] addresses the statutory requirements for concurrence and clearly indicates the need for independent decision-making – including [para 29] taking into account the wider public interest and any public benefits arising from the creation of a marine reserve	
Functions and Powers	All marine farming tenure issues prior to RMA were issued by way of lease from the Crown. Act specifies “controlling authority” as Harbour Board, local authority or Minister, depending on where authority vested under Harbours Act 1950. Annual licence fee is determined by controlling authority. The responsible department must keep a register of leases and licences.	Ministers: S3E – The Minister may approve population management plans (PMPs) for one or more species. PMPs may set out the status of the species, assess fishing interactions, assess risk of these interactions and other interactions, etc and make recommendations to the Minister of Fisheries on measures to mitigate the fishing related mortality of the species. S3F - Minister must determine the maximum allowable level of fishing-related mortality for threatened species or any other marine mammals	Governor General GG - to declare a MR and promulgate regulations by Order in Council; Minister Minister to decide and recommend MRs - with concurrence of relevant Ministers Chief Executive/Department DG Doc - to manage reserves; authorise takes for scientific purposes; to intervene to ensure welfare of MRs; Rangers - warranted powers to stop, search and seize within MR and in fresh pursuit;	Minister s5 sets out Minister of Transport's functions 1) The principal functions of the Minister under this Act shall be (a) To promote maritime safety at a reasonable cost (b) To ensure New Zealand's obligations under the Conventions are implemented and to administer New Zealand's participation in them: (c) To ensure New Zealand's preparedness for, and ability to respond to, marine oil pollution spills at a reasonable cost: (d) To promote compliance with marine pollution prevention standards in the

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
		S3G - (1) Area-based limits set under section 3E (1) (g) of this Act shall be set only- (a) For populations of threatened species that are geographically or genetically discrete; and (b) For areas corresponding to areas having effect under the Fisheries Act 1996 as fisheries management areas or quota management areas. S5 In considering any application for a permit the Minister shall have regard to "the need to conserve, protect or manage any marine mammal" and any international agreements to which NZ is party. The Minister's decision is final. S21. Minister may appoint advisory, research or technical committees S22 – Minister may declare Marine Mammal Sanctuaries – concurrence required with relevant other Ministers <i>Government Agencies</i> S3A - The Department of Conservation shall administer and manage marine mammals and marine mammal sanctuaries. The Director-General of DOC also has functions and powers relating to the establishment of PMPs.	Other Authorities NZCA - to advise re. continued welfare of MRs	maritime transport system at a reasonable cost. 2) For the purposes of subsection (1) of this section, a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation. Director of Maritime Safety Parts 5 sets out duties of director in relation to maritime documents, suspension of seafarers, investigation of accidents, and inspection and detention of ships. Part 29 (ss430-431) sets out functions of director of MSA. In summary these are to promote a safe maritime environment and provide effective marine pollution prevention and oil spill response by undertaking the following: - Establish, monitor, review & promote compliance relating to safety standards for marine transport, including communication & navigational aids - Ensure NZ's preparedness for oil spill response - Licence ships & their operation, and investigate accidents, maintain shipping records, etc - Advise Minister on technical maritime safety policy - Perform other such functions as conferred on it by this Act or other Acts
Commentary		There are currently no population management plans in place under the Act.	Marine Reserves Management Committees were abolished by the Conservation Law Reform Act 1990 – although none were operative.	See Conventions Table for discussion of MARPOL.
Implementation measures / tools	Marine farming leases and licences, with annual rent.	National: S3 - General Policy, Conservation Management Strategies [integrated management of marine mammals], Conservation Management Plans [marine mammal sanctuary], Population Management Plans, S4 - Permits to hold or take marine mammals S8 – Register of permits	National Marine Reserve General Policy Sub national Conservation Management Strategies Conservation Management Plans Concessions Regulatory	National MSA develops legal standards on behalf of the Minister of Transport. These standards (rules) are aimed at ensuring the safe travel of passengers, crew, cargo and ships, and protection of the marine environment. MSA also develops marine protection rules aimed at preventing pollution of the sea from ships and the disposal of waste.

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
		S22 – Marine Mammal Sanctuaries s28 - Regulations Sub national: CMPs and PMPs may apply by location Regulatory: Policies and rules in CMS, CMP and PMP; Permits and Regulations.	Regulations	Marine protection rule-making powers also cover the implementation of international conventions and standards for protection of the marine environment; marine protection documents; dumping of waste at sea; oil spill contingency plans; and controls in relation to harmful substances, including the discharge of produced water from offshore installations.
Commentary		The various instruments have clear public participation and third party processes attached. There are no time-frames for completion or review periods specified. S4 of the Conservation Act – giving effect to the Principles of the Treaty of Waitangi – applies by extension through the First Schedule to that Act. – as confirmed by the Courts.	One of the issues that has raised considerable discussion is that of the ability in plans etc to prohibit activities and thereby effectively limit or fetter the discretion of the Minister.	Marine Protection rules have been made to broadly correspond with the marine pollution regulations (under the RMA) that operate inside the territorial sea. The main difference between the RMA regulations and the MSA Rules is that the rules currently do not control sewage discharge from ships. Such a rule is, however, currently being developed.
Decision-making processes	Decision by “controlling authority” – see functions and powers above.	National: Ministers and DG Conservation; Judicial review by High Court etc. Sub national: Depends on delegations Delegations: Regional Managers and Conservators may have delegated authority.	Decision making is Department to Minister of Conservation Minister of Conservation - Minister of Fisheries / Maori Affairs	National Centralised decision-making through regulations. MSA develops rules/regulations in consultation with the maritime community and other interested parties.
Commentary		Centralised decision-making subject to statutory strategies and plans [with third party participation rights]	Decisions to establish MRs rest with the Minister of Conservation; subsequently concession and management decisions are effectively delegated to conservancies.	
Information gathering mechanisms	Not specified but regulations provide for records to be kept.	Private entities: S10 – requirement to advise DG of actions undertaken with respect to marine mammals pursuant to a permit etc. S16 – requirement to report accidental or incidental death or injury caused while fishing pursuant to a permit etc.	Not stated.	Public Authorities Shipping registers and records Private entities Funding
Commentary			There are no formal requirements for information gathering etc; nor are there any criteria for the adequacy or content of information required as part of the MR application process.	
Monitoring	No specific monitoring provisions – monitoring	Not stated.	Not specified	Director of Maritime Safety has this function.

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
	is provided for under RMA framework.			
Commentary			There is no formal requirement or specification for monitoring in terms MRs. However subsequent activities within MRs are governed by concession processes and procedures and monitoring conditions can be applied.	
Legislation linkages	S42B MFA sets out linkage with RMA. Marine Farming Amendment Act 1992 provides for all leases and licences under the MFA to continue in force with same conditions and effect under the RMA. The RMA (Aquaculture Moratorium) Amendment Act 2002 imposes a 2-year moratorium on granting coastal permits for aquaculture. S47 states that nothing in the MFA shall restrict operation of Crown Minerals Act and any rights granted under that Act. Minister may with concurrence of Ministers of Energy, Transport and Conservation restrict activities where it is considered necessary for protection of fish, structures, or marine vegetation in leased or licensed area. S49 states that Fisheries Act 1983 does not applied to leased or licensed areas, and nothing in MFA authorises taking of fish or marine vegetation other than that to which the lease or licence applies.	Animal Welfare Act 1999; Antarctica Act 1960 Regulations; Ross Dependency Whaling Regulations 1929 Key linkage to Fisheries Act. S15 of the Fisheries Act states that, if a population management plan has been prepared under the Marine Mammals Protection Act the Minister shall take all reasonable steps to ensure that maximum allowable fishing related mortality specified in the plan is not exceeded. Plus the Minister may take any other relevant measures mitigate the effects of fishing on the relevant protected species.	Conservation Act 1987; Marine Farming Act 1971;	
Commentary	Legislation linkages are complex and are currently being addressed through the Aquaculture Reform Bill.			
Allocative processes	See rights and responsibilities above.	Not stated.	Not stated.	Not stated
Commentary		The Act sets up processes by which case-by-case applications can be determined.	Once an MR is created no allocations as such are permitted	
Environmental assessment procedures	None – these are dealt with under the RMA framework.	Assessment is required as part of the establishment of CMS, CMPs and PMPs.	Not stated.	Covered under marine pollution rules.
Commentary		An environmental assessment is not specifically required as part of a permit application but further information of this sort can be requested by the DG to assist the Minister in making a decision on the application	There is no formal requirement or specification for EA in terms of applications for MRs. However subsequent activities within MRs are governed by concession processes and procedures under the Conservation Act - which are essentially effects-based assessments.	
Conflict resolving mechanisms	Any dispute in any lease or licence must be determined by arbitration. Each party shall	The strategy and planning instruments provide opportunities for identifying and resolving	Various requirements for concurrence suggest that conflicting objectives, activities etc need to	Courts and Maritime Appeal Authority (Part 6)

	Marine Farming 1971	Marine Mammals Protection Act 1978	Marine Reserves Act 1971	Maritime Transport Act 1994
	appoint one arbitrator and the arbitrators appoint an umpire.	issues both with third parties generally and Ministers [through concurrence] specifically	be resolved before a MR is likely to be declared. No formal requirements are set down - other than the requirement on the Minister to take these into account before making a decision on an application.	
Commentary			In practice, proposed marine reserves are frequently held up for considerable periods while conflicts are resolved or not. DoC and MFish are currently working together to develop a protocol for the process.	
Compliance / Enforcement	Any fishery officer or officer of the Crown authorised by the DG may enter and inspect leased or licensed area. DG may require lessee or licensee to supply survey information. Ad hoc regulations under s48 require records of farmed fish or vegetation, removal of waste, pest control ,etc	S11 – Marine Mammal Officers S24 – Offences etc. S26 – Defences , including beyond the outer limits of New Zealand fisheries waters	The Act sets up offences and penalties, and establishes the position of rangers with powers of pursuit and seizure for enforcement purposes. Offences are pursued in the district court.	MSA has power of inspection, investigation, audit and detention of ships (Part 5)
Commentary			Seized property is forfeited to the Crown if not released.	

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
Long Title	An Act to - (a) To affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and (b) To affirm New Zealand's commitment to the International Covenant on Civil and Political Rights	An Act- (a) To record the apology given by the Crown to Ngāi Tahu in the deed of settlement executed on 21 November 1997 by the then Prime Minister the Right Honourable James Brendan Bolger, for the Crown, and Te Runanga o Ngāi Tahu; and (b) To give effect to certain provisions of that deed of settlement, being a deed that settles the Ngāi Tahu claims	An Act to restate and reform the law relating to the use of land, air, and water	An Act to make provision with respect to the territorial sea and contiguous zone of New Zealand; and to establish an exclusive economic zone of New Zealand adjacent to the territorial sea, and in the exercise of the sovereign rights of New Zealand to make provision for the exploration and exploitation, and conservation and management, of the resources of the zone; and for matters connected with those purposes.
Commentary	6. Interpretation consistent with Bill of Rights to be preferred-- Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.			
Purpose		No single stated Purpose other than to be a full and final settlement of grievances under the Treaty of Waitangi Act 1975 against the Crown. Each part of the Act has its own Purpose, which is generally to provide for the legislative matters contained in that Part.	1) The purpose of this Act is to promote the sustainable management of natural and physical resources. 2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while – (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.	Not stated.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
Commentary			Debate continues over the correct interpretation of the purpose. Opposing views are often characterised as: 1) the "environmental bottom-line" approach (which argues that bio-physical environment has primacy and cannot be traded away in decision-making); or 2) the "overall judgement" approach (which argues for some consideration of the economic and social benefit of the proposal). The Courts did subscribe to the former view but have more recently adopted the later partly due to the increasing emphasis placed on sustainable development and the need for integrated decision-making. The environmental consequences have yet to be determined. The notion of intergenerational equity is introduced through the expression "reasonably foreseeable needs of future generations". Decision-makers are required to take the purpose into account in all decisions. The effect of this statement is, however, questionable as there is no consensus around how reasonably foreseeable needs are to be assessed.	There is no stated purpose. The Act establishes the various zones - being the territorial sea, internal waters, contiguous zone and the Exclusive Economic Zone - and the means for setting the boundaries of those zones. The Act gives effect to the international law of the sea by setting out New Zealand's sovereignty, jurisdiction and sovereign rights to the marine area.
Principles	27. Right to justice-- 1) Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law. 2) Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination. 3) Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.	S7. Interpretation of Act generally- It is the intention of Parliament that the provisions of this Act are interpreted in a manner that best furthers the agreements expressed in the deed of settlement.	6. Matters of National Importance; These are set out as a list of objectives in relation to biophysical matters (preservation of the natural character of the coastal environment, protection of outstanding natural features etc 7. Other Matters; These are also set out as a list related matters (some biophysical some not) 8 Treaty of Waitangi This simply requires the principles of the Treaty to be taken into account. Part II of the Act recognises ecosystems and the importance of an ecosystems approach (thought to be facilitated by the focus on integrated management).	Not stated.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
Commentary			The "principles" are largely objectives many of which are incorporated verbatim into regional and district plans. They provide an unusually specific set of policy objectives. Although the difference between the matters in s.6 and the matters in s.7 is not altogether clear. Part II of the Act recognises ecosystems and the importance of an ecosystems approach (thought to be facilitated by the focus on integrated management). Although not specified as "principles" in the Act itself, several other principles do underpin the approach taken by the Act. These are 1) integrated management; 2) devolved decision-making (or subsidiarity); and 3) public participation. There is on-going debate about what integrated management means and how it can be achieved in a statute with limited functions and where the purpose of the Act is affected by decision-makers acting under other statutes. There is, similarly, on-going debate about the importance to be attached to the subsidiarity principle. Clearly, the Act provides the means to exercise centralised policy making and regulation but there is often resistance from those who believe the subsidiarity principle to prevail over centralism. This is clearly one reason there has been little up-take of central mechanisms (see later discussion). Debate also continues over the appropriate degree of public participation. Public participation tends to undermine process efficiency and various ways of limiting participation have been attempted by amendment.	
Spatial jurisdiction	S3. Application-- This Bill of Rights applies only to acts done- (a) By the legislative, executive, or judicial branches of the government of New Zealand; or (b) By any person or body in the performance of any public function, power, or duty conferred or imposed on that person or	This Act applies primarily within the rohe of Te Runanga o Ngāi Tahu and, presumably, the territorial sea of NZ.	The Act applies to all "land" including land covered by water and the air space above land. This definition of land includes the "coastal marine area" being the foreshore, seabed and coastal water (including the air space above the water) from the mean high water springs to the outer limits of the territorial sea.	The Act defines the territorial sea, inland waters, contiguous zone and the exclusive economic zone (EEZ)

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
Commentary	body by or pursuant to law.		The spatial jurisdiction of the RMA is comprehensive within the territorial sea - including all land and water and airspace above. Within this area the Act is limited not in a spatial sense but in a functional sense. That is, some resources and some activities are excluded because more specific legislation applies and some activities are explicitly excluded.	S3: The territorial sea of New Zealand comprises those areas of the sea having, as their inner limits, the baseline described in sections 5 and 6 [and 6A] of this Act and, as their outer limits, a line measured seaward from that baseline, every point of which line is distant 12 nautical miles from the nearest point of the baseline. [The baseline for most purposes is "<i>the low-water mark along the coast of New Zealand including the coast of all islands</i>"] S8A(2): The contiguous zone of New Zealand comprises those areas of the sea having, as their inner limits, the marker, and, as their outer limits, a line measured seaward from the marker, every point of which line is distant 12 nautical miles from the nearest point of the marker. [The marker is the outer limit of the territorial sea.] S9(1): The exclusive economic zone of New Zealand comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of New Zealand, having as their outer limits a line measured seaward from the baseline described in sections 5 and 6 [and 6A] of this Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline. [The baseline is the territorial sea baseline of low-water mark]
Rights and Responsibilities (of resource users)		Part 9 establishes a right of first refusal in favour of Te Runanga o Ngai Tahu regarding the disposal of any relevant Crown land. Part XII s297 Customary Fisheries makes provision for acknowledgement of taonga fish species and consultation with respect to them under the Fisheries Act and the Conservation Act. Under s307 <i>Right of first refusal to purchase quota</i> - (1) <i>Te Runanga o Ngai Tahu has a right of first refusal to purchase from the Crown a proportion</i>	Rights to use resources are granted either by resource management plans prepared by local authorities or by individual resource consents issued by consent authorities (usually local authorities but sometimes a Minister). Rights may be altered in various ways most frequently by either a review of a plan or by expiry, cancellation or review of resource consent. Consents do not constitute a perpetual right and may be granted for a maximum period of 35 years. In some cases existing use rights will apply that may mean resource users do not require a consent.	The Act vests the bed of the territorial sea and inland waters in the Crown. Other rights as stated in UNCLOS.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
		<i>of the total allowable commercial catch of a Shellfish Species made subject to a QMS.</i> This right constitutes a TACC of up to 40% of the shellfish species within the Ngai Tahu claim area. In the takiwa of Ngai Tahu Whanui, S316 provides a preferential right for acquiring up to 10% of any area put up for coastal tendering under s157 / 161 of the RMA.	Existing use rights are, however, limited in respect of resources controlled by regional councils (including the CMA). Existing use rights to use the CMA or to use resources in ways that might affect the CMA can be overridden by a regional plan. Responsibilities are similarly set out as either conditions for permitted activities (as specified in plans) and/or as conditions of resource consent. A general duty of care on everybody using the environment is set out in section 17.	
Commentary		Schedules 97 [Taonga Species] and 98 [Customary Fisheries] specify marine mammals, taonga fish species and shellfish species to which the Act applies.	The Act does make a theoretical distinction between rights to land (being a private resource) and air, water and the coast (being public resources). The theory of the Act is the RMA takes away rights to land (which may be used in any way not restricted under the Act). With respect to the public resources the Act grants rights (these resources may not be used unless uses are permitted by the Act). The distinction is however largely academic in practice and land use plans tend to be designed in ways that grant or allocate rights. Similarly, the Act makes an important distinction about existing use rights (being rights to continue to use a resource in a way that is contrary to the Act). It is a distinction based largely around the nature of the effect. Uses of land that do not produce a bio-physical intergenerational effect enjoy perpetual existing use rights (provided the effect stays the same or similar in character and intensity). Uses of land and all uses of public resources are deemed by their nature to produce a biophysical and intergenerational effects and no perpetuity protection of the right exists. Land use does enjoy another form of rights protection in the form of section 85. This section states (in effect) that an owner must be able to make reasonable use of their land (although reasonable use does not include a use that would have a significant environmental	The Act did control (issue rights by way of licences) fishing by foreign fishing craft. However, these provisions have since been superseded by Part V of the Fisheries Act which came into force on 1 October 2001.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			effect).	
Functions and Powers			Ministers The Minister for the Environment has a role in policy direction through recommending National Policy Statements. The Minister has a regulatory role through recommending National Environmental Standards and retaining the ability to "call-in" particular development applications. The Minister also approves special purpose agencies -see below). The Minister of Conservation exercises functions in the CMA - approving coastal plans issued by regional councils and taking a role in decisions on Restricted Coastal Activities (activities that might produce nationally significant effects). Both Ministers have monitoring functions and the Minister for the Environment may issue grants and loans. Government Agencies The Act is administered by MfE Local Government The majority of day-to-day resource management is carried out by local government. Regional councils have the function of controlling the use of air, water, the CMA and land (to the extent that land use might affect soil conservation and water quantity and quality - including coastal water). Territorial authorities control the effects of land use other than those matters controlled by regional councils. Territorial councils have no functions seaward of MHWS. A wide range of functions and powers apply to regional and territorial councils Special purpose authorities Act provides for Heritage Protection Authorities and Requiring Authorities. These entities exercise limited regulatory functions over specific areas. The Act also provides for the Environment Court – a specialist court to hear disputes (a wide range of functions and powers apply).	Ministers Minister of Foreign Affairs and Trade: Under sections 8 and 27, where no other Act applies, regulations may be made in respect of the Territorial Sea or the EEZ, for any of the following purposes. - regulating conduct of scientific research - protection of the marine environment - regulating construction and use of artificial islands - regulating exploration and exploitation of energy projects - providing for other matters and giving effect to sovereignty Regulation-making power for enforcement and setting of penalties.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			Public May apply for an enforcement order against any resource user or against any council for not carrying out function. Affected parties can require consent applications to be publicly notified.	
Commentary			The functions represent the application of the devolution (subsidiarity) principle. Minister of Conservation's role in the CMA is justified on the basis of protecting the Crown's ownership interest.	
Implementation measures / tools		Deed of Settlement.	National National level tools include national policy statements, national environment standards and submissions/appeals on plans and consents by government agencies, Sub national Consistent with the principle of devolved decision-making, the main implementation tools are Regional Policy Statements and Regional and District Plans. These documents set an overall policy and regulatory framework for the integrated management of resources. Plans categorise actual or potential activities and require consents accordingly. Consents (the individual regulation of activities) provide the second most significant implementation tool. Other specific tools include designations (a variation of the resource consent - on land only), water conservation orders (freshwater only), heritage protection orders (on land only). and the taking of esplanade reserves and strips when land is subdivided (along the coast and the margins of lakes and rivers). Regulatory Plans tend to focus on regulatory methods being regional or territorial rules. These are often spatially bound forming "zones" that regulate or promote a particular activity. An amendment in 2002 (via the Aquaculture Moratorium Act) inserted specific provision (s.68A) to allow regional councils to introduce	Regulations as noted above are potential tools, However none have been promulgated.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			Aquaculture Management Areas as a way to regulate the development of marine farming and manage conflict. In doing so, a regional council must consider the effect on the environment including effects on fishing and other uses of the CMA. Financial Financial contributions (being cash, works or services) may be taken as conditions of resource consent. Bonds may also be taken to secure conditions/performance. Coastal Occupation Charges may be taken by regional councils and proceeds must be used for resource management purposes. Rents and royalties are paid to the Crown in respect of the taking of sand and shingle from the CMA Market Provision is made for coastal tendering and transferable permits –see allocative processes below.	
Commentary			All district councils have prepared, or are in the process of preparing, district plans (DPs). All regional councils have prepared or are in the process of preparing regional policy statements (RPSs) and regional coastal plans (RCPs) - DPs, RPSs and RCPs are mandatory. In addition, all regions have prepared or are in the process of preparing at least one regional plan. Some 48,000 resource consents are issued each year in relation to these plans (or the transitional plans they replace). Between 1000-1500 are for coastal permits. There is only one NPS - the mandatory NZ Coastal Policy Statement. There are no national environmental standards although there are national regulations controlling marine pollution. There are many thousands of designations for public works and network utilities, 5 Water Conservation Orders, 4 Heritage Protection Authorities (and none since 1995).	Doubt has been expressed about the usefulness of regulations under section 27. They are limited to circumstances "where no other provision is for the time being made by any other enactment for any such purposes". A qualification that would seem to leave room for legal challenge.

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			Issues remain over the coastal occupation charges and whether the ability to impose charges on existing consent holders and in particular their applicability to occupation by ports.	
Decision-making processes			National There are particular processes for central decision-making (NPSs and call-ins) that involve Boards of Inquiry making recommendations to the Minister. Sub national Most decisions under the Act are taken by regional councils and territorial authorities. These are generally taken either through a public hearing process by elected representatives and/or appointed commissioners or administratively by professional staff. For Restricted Coastal Activities this includes a representative of the Minister of Conservation. Delegations and transfers Elected representatives may delegate the decision-making role to officers. Decision-making functions may also be transferred to other public authorities. Non-public authorities There are also particular processes involved in decisions taken by HPAs and requiring authorities. These involve local government undertaking administrative work and making recommendations to the special purpose authority. Market Market decision-making applies to any coastal tendering or transferable permits regime. Market decision-making also applies to the extent that applicants can pay affected parties in compensation for any effect (such effects then must be disregarded by the consent authority when considering whether an application should be publicly notified). Public participation Decision-making processes may be categorised	National As prescribed in regulations to the extent that they may be provided under the Act

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			as either public processes (with public notification and full third party rights) or limited public processes (where the number of third party participants is limited). Decisions on plans, HPOs, WCOs, restricted coastal activities and designations are public decision-making processes to the extent that any member of the public has the right to make a submission and be heard. Decisions on resource consents may be either public or limited public processes depending on the actual or potential effects of the activity. Tangata Whenua Tangata whenua participation requirements apply in various ways. The requirement to take into account the principles of the Treaty of Waitangi provides an overarching expectation of participation. This is reflected in the First Schedule requirement to consult with tangata whenua when preparing plans. 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. Alternatively, it might encourage the local authority to consult with respect to a particular application. These mechanisms provide the means by which tangata whenua are alerted to a proposal and have their views reflected. Should tangata whenua not be satisfied with an application or a decision they can take advantage of the Act's general rights of participation and appeal. Appeals Decisions of consent authorities may be appealed de novo to the Environment Court, and then to higher courts on points of law. Environment Court decision-making are limited public processes (although the barrier to participation by interested individuals or community groups is very low).	

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
Commentary			As noted elsewhere, national decision-making processes have seldom been used. The local decision-making processes of the Act continue to be debated at length. The question of whether an application is publicly notified (triggering third party rights) is critical. There is no appeal from a consent authority decision on this matter. A new category of limited notification is proposed to be introduced by amendment to ease some tension. The issue of whether elected (lay) people should be making technical decisions continues. Government has recently provided funding to introduce an accreditation scheme to allay the concerns of some stakeholders. The broad scope (open standing) of appeal rights is also contentious and is often cited as a reason why the Environment Court faces a large backlog. Tangata whenua/iwi participation remains one of the more problematic aspects of the Act's implementation. This partly results from the highly variable capacity of iwi to respond to the RMA system, the cost of that participation, and the on-going issues of disputed mandate.	
Information gathering mechanisms	N/A	N/A	Public Authorities Information on the state of resources and the effect of the Act that is held by public authorities is gathered by: (1) the Minister for the Environment exercising the monitoring function under section 24; (2) regional and district councils exercising their monitoring duty under section 35; (3) resource consent holders providing monitoring information that may be required as a condition of any consent; and (4) resource consent applicants providing information as part of their obligations to prepare assessments of environmental effects for any proposed activity. Private entities Private entities (being consent applicants or consent holders) gather information using any	N/A

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			available sources. This will include information held by a consent authority and information held, or specifically commissioned, by the entity itself. Funding Information gathering carried out by local government is generally funded by general rates or other indirect funding means. Some information will be drawn from information required of consent holders and will be funded by those consent holders	
Commentary			Minister for the Environment has no systematic way of carrying out the monitoring function (s.24). Information held is not co-ordinated. The section 35 duty on local authorities to monitor is not strictly enforceable and is carried out at varying levels of detail and sophistication amongst local government. In practice all those parties identified above draw on primary data collected by research agencies - including CRI's. Some of this will be public good science. Other data collection will be specifically commissioned.	
Monitoring		N/A	State of the environment Both the Minister for the Environment and local authorities are required to monitor the state of the environment. Functions and performance Both the Minister for the Environment and local authorities are required to monitor performance under the Act. The Minister of Conservation is required to monitor the effect of the NZCPS	N/A
Commentary			The Minister of the Environment has not conducted significant state of the environment reporting although MfE's environmental indicators programme is designed to provide for systematic monitoring and reporting of the state of the environment in the future. A survey of the exercise of some local authority functions is carried out biennially. The Department of Conservation has done little	

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			systematic monitoring of the NZCPS to date but is currently developing a programme to do so (see separate review of the NZCPS).	
Legislation linkages		Conservation and Fisheries Acts	The Act's emphasis on integrated management encourages linkages to other related information. Section 32 of the Act requires functionaries to consider alternate ways of achieving outcomes including means provided by the exercise of functions under other Acts. Specific linkage is made to the Fisheries Act by way of excluding regional councils controlling fishing operations in fisheries controlled under the Fisheries Act. In preparing plans local authorities are required to take into account management plans and strategies prepared under other Acts, the Historic Places Register (prepared under the Historic Places Act), Iwi Management Plans and regulations relating to conservation or management of taiapure or fisheries. Consultation is also required with Ministers of Conservation, Transport (in relation to the Marine Pollution Act) and Fisheries during the preparation of plans. Similarly, in considering certain types of resource consents, consent authorities must take into account any management strategy prepared under the Conservation Act. If relevant, they must also send copies of any application to specific Ministers / agencies acting under the Historic Places Act, Marine Farming Act, Fisheries Act, Freshwater Fish Farming Regs 1983. More broadly, in making decisions on consents authorities may take into account any other matters considered relevant. Such matters might include other legislation or instruments prepared under other legislation	Linkage is made to the Fisheries Act through the deeming of seas of the EEZ as NZ Fisheries Waters Linkage is also made to Marine Mammals Protection Act through stating that that Act applies within the EEZ. Regulation powers only apply if activity is not controlled by any other Act.
Commentary			No specific linkage is provided to other closely related legislation including the Biosecurity Act, the Marine Reserves Act and Forests Act (Part VIIA in particular). However regulations dealing with biosecurity	

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			effects of hull cleaning are planned under the Biosecurity Act with the intention that they should be taken into account in decisions under the RMA such as for consents for boat yards cleaning hulls of fouling organisms. Although it is possible to take other Acts and their instruments into account, in practice such matters receive little weight. As a mechanism to achieve integration this is of minimal value. There has been some integrated management with biosecurity controls being implemented under the RMA as an extension of environmental assessment for coastal consents eg marinas, boat slips and new ports.	
Allocative processes			The Act provides three mechanisms to allocate resources: 1) Regulations in plans - usually a form of zoning or standard; 2) Coastal tendering - in respect of coastal space; 3) The resource consent process. The resource consent process itself provides two forms of allocation (i) allocation fixed to a consent holder or site; and (ii) transferable permits (in the case of some uses of public resources only - specific conditions apply)	Not provided for (could be provided by regulation)
Commentary			Coastal tendering has not been used. There is only one current example of where a tradable water permit regime (for the market allocation of freshwater) has been introduced. The failure of the Act to facilitate the use of market mechanisms despite the promise is one of the key feature's of the Act's implementation.	
Environmental assessment procedures			Every resource consent application must be accompanied by an "assessment of environmental effects" (AEE). The Fourth Schedule of the Act sets out the matters that should be included in an AEE but in practice the detail of AEE is at the discretion of the consent authority and will vary according to the nature and scale of the activity. No methodology is prescribed except that consultation with affected parties is envisaged.	Not provided for (could be required by regulation)

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			Environmental Assessment is also envisaged as part of the preparation of plans. Various provisions require general environmental objectives to be promoted and the need for particular provisions to be evaluated. This approach implies environmental assessment, at least at a broad scale, as part of the design of plans.	
Commentary			This was a new requirement in 1991. The main point of dispute is the scale and detail with which AEEs need to be prepared. Consent authorities have the power to (i) not accept an application that is incomplete (ii) request further information from the applicant; or (iii) commission further studies (and charge the applicant). The exercise (or non exercise) of these powers has caused friction.	
Conflict resolving mechanisms			The Act manages conflicts in various ways. First, the comprehensive plan framework provides a forum for many potential conflicts to be resolved in advance of the conflict arising. The policy is debated and laid out for a 10 year period. Individuals and groups representing different interests have the opportunity to contribute to detailed policy development. Different trade-offs are made by democratically elected decision-makers. Similar opportunities arise in the context of resource consents which are required where plans have not laid out provisions to deal with detailed circumstances but reserve the right to consider proposal on a case by case basis. Finally, conflict is addressed by a specialist court (the Environment Court) when parties do not accept the decisions of consent authorities on either plans or resource consents. The Court considers disputes de novo - that it is considers both technical and legal evidence and argument. Environment Court decisions may be challenge on points of law to higher courts.	N/A
Commentary			The Environment Court acts as the inevitable decision-maker for any significant or contentious application. The Court has	

	NZ Bill of Rights Act 1990	Ngai Tahu Claims Settlement Act 1998	Resource Management Act 1991	Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act 1977
			struggled to keep up with the workload caused largely by a huge number of appeals on the new plans prepared under the RMA in recent years. The Court can, and does, appoint mediators in certain circumstances. However, common practice is for appeals to settle by private negotiation before any Environment Court hearing. A particular feature of the dispute resolution system is the very significant rights of third parties. The potential for a third party to join an appeal - even where that party was not involved in the initial decision-making process - can increase the complexity of appeals and increase the difficulty in achieving conflict resolution.	
Compliance / Enforcement			The Act contains a range of compliance mechanisms. The three principal mechanisms are: 1) a local authority or any other person can apply to the Environment Court to issue an enforcement order against a person who acts contrary to the Act; 2) an enforcement officer of a local authority may issue an abatement notice on any person acting contrary to the Act; 3) an enforcement officer may issue an infringement notice in the case of specific infringements. It is an offence against the Act not to comply with an enforcement order or an abatement notice (and other matters) and those doing so may be prosecuted in the District Court. The Court is able to fine offenders up to \$200,000 plus \$10,000 for each day the offence continues. A custodial sentence may also be imposed. Particular provisions apply for offences in relation to marine pollution. Local authorities may impose an infringement fee (instant fine) in respect of infringement notices.	May be set by regulation Any offence against the Act, or against any regulations made under this Act, that is committed within the Exclusive Economic Zone is deemed to have been committed in New Zealand
Commentary			The enforcement provisions are used extensively. The infringement notice was introduced by amendment to the Act to allow local authorities to take minor enforcement action with minimal administrative cost.	

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
Long Title	An Act to further the protection and conservation of endangered species of wild fauna and flora by regulating the export and import of such species and any product derived from those species	An Act to provide for the observance, and confirmation of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the Principles of the Treaty.	An Act— (a) To give effect to the settlement of claims relating to Maori fishing rights; and (b) To make better provision for Maori non-commercial traditional and customary fishing rights and interests; and (c) (c) To make better provision for Maori participation in the management and conservation of New Zealand's fisheries	An Act to complete the implementation in the law of New Zealand of the United Nations Convention on the Law of the Sea
Commentary	S3 states that every specimen of an endangered species either bred in captivity [animal] or artificially propagated [plant] is a specimen of a threatened species for the purposes of the Act.		The Act has a lengthy preamble relating to the Deed of Settlement.	
Purpose	S2 - The object of this Act is to enable New Zealand to fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and to promote the management, conservation, and protection of endangered, threatened, and exploited species to further enhance the survival of those species.	None stated	Following payment of \$150 million, guarantee of 20% of species in QMS, etc, settles all claims with respect to maori commercial fisheries	S5 - The purpose of this Part of this Act is to give effect in the law of New Zealand to provisions of Part XI of the Convention.
Commentary	Requires any and all specimens to be subject to permit requirements even if in transit through NZ waters.		S9 - All claims (current and future) in respect of, or directly or indirectly based on, rights and interest of Maori in commercial fishing are hereby fully and finally settled, satisfied, and discharged.	Part XI relates to "The Area" and has 5 sections: 1) General Provisions [Articles 133-135]; 2) Principles Governing the Area [Articles 136-149]; 3) Development of Resources of the Area [Articles 150-155]; 4) The Authority [Articles 156-185]; 5) Settlement of Disputes and Advisory Opinions [Articles 186-191]. The "Area" is the seabed and subsoil beyond the EEZ and continental shelf.
Principles	Not stated.	None stated.	S3 - Interpretation of Act generally It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the agreements expressed in the Deed of Settlement referred to in the Preamble to this Act.	
Commentary	While a principle[s] is not stated, the purpose of	While the Act itself has no principles, by its very		UNCLOS itself states a number of principles –

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
	enhancing the survivability of species is effectively the guiding principle.	nature it seeks to give effect to the principles of the Treaty of Waitangi		this Act simply enshrines the decision-making processes in domestic law.
Spatial jurisdiction	NZ territory	The Act does not specify a spatial limit however the scope of claims must be within the scope of the Treaty of Waitangi which extends to all "lands, estates, forests and fisheries".	NZ territory	Marine areas beyond NZ jurisdiction
Commentary		The 1992 Amendment to the Act does specifically exclude claims in relation to commercial fishing and commercial fisheries. However, non commercial fisheries would seem to be within the scope of the Act as is the foreshore and seabed within New Zealand's Sovereign jurisdiction. There are numerous non-commercial fisheries claims lodged with the Tribunal		S2 - "Area" means the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction
Rights and Responsibilities (of resource users)	S9 - no person shall trade in any specimen of an endangered, threatened, or exploited species into or from New Zealand, except pursuant to the appropriate permit or certificate granted under this Part of this Act. S25 – permits and certificates authorise trade on one occasion only – unless DG decides otherwise [s10(3)].	The Act provides Maori with the right to lodge a claim with the Waitangi Tribunal to the effect that they have been prejudicially affected by an act or omission of the Crown, which act is inconsistent with the principles of the Treaty of Waitangi.	Obligation on Minister of Fisheries to consult with tangata whenua and develop policies re management practices of Maori in the exercise of non-commercial fishing rights [fish, aquatic life, or seaweed that are subject to the Fisheries Act 1983]	S6 – no person [including departments of state] may do any activity in the "area" without a license unless otherwise permitted under the Act.
Commentary	All trade under this Act is regulated through the DG Conservation.	Two claims in particular have potential to significantly affect rights in relation to oceans issues. The first is WAI 262 being a claim over indigenous flora and fauna; and a new claims in relation to marine farming. Various other claims relate to the foreshore and seabed. These claims obviously have fundamental implications for: - rights of the Crown and resource users in the marine area and marine resources; and - obligations of the Crown in respect of the allocation of resources and rights to the marine area/resources.		This Act removes any rights of any NZ person or organisation/company to conduct activities in the Area without appropriate authorisation.

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
Functions and Powers	Governor-General S21(2) - Governor-General may, by Order in Council, specify any exploited species Ministers: S7 - Minister to appoint Scientific Authorities Committee S8 - Minister has general powers <u>and</u> may conduct research and investigations and disseminate findings. Government Agencies: S11 - DG to determine permit applications s28 – DG to consider application for release of surrendered specimen when visitor leaves NZ. S27 - Customs officers or endangered species officer to inspect and examine, etc. S32 – Part 1 of this Act shall not apply to the non-commercial loan, donation, or exchange between scientists or scientific institutions recognised by the DG in New Zealand. S33 – DG may waive the requirement of holding a permit or certificate granted under Part I of this Act in respect of any specimens of an endangered, threatened, or exploited species that form part of a travelling zoo, circus, menagerie, plant exhibition, or other travelling exhibition. S34 – Part 1 does not apply to trade in any marine specimen of a threatened species that is taken by a ship registered in NZ or licensed under the TS, CZ & EEZ Act and which is in accord with international agreements to which NZ is a party prior to commencement of this Act. But a certificate of capture is required for subsequent export. S40-42 - DG has custody of seized specimens and determines disposal S43 – DG may require taking of samples of specimens for analysis to determine whether bred in captivity.	Special purpose authorities The Act establishes the Waitangi Tribunal to hear and consider claims. (Various administrative powers apply. None are relevant to this analysis)	Limits jurisdiction of Waitangi Tribunal to inquire into certain commercial fishing or fisheries matters. Renames Treaty of Waitangi Fisheries Commission	Governor-General: The Governor-General in Council, with the concurrence of the Chief Justice and any 2 or more of the members of the Rules Committee, of whom at least one shall be a Judge, may make rules relating to the enforcement of any decision Ministers: S7 - Minister to grant licences to carry out any activity in the Area Special purpose authorities: Nil within NZ; The Chamber and/or Tribunal with respect to the Area.
Commentary	This is a centralised authority with no delegation beyond the Department of Conservation – except for the purposes of			S2 - “ Secretary ” means the Secretary of Foreign Affairs and Trade

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
	compliance and enforcement			
Implementation measures / tools	National: S53 - Schedules to Act 5) First Schedule – Species endangered by trade 6) Second Schedule – Species threatened by trade 7) Third Schedule – species exploited by trade S54 - Regulations Sub national: Permits and certificates may apply by location. Regulatory: S10 - Permit to trade in specimens of endangered, threatened, or exploited species S13 - permit to export any specimen of an endangered species S14 - permit to import any specimen of an endangered species S15 - certificate to re-export any specimen of an endangered species S16 - certificate to introduce into New Zealand from the sea any specimen of an endangered species S17 - permit to export any specimen of a threatened species S19 - certificate to re-export any specimen of a threatened species S20 - certificate to introduce from the sea any specimen of a threatened species S21 - permit to export any specimen of that exploited species S21 - certificate of origin in respect of any specimen of that exploited species S23 - certificate to re-export any specimen of an exploited species S24 - certificate to introduce from the sea any specimen of an exploited species S29 - certificate of acquisition for specimens legally acquired prior to Act coming into force.	National The Waitangi Tribunal may make recommendations to the Crown for the redress of contemporary and historic grievances.	Through mechanisms in other statutes such as the Fisheries Act.	National: Decisions released by the International Seabed Authority may apply. Sub national: Nil unless rules promulgated by G-G.

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
	S31 - certificate for specimens bred in captivity or artificially propagated S34 - certificate of capture in accordance with other treaties.			
Commentary	S4 of the Conservation Act – giving effect to the Principles of the Treaty of Waitangi – applies by extension through the First Schedule to that Act.			
Decision-making processes	National: DG of Conservation decides permits [s11] – with appeal to District Court on question of law [s12] Sub national: Depends on delegations Delegations: Departmental Regional Managers and Conservators may have delegated authority.	None (except to the extent that the Tribunal may decide to make particular recommendations).	Ministerial	National: Governor-General; Secretary of Foreign Affairs
Commentary	Centralised decision-making with no third party rights; applicant may appeal to the district court.			
Information gathering mechanisms	Private entities: Conditions may be attached to permits	The Tribunal employs its own historical researchers. It also relies on evidence provided by claimants.	Not stated	N/A
Commentary				
Monitoring	N/A	NA	Not stated	N/A
Commentary				
Legislation linkages	S38A - Customs and Excise Act 1996 applies in relation to the importation or exportation of any endangered, threatened or exploited species as if such endangered, threatened, or exploited species were a prohibited import or prohibited export within the meaning of that Act	NA	Linkages to Treaty of Waitangi Act 1975; Fisheries Act 1989, Maori Fisheries Act 1983, plus other consequential amendments.	N/A
Commentary				
Allocative processes	N/A. One-off applications..	None. The Tribunal may only make recommendations for the allocation of resources to Maori.	Quota Management System Treaty of Waitangi fisheries Commission Fisheries policies for non-commercial Maori take.	N/A
Commentary	The Act does not allocate but, rather, sets up processes by which case-by-case applications can be determined.			

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
Environmental assessment procedures	No specific procedure	NA	Not stated	
Commentary	An EA is not specifically required as part of a permit or certificate application but further information of this sort can be requested by the DG to assist in making a decision on the application			
Conflict resolving mechanisms	No specific provision outside an appeal by the applicant to the district court on a question of law	NA	Not stated	Governor-General through promulgation of rules. The International Seabed Authority The International Tribunal for the Law of the Sea – Seabed Disputes Chamber
Commentary				
Compliance / Enforcement	S35 – Endangered Species Officers: Every inspector appointed under the Ministry of Agriculture and Fisheries Act 1953 or the Biosecurity Act 1993 and every Customs officer – or warranted under the States Services Act. S36 - 39 – powers of arrest, entry, search, seizure S44-49 – offences and penalties	NA	Not stated	S8 – Offence to carry out activities in the area without a licence S9 – NZ criminal and civil law applies as if activities carried out were carried out within NZ S10 – principals and agents liable; limited defences available s11 – statutory limitation of 6 months from date of information; suspended while outside NZ jurisdiction s12 – prompt release of crews and vessel s13 - gives effect in the law of New Zealand to article 21, paragraph 2, of Annex III of the Conventions – imports decisions of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea or a commercial arbitral tribunal as if made in the High Court of NZ. s14 - gives effect in the law of New Zealand to article 39 of Annex VI of the Convention - imports decisions of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea as if made in the High Court of NZ
Commentary				Annex III: Basic conditions of Prospecting, Exploration and Exploitation. Article 21(2)

	Trade in Endangered Species Act 1989	Treaty of Waitangi Act 1975	Treaty of Waitangi [Fisheries Claims] Settlement Act 1992	United Nations Convention on the Law of the Sea Act 1996
				states: <i>Any final decision rendered by a court or tribunal having jurisdiction under this Convention relating to the rights and obligations of the Authority and of the contractor shall be enforceable in the territory of each State Party</i> Annex VI: Statute Of The International Tribunal For The Law Of The Sea. Article 39 states: <i>The decisions of the Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought.</i>

	Wildlife Act 1953
Long Title	An Act to consolidate and amend the law relating to the protection and control of wild animals and birds, the regulation of game shooting seasons, and the constitution and powers of acclimatisation societies
Commentary	Includes following definitions: "Wildlife" means any animal that is living in a wild state – but excludes animals controlled under the wild Animal Control Act 1977. "Animal" means any mammal (not being a domestic animal or a rabbit or a hare or a seal or other marine mammal), any bird (not being a domestic bird), any reptile, or any amphibian [; and includes any terrestrial or freshwater invertebrate declared to be an animal under section 7B of this Act [[and any marine species declared to be an animal under section 7BA of this Act]]; and also includes the dead body or any part of the dead body of any animal]; "Aquatic life" means any species of plant or animal life which, at any time in the life history of the species, must inhabit water; and includes seabirds (whether or not in an aquatic environment). Domestic animals and birds are defined.
Purpose	3. Wildlife to be protected - Subject to the provisions of this Act, all wildlife is hereby declared to be subject to this Act and (except in the case of wildlife for the time being specified in the First Schedule, Second Schedule, Third Schedule, Fourth Schedule, or Fifth Schedule hereto) to be absolutely protected throughout New Zealand [and New Zealand fisheries waters].
Commentary	The above is not a stated purpose but provides a reasonable purpose statement nonetheless. The exemptions relate to animals declared game [First Schedule], animals partly protected [Second Schedule]; animals that may be hunted, killed or held in possession subject to ministerial conditions [Third Schedule]; animals that are unprotected unless otherwise declared [Fourth Schedule]; or animals completely unprotected [Fifth Schedule]. A number of other schedules specify other categories of animal including: Schedule 7A – Marine species declared to be animals, currently only <i>Black coral: all species in the Order Antipatharia.</i> <i>Red coral: all species</i> <i>Spotted black grouper (Epinephelus daemeli)</i> As marine species only come under the Act if declared an

	Wildlife Act 1953
	"animal", the Act currently only applies to the three scheduled species.
Principles	
Commentary	
Spatial jurisdiction	Certain parts of the Act – essentially the wildlife management tools - apply only inside the outer limits of the territorial sea of NZ.
Commentary	
Rights and Responsibilities (of resource users)	S57(3) : All wildlife – other than those specified in the Fifth Schedule - is vested in the Crown
Commentary	
Functions and Powers	Governor-General May amend Schedules by Order in Council May by proclamation declare wildlife sanctuaries, refuges, reserves and districts. Minister of Conservation - Issues or recommends wildlife sanctuaries etc in conjunction with other relevant minister[s] or authorities [e.g. Fish and Game Council]. - May grant concessions under Part IIIB of the Conservation Act 1987. - Approves statements of general policy - Approves population management plans – for threatened species or other species of marine wildlife [s14F(1)] – with concurrence of Minister of Fisheries - Minister's general powers are stated in s41. Director-General - Authorises taking or killing of wildlife – including eggs - whether absolutely or partially protected. - Authorises public museums to possess dead bodies of absolutely or partially protected wildlife. - Authorises the liberation or export of wildlife
Commentary	
Implementation measures / tools	National Conservation Management Strategy Schedule 7A – Marine species declared to be animals Population Management Plan Local Wildlife Management Sanctuary / Refuge / Reserve / District Concessions Conservation Management Plan Licenses
Commentary	- Wildlife sanctuaries provide absolute protection irrespective of any wildlife's classification under the Act – unless otherwise provided for in the proclamation. - Wildlife refuges and reserves have correspondingly lesser

	Wildlife Act 1953
	levels of protection. - Population management plans based on maximum allowable fishing-related mortality – for threatened species, criterion is recovery to non-threatened status ASAP or at least within 20 years; for remainder = stable population [both in size and reproductive capacity]. - Area-based limits may also be established once the maximum allowable fishing-related mortality level is set.
Decision making processes	National Ministers Director-General NZ Conservation Authority Conservation Boards
Commentary	
Information gathering mechanisms	N/A
Commentary	
Monitoring	S63 requires the reporting of any accidental or incidental death or injury to any
Commentary	
Legislation linkages	
Commentary	
Allocative processes	Concessions, licenses and permits.
Commentary	
Environmental assessment procedures	As prescribed by Standard Operating Procedures.
Commentary	
Conflict resolving mechanisms	Department and Courts
Commentary	
Compliance / Enforcement	- Offences are established. - In addition to warranted officers of the Department of Conservation or constables, rangers can be appointed. - S63A – it is an offence to take [includes: to buy, sell, process, hunt, kill etc] absolutely or partially protected marine wildlife
Commentary	

Appendix 4 – Stocktake of Strategies

Listed below are strategies that have been reviewed in detail for the purposes of this stocktake. This is not intended to be a comprehensive list (or review) of all oceans-related strategies in place or under development. Other relevant strategies (such as the National Plan of Action on Seabirds) will be reviewed in separate papers to be produced by the Oceans Policy Secretariat as part of Oceans Policy development.

Strategies Reviewed:

- New Zealand Biodiversity Strategy 2000
- Sustainable Development Programme of Action (& links to the Growth and Innovation Framework)
- New Zealand Waste Strategy 2001
- Sustainable Land Management Strategy 1988
- Environmental Performance Indicators Programme
- Draft Marine Protected Areas Strategy
- Draft MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment
- Draft MFish Framework for Integrated Fisheries Plans
- Draft MFish Seamount Strategy
- Draft MFish Strategy for delivering ToW obligations
- Draft Bioprospecting Strategy
- New Zealand Coastal Policy Statement
- EECA Strategy 2002
- New Zealand Marine Oil Spill Response Strategy 1999/2000
- Marine Pollution Regulations (under the RMA and in accordance with MARPOL and the London Dumping Convention).

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
Purpose and principles	The Strategy's vision describes a future in which all New Zealanders contribute to sustaining the full range of indigenous biodiversity and share in its benefits, and in which the genetic resources of our important introduced species are secure. Thirteen principles are identified to guide the conservation and sustainable management of New Zealand's biodiversity and the implementation of this Strategy: Principle One — Governance The Government is responsible for providing the direction and leadership to ensure the conservation and sustainable use of New Zealand's biodiversity as a matter of national importance. Principle Two — Treaty of Waitangi The special relationship between the Crown and Maori as reflected in the Treaty of Waitangi should be recognised and provided for in the conservation and sustainable use of biodiversity, including kaitiakitanga, customary use and matauranga Maori. Principle Three — Collective and Ethical Responsibilities All New Zealanders depend on biodiversity and have a responsibility for its conservation and sustainable use beyond their own needs: • To the needs of future generations; and • To other species, life forms and ecosystems, which have intrinsic, value and warrant respect. Principle Four — Working Together The conservation and sustainable use of New Zealand's biodiversity require individuals and public agencies to work together in a coordinated manner, to share knowledge, costs and benefits, to be clear about their different roles and responsibilities and to have the capability and resources to contribute. Principle Five — Respect for Property Rights Respect for property rights, as well as their scope and associated responsibilities, is essential to ensure a collaborative partnership is developed between resource owners and users and public agencies to sustain and conserve biodiversity. Principle Six — Recognise Variable Capacity to Respond	The Sustainable Development Programme of Action is a very recent strategy, which was discussed at Cabinet on 16th December 2002. The text presented in this report was provided officials from the Ministry of Economic Development and the Department of Prime Minister and Cabinet. Principles for policy and decision-making The government recognises that its decisions should ensure the well-being of current and future generations. It will take account of the economic, social, economic, environmental and cultural consequences of its decisions by: ▪ Considering the long-term implications of decisions ▪ Seeking innovative solutions that are mutually reinforcing, rather than accepting that gain in one area will necessarily be achieved at the expense of another ▪ 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 ▪ Working in partnership with local government and other sectors and encouraging transparent and participatory processes ▪ Considering the implications of decisions from a global as well as a New Zealand perspective ▪ Decoupling economic growth from pressures on the environment ▪ Respecting environmental limits, protecting ecosystems and promoting the integrated management of land, water and living resources ▪ Working in partnership with appropriate Maori authorities to empower Maori in development decisions that affect them ▪ Respecting human rights, the rule of law	The strategy presents a "vision and an action plan for reducing and better managing waste" and has six core principles: ▪ Global citizenship ▪ Kaitiakitanga/stewardship ▪ Extended producer responsibility ▪ Full cost pricing ▪ Life-cycle principle (i.e. consideration of all environmental effects of production, use and disposal) ▪ Precautionary principle	This strategy was launched in 1996 as an initiative of the previous Government. It is no longer operative as such, however, however some initiatives that were launched under the strategy are still continuing, for example, the New Zealand Landcare Trust. MfE's sustainable land management programme is now focussing on: ▪ Water quality, and ▪ Intensive land use impacts on water quality (largely dairy impacts). MfE is also working on two specific programmes: ▪ Agricultural impacts on Lake Taupo ▪ A Fonterra lead joint action plan with central and local government from mitigation action that farmers can take regarding adverse effects. No specific documentation was available for these initiatives. No further comment is made, given that the strategy is no longer operative.

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
	In designing mechanisms to support biodiversity conservation, management agencies should recognise the variable capacity of individuals and local communities to implement these mechanisms. Principle Seven — Internalising Environmental Costs Where an activity imposes adverse effects on biodiversity, the costs of mitigating or remedying those impacts should be borne by those benefiting from the activity. Principle Eight — In situ Conservation Biodiversity is best conserved <i>in situ</i> by conserving ecosystems and ecological processes to maintain species in their natural habitats. However, <i>ex situ</i> measures will be important to support the conservation of some species. Principle Nine — Indigenous Biodiversity Priorities Priority should be given to conserving indigenous species over introduced species, when making management decisions. Principle Ten — Sustainable Use Conserving biodiversity is a priority, but does not preclude its use, where this use is ecologically sustainable and does not result in the long-term decline of biodiversity. Principle Eleven — Management Actions Biodiversity management requires a comprehensive approach that recognises all levels of biodiversity (ecosystem, species and genetic). Management actions should identify, and prevent and mitigate the causes of biodiversity loss and in doing so should: ▪ Address all key threats; ▪ Be based on the best and most current information and knowledge available; ▪ Be adaptive, aiming for continual improvement as new knowledge is gained; and ▪ Be focused on the priority needs; and ▪ Be cost-effective. Principle Twelve — Precautionary Decision Making Management actions to conserve and sustainably use biodiversity should not be postponed because of a lack of knowledge, especially where significant or irreversible damage to ecosystems	and cultural diversity.		

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
	can occur or indigenous species are at risk of extinction. Principle Thirteen — Focus on the Future Our actions in the past reflect the understanding and conditions of those times; while we can learn from our mistakes, the way forward will not be assisted by apportioning blame for the unsustainable practices of the past.			
Commentary	Biological biodiversity (biodiversity) is defined as follows: The variability among living organisms from all sources including, <i>inter alia</i>, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (Convention on Biological Diversity). Components include: Genetic Diversity: The variability in the genetic make up among individuals within a single species. In more technical terms, it is the genetic differences among populations of a single species and those among individuals within a population. Species Diversity: The variety of species — whether wild or domesticated — within a particular geographical area. A species is a group of organisms, which have evolved distinct inheritable features and occupy a unique geographic area. Species are usually unable to interbreed naturally with other species due to such factors as genetic divergence, different behaviour and biological needs, and separate geographic location. Ecological (ecosystem) Diversity: The variety of ecosystem types (for example, forests, deserts, grasslands, streams, lakes, wetlands and oceans) and their biological communities that interact with one another and their non-living environments.	The aim is to ensure the use of these operating principles in policy development. Infusing this way of thinking into the public sector will require a concerted effort from chief executives. It will also require government agencies to invest in capability building to ensure that integrated policy development occurs across social, economic, environmental and cultural spheres. A single-issue approach to decision-making is unlikely to achieve the gains we are looking for. Sustainable development must be at the core of all government policy. There are a number of mechanisms for achieving this. One will be the issuing of a Cabinet Circular to guide the public sector.		
Goals and objectives	Goal One: Community and individual action, responsibility and benefits Enhance community and individual understanding about biodiversity, and inform, motivate and support widespread and coordinated community action to conserve and sustainably use biodiversity; and enable communities and individuals to equitably share responsibility for, and benefits from, conserving and sustainably using New Zealand's biodiversity, including the	The Sustainable Development Programme of Action states the desired outcomes for the four areas it identifies. These outcomes are: Freshwater ▪ Freshwater is allocated and used in a sustainable, efficient and equitable way ▪ Freshwater quality is maintained to meet all	Goals are listed as: ▪ Sound waste minimisation and management legislation ▪ High environmental standards ▪ Efficient disposal pricing ▪ Adequate, accessible information ▪ Efficient use of materials The strategy has a number of specific objectives relating to:	

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
	benefits from the use of indigenous genetic resources. Goal Two: Treaty of Waitangi Actively protect iwi and hapu interests in indigenous biodiversity, and build and strengthen partnerships between government agencies and iwi and hapu in conserving and sustainably using indigenous biodiversity. Goal Three: Halt the decline in New Zealand's indigenous biodiversity Maintain and restore a full range of remaining natural habitats and ecosystems to a healthy functioning state, enhance critically scarce habitats, and sustain the more modified ecosystems in production and urban environments; and do what else is necessary to maintain and restore viable populations of all indigenous species and subspecies across their natural range and maintain their genetic diversity. Goal Four: Genetic resources of introduced species Maintain the genetic resources of introduced species that are important for economic, biological and cultural reasons by conserving their genetic diversity.	appropriate needs - Water bodies with nationally significant natural, social or cultural heritage values are protected. Energy - Energy use in New Zealand becomes progressively more efficient and less wasteful - Our renewable sources of energy are developed and maximised - New Zealand consumers have a secure supply of electricity. Sustainable cities - Cities as centres of innovation and economic growth - Liveable cities that support social wellbeing, quality of life and cultural identities. Child and youth development - Supportive families - Adequate material living standards - Good health - Success at all levels of education and transition into employment - Lives free from violence and crime.	- Institutions and legislation - Waste reduction and material efficiency - Information and communication - Performance standards and guidelines.	

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
Commentary	A Vision for Aotearoa — New Zealand ▪ New Zealanders value and better understand biodiversity; ▪ We all work together to protect, sustain and restore our biodiversity, and enjoy and share in its benefits, as the foundation of a sustainable economy and society; ▪ Iwi and hapu as kaitiaki are active partners in managing biodiversity; ▪ The full range of New Zealand's indigenous ecosystems and species thrive from the mountains to the ocean depths; and ▪ The genetic resources of our important introduced species are secure, and in turn support our indigenous biodiversity.	The Programme of Action includes the vision that was first set out in <i>Growing an Innovative New Zealand</i>. <i>A vision for New Zealand</i> ▪ A land where diversity is valued and reflected in our national identity. ▪ A great place to live, learn, work and do business. ▪ A birthplace of world-changing people and ideas. ▪ A place where people invest in the future. We look forward to a future in which New Zealanders: ▪ Celebrate those who succeed in all walks of life and encourage people to continue striving for success ▪ are full of optimism and confidence about ourselves, our country, our culture and our place in the world, and our ability to succeed ▪ are a nation that gains strength from its foundation in the Treaty of Waitangi and in which we work in harmony to achieve our separate and collective goals ▪ are excellent at responding to global opportunities and creating competitive advantage ▪ are rich in well-founded and well-run companies and enterprises characterised by a common sense of purpose and achievement that are global in outlook, competitive and growing in value ▪ derive considerable value from our natural advantages in terms of resources, climate, human capital, infrastructure and sense of community ▪ cherish our natural environment, are committed to protecting it for future generations and eager to share our achievements in that respect with others ▪ know our individual success contributes to stronger families and communities and that all of us have fair access to education, housing, health care and fulfilling employment.		

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
		Key Government Goals to Guide the Public Sector in Achieving Sustainable Development have recently been agreed by Cabinet. These are: ▪ Strengthen National Identity and Uphold the Principles of the Treaty of Waitangi Celebrate our identity in the world as people who support and defend freedom and fairness, who enjoy arts, music, movement and sport, and who value our diverse cultural heritage; and resolve at all times to endeavour to uphold the principles of the Treaty of Waitangi. ▪ Grow an Inclusive, Innovative Economy for the Benefit of All Develop an economy that adapts to change, provides opportunities and increases employment, and while reducing inequalities, increases incomes for all New Zealanders. Focus on the Growth and Innovation Framework to improve productivity and sustainable economic growth. ▪ Maintain Trust in Government and Provide Strong Social Services Maintain trust in government by working in partnerships with communities, providing strong social services for all, building safe communities and promoting community development, keeping faith with the electorate, working constructively in Parliament and promoting a strong and effective public service. ▪ Improve New Zealanders' Skills Foster education and training to enhance and improve the nation's skills so that all New Zealanders have the best possible future in a changing world. Build on the strengthened industry training and tertiary sectors to ensure that New Zealanders are among the best educated and most skilled people in the world. ▪ Reduce Inequalities in Health, Education,		

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
		Employment and Housing Reduce the inequalities that currently divide our society and offer a good future for all by better co-ordination of strategies across sectors and by supporting and strengthening the capacity of Maori and Pacific Island communities. Ensure that all groups in society are able to participate fully and to enjoy the benefits of improved production. Protect and Enhance the Environment Treasure and nurture our environment with protection for eco-systems so that New Zealand maintains a clean, green environment and builds on our reputation as a world leader in environmental issues. Focus on biodiversity and biosecurity strategies.		
Scope and jurisdiction	This Strategy is about managing threats to New Zealand's total biodiversity — both introduced and indigenous. It applies to the limits of the EEZ [ref Theme 3: Scope p55] and has a 2020 Outcome timescale. A mechanism for coordinating implementation of the Strategy at a central government level is outlined. Successful implementation will require a coordinated effort across central and local government, working in partnership with iwi and hapu, and with the community, the private sector and landowners. 10 biodiversity action themes are identified – one of which, Theme 3, is devoted to Coastal and Marine Biodiversity. Coastal and marine ecosystems include estuaries, inshore coastal areas, and offshore areas within New Zealand's jurisdiction, and the resident and migratory species within them. Other relevant themes include: - Theme 4: Conservation and Use of Genetic Resources - Theme 5: Biosecurity and Biodiversity - Theme 10: New Zealand's International Responsibilities	The Programme of Action is a whole-of-government approach to sustainable development and covers economic, social, environmental and cultural sectors)	Waste is managed under the RMA, therefore the scope and jurisdiction of the Waste Strategy will be same as the RMA, which applies to all "land" including land covered by water and the air space above land. This definition of land includes the "coastal marine area" being the foreshore, seabed and coastal water (including the air space above the water) from the mean high water springs to the outer limits of the territorial sea.	

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
Commentary			In waste terms, the strategy includes all liquid, gaseous, and solid wastes.	
Participants	Formal The NZBS was developed primarily by Central Government but involved extensive consultation and submission processes.	Formal Development of the Programme of Action has been led by the Department of Prime Minister and Cabinet. The formal partners in the implementation process will be government agencies (i.e. it will be a strategy for government rather than a strategy for New Zealand) Informal Partnership is a key component of the sustainable development approach and the government has signalled its intention to work closely with other sectors on the issues identified in the Programme of Action. Discussions with key stakeholders have already begun.	Formal Strategy is a joint MfE and Local Government New Zealand initiative. Major players include regional councils, TLAs, the waste industry, manufacturers, etc. Informal Consumers and the public. Exclusions	
Commentary			The strategy is a good example of a joint central / local government initiative, at least at the level of LGNZ. However, it is unclear to what extent local authorities actively support the strategy.	
Policy Framework	International obligation/mandate New Zealand has an international responsibility to meet commitments under the Convention on Biological Diversity. Ratified by New Zealand in 1993 WTO-TRIPS agreement [World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights] and the WIPO Paris Agreement [World Intellectual Property Organisation: Agreement for the Protection of Industrial Property], New Zealand is also a member of the United Nations FAO Commission on Genetic Resources for Food and Agriculture, the International Convention for the Protection of New Varieties of Plants (UPOV) and the International Association of Plant Breeders (ASSINSEL). Statutory Authority Statutory authority is not changed; Government Departments are generally given the lead role with other relevant statutory parties identified.	International obligation/mandate A commitment to promoting sustainable development is inherent in Agenda 21 and in the Johannesburg Programme of Implementation, developed at the World Summit on Sustainable Development. While the New Zealand Programme of Action focuses on key domestic issues, it addresses issues that are also highlighted on the international agenda.	International obligation/mandate Strategy cites OECD Environmental Management Strategy for the First Decade of the 21st Century. Statutory Authority	

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
Commentary	A comprehensive framework for action directed towards the Strategy goals is outlined in ten "themes": biodiversity on land; freshwater biodiversity; coastal and marine biodiversity; conservation and use of genetic resources; biosecurity and biodiversity; governance; Maori and biodiversity; community participation and awareness; information, knowledge and capacity; and New Zealand's international responsibilities. The question of intellectual property rights for genetic material, the CBD principle of access agreements to genetic resources by other Convention parties, Maori claims under the Treaty of Waitangi etc pose considerable potential problems when aligned with NZ obligations under, for example, WTO-TRIPS.	The Sustainable Development Programme of Action will guide the actions and decisions of government and government agencies. Other stakeholders will be encouraged to promote its objectives and to apply the sustainable development approach.		
Legislative provisions not implemented		None	None	
Commentary	Not sure if there are explicit links to RAMSAR			
Linkages and co-ordination	Between policy documents Extensive linkages with a range of strategies e.g. Marine Protected Areas Strategy, National and Regional Pest Management Strategies. Between agencies Extensive linkages across agencies through identification of lead and supplementary agencies / responsibilities – including in areas such as the introduction of new organisms and biosecurity/ border control. Formal linkages through the NZBS Central Government Co-ordinating Group (i.e. Chief Executives of DOC, MFish, MfE, MAF, and MoRST). This group is responsible for governance and co-ordination of NZBS implementation programmes to implement specific aspects of the strategy.	Between policy documents The sustainable development approach is one of government's key policy frameworks. It is closely related to the Growth & Innovation Framework and will have a bearing on policy and decision-making across the government sector. Between agencies Agencies will be expected to take a sustainable development approach and apply the principles set out in the Programme of Action. This will involve considering the long-term implications of decisions, and ensuring that the economic, social, environmental and cultural dimensions of issues are considered.	Between policy documents NZ Sustainable Development Strategy, Hazardous Waste Management Strategy Between agencies	

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
Commentary	Identified lead players, with number of actions for which they are responsible under the 7 sub-themes of Theme 3: Coastal and Marine Biodiversity, include DoC [14], DPMC [1], FRST [1], MfE [4], MFish [9], MSA[1]. In addition 20 other interested parties are identified ranging from the specific, such as Te Puni Kokiri, to the general, such as the marine industry and community groups.			
Relevance to Oceans	The stated Desired outcome for 2020 for Theme 3: Coastal and Marine Biodiversity is: - New Zealand's natural marine habitats and ecosystems are maintained in a healthy functioning state. Degraded marine habitats are recovering. A full range of marine habitats and ecosystems representative of New Zealand's indigenous marine biodiversity is protected. - No human-induced extinctions of marine species within New Zealand's marine environment have occurred. Rare or threatened marine species are adequately protected from harvesting and other human threats, enabling them to recover. - Marine biodiversity is appreciated, and any harvesting or marine development is done in an informed, controlled and ecologically sustainable manner. - No new undesirable introduced species are established, and threats to indigenous biodiversity from established exotic organisms are being reduced and controlled.	Government will be looking for a sustainable development approach in oceans policy, and in particular the application of the SD principles to oceans policy development.	Little direct relevance to Oceans Policy other than as an example of a strategy that seeks to deliver sustainable development for New Zealand. Also a good example of a joint central / local government initiative.	
Commentary	Identified oceanic issues include: - Information and awareness of marine biodiversity - Coordinated management - Impact of human activities on coastal and marine habitats - Impact of human activities on coastal and marine species - Sustainable fisheries - Marine biosecurity - Marine protected areas and representativeness	The SD Programme of Action will guide public sector decision-making including decision-making in relation to the Oceans. However it should be noted that oceans has not been identified as a priority issue. Priority issues are: - Water - Energy - Sustainable cities - Child and youth development.		
Decision-making	Process overview DoC is responsible for overall process and reporting requirements. Specific lead agencies are identified for tasks; specific funding provides	Process overview Lead Ministers have been nominated for each of the issues identified in the Programme of Action. While a co-ordination process is being set up at	Process overview N/A no formal decisions as yet Stakeholder and public input	

1. Formal Strategies	NZ Biodiversity Strategy 2000	Sustainable Development Programme of Action	NZ Waste Strategy	NZ Sustainable Land Management Strategy
	financial support for detailed aspects of the Strategy. The interagency Chief Executives Group (DOC, MfE, MFish, MAF, MoRST) has responsibility for implementing Green Package initiatives. Stakeholder and public input Implementation of the strategy is shared across many parties. These will each require specific identification of stakeholders and provision for relevant input. Delegations Not specified.	CEs and officials levels, primary responsibility for work on water, energy, cities and child and youth development will remain with the appropriate agencies.	Delegations	
Commentary	DoC and MfE led development of NZBS, with 13 other government departments/agencies. The CE's group, with specific lead agencies accountable at the programme level, now leads decision-making.	The SD Programme of Action will be used to guide decisions taken by the Government and Government agencies. It may, for example, form a specific consideration in the preparation of Cabinet papers.		
Compliance and Enforcement	At this stage the process has not progressed to the point of identifying compliance and enforcement requirements, although they are under consideration as part of the Strategy.	Through the normal accountability arrangements.	N/A	
Commentary				
Overview of operation and effect	Because the NZBS is a multi-party strategy, operational overview is split between the two principal government agencies MfE and DoC – with significant input in the marine sector from MFish.	See above	Strategy was launched in March 2002.	
Commentary	5-year review is to be undertaken. It will provide a picture of how effective implementation has been. Milestones are also implemented at the programme level in many cases		The strategy did not require any specific actions so therefore difficult to judge operation and effect at this early stage. Emphasis on waste minimisation and a "move up the pipe" signals a change in direction from traditional effects based RMA management.	
Key milestones	These are currently identified in terms of the budget allocation process through the "Green Package".	To be developed as part of the work programmes for each of the issues identified.	Large number of targets – mostly for 2005 and out years.	
Commentary		The Programme of Action is expected to be completed and released by the end of February 2003.	Some say the targets are poorly defined. MfE is currently working to better define targets.	

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Purpose and Principles	The purpose of the Environmental Performance Indicators Programme (EPIP) is to help in assessing the state of New Zealand's environment and the success of environmental policies and laws. Importantly, the Environmental Performance Indicators programme uses the pressure-state-response approach. That is, it will measure and report on: – the pressures that are being put on the environment – the current and historical state of the environment – the effectiveness of any responses made to protect or repair the environment.	<i>This section refers to work underway to develop a Marine Protected Areas Strategy. This work is still in the relatively early stages of development.</i> To set out a strategy for establishing a network of areas that protect marine biodiversity.	<i>This section refers to work underway to develop the MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment. It is drawn from the draft MFish document entitled "A Strategy for Managing the Effects of Fishing on the Aquatic Environment", which was supplied by MFish.</i> To implement an Ecosystem Approach to Fisheries, make significant improvements in managing the environmental effects of fishing and to ensure MFish meets its environmental obligations under the Fisheries Act 1996 and other legislation in an efficient and consistent manner. (Note this strategy is formally known as the strategy for <i>Managing the Effects of Fishing on the Aquatic Environment</i>.) 15 "operating principles" covers issues such as" - Providing for utilisation within constraints of sustainability - Crown working closely with Maori & other stakeholders - Continual improving & a "learning culture" - Proactive management - Increased responsibility on those responsible for activities to demonstrate acceptable effects - User pays - Flexible standards, where practicable - Use of best available information, transparent processes that consider uncertainty, compliance and enforcement costs, etc	<i>This section refers to work underway to develop a Fisheries Plan Framework. It is drawn from the "Draft Final Fisheries Plan Framework" dated 02 September 2002 and supplied by MFish.</i> Fisheries plans were introduced into the Fisheries Act in 1999 to provide fisheries stakeholders with an alternative approach to managing fisheries by: ▪ Providing advice directly to the Minister of Fisheries on decisions under the Fisheries Act ▪ Taking responsibility for the tasks and services that support those decisions. The draft MFish framework provides a guide to developing a fisheries plan, including specifying what needs to be in a fisheries plan and what information the Minister needs.

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Commentary	The benefit of the pressure-state-response model and the rigorous approach to defining and applying the indicators is that the information gained will not only provide an overall picture of the state of the environment, it will also provide a critical tool for environmental management. Considerable effort has been invested in ensuring the indicators yield more than interesting information but do in fact provide the information to improve the quality of policy development and regulatory decision-making.	The draft MPA Strategy is a specific implementation initiative under the wider New Zealand Biodiversity Strategy (NZBS) – see goal below. It is lead jointly by DOC and MFish and seeks to provide an umbrella strategy covering existing marine protection measures (e.g. marine reserves, fisheries closures, etc) to implement the NZBS goal for marine protection.	Strategy has been developed largely as a means to ensure that MFish meets its obligations relating to the environmental principles (section 9) of the Fisheries Act 1996. MFish notes that “there is a widely held view both within MFish and by fishery stakeholders that MFish should do more to meet these environmental obligations”.	Fisheries plans have been developed as a tool to enable a move away from the highly centralised decision-making under the Fisheries Act by providing a legal means by which the principle advice to Minister on management of particular fisheries could be developed outside processes run by MFish. No fisheries plans developed as yet.
Goals and Objectives	The goals and objectives are synonymous with the purpose described above.	Objective 3.6 of NZBS is the primary goal for the MPA strategy: To protect a full range of natural marine habitats and ecosystems to effectively conserve marine biodiversity, using a range of appropriate mechanisms, including legal protection.	No explicit goals but vision is for: A healthy aquatic environment Users of fisheries resources and aquatic environment take responsibility and face the costs for their activities within environmental standards set by Govt. Users of fisheries resources and aquatic environment respect each others rights, responsibilities and interests and constructively resolve issues amongst themselves. Voluntary compliance with rules Stakeholders and public support the way the effects of fishing on the aquatic environment are being managed.	Not explicitly stated as goal but clear intention is to make it possible to use available resources outside MFish to achieve better fishery management outcomes; and, to enable development of long-term strategies for NZ’s fisheries that meets peoples expectations regarding long-term sustainability and efficient utilisation.
Commentary			MFish describe the strategy as an <i>Ecosystem Approach to Fisheries Management</i> and note that this does not replace existing fisheries management, but rather builds on existing the management framework by incorporating additional ecosystem considerations. To this extent the vision for the strategy is similar to the MFish vision for wider fisheries management.	MFish note that under current statutory management regime opportunities to develop fisheries and to achieve better environmental outcome could not be exploited, and stakeholders and tangata whenua could not themselves address a fisheries management issue that required a decision from the Minister if MFish did not commit resources to that issue (and limited MFish resources mean that only a selected number of fisheries management issues are addressed across a selected number of fisheries).

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Scope and jurisdiction	The EPI programme is intended to apply to all environmental issues. Indicators have been or are in the process of being developed for: ▪ Air ▪ Marine ▪ Climate Change ▪ Ozone ▪ Land ▪ Freshwater ▪ Pests, weeds and diseases ▪ Transport ▪ Energy ▪ Biodiversity ▪ Amenity ▪ Maori ▪ Contaminated Sites ▪ Waste The two marine indicators have been implemented: ▪ Fish stocks ▪ Beach water quality. Marie indicators still being developed are: <i>Physical/Chemical</i> ▪ Marine spills ▪ Land use/sedimentation risk ▪ Sedimentation ▪ Land use/eutrophication risk ▪ Chl-a or trophic index ▪ Toxic and ecotoxic contaminants <i>Habitats & Communities</i> ▪ Extent of marine habitats ▪ % area under protection ▪ <i>Species</i> ▪ Threatened taxa ▪ Alien species <i>Human Health & Values</i> Litter ▪ Area of under public ownership ▪ Time not suitable for bathing and shellfish gathering ▪ Toxic and non-toxic algal blooms ▪ Natural character ▪ Areas with unrestricted public access	Territorial sea & EEZ or “across the entire marine area within New Zealand’s jurisdiction”	Scope of the Fishery Plan framework is the same as Fisheries Act – territorial sea, EEZ and freshwater fisheries other than whitebait, salmon and trout.	Scope of the Fishery Plan framework is the same as Fisheries Act – territorial sea, EEZ and fresh water fisheries other than whitebait, salmon and trout. Scope of individual fisheries plans can vary and is set by stakeholders in that particular fishery; e.g. ▪ Localised area ▪ Quota Management Area (QMA) ▪ Managing particular species or impacts throughout the EEZ

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
	<i>Fishing Impacts</i> Fishing Impacts			
Commentary	Marine indicators are at various stages of development. Many await the development and introduction of the <i>Marine Environment Classification (MEC)</i> system. The MEC is a system of classifying (or dividing) the marine environment into ecologically relevant environmental units (i.e. areas with similar biophysical characteristics that are likely to reflect different ecological communities). The MEC is the basic framework within which indicators can be implemented. It provides the rationale for determining where and at what spatial distribution the indicators should be applied. It allows, for example, indicators to be applied on a representative basis and the context within which information can be evaluated. The scope of the MEC extends to the outer limits of the EEZ (at a scale of 1 km grid) but it is also proposed that the approach be applied at a regional scale at a 100 m grid scale. The MEC is likely to be a critical tool for managing the marine environment in the future. Of particular note is the importance of the MEC in supporting an ecosystem based approach to oceans management	Marine reserves can currently only be declared within the territorial sea. The Marine Reserves Bill 2002 proposes to allow marine reserves to be created in the EEZ. The potential establishment of marine protected areas in the EEZ raises some interesting issues; for example, classification of deep-sea areas and compliance and enforcement issues. There will also be some challenges in ensuring that the "optimum utilisation" principle of UNCLOS is balanced with the establishment of any "no fishing" zones, especially if such zones are established for the purpose of establishing a "representative" network of marine protected areas. It will need to be demonstrated that such a purpose is consistent with and "fits" UNCLOS.	The draft strategy explicitly states that it addresses the effects of commercial, customary and recreational fishing on the aquatic environment; but <u>not</u> matters covered elsewhere, namely, target fish stock management, aquaculture, marine biosecurity, adverse effects of general maritime industries, general discharges from vessels (e.g. food, wastes, etc) or land-based effects on the aquatic environment (e.g. sedimentation, nutrient run-off)	
Participants	Formal A large number of players have been involved in the development of the indicators (and MEC). Because of the wide application of the indicators (and the information they yield) many government and non governmental organisations have taken an interest in indicator development. Although MfE has overall responsibility for the programme implementation of individual indicators relies on a mix of government agencies CRI's and local government (depending on the particular indicator).	Formal Biodiversity Ministers Responsibility for overall governance and co-ordination rests with the NZBS Central Government Co-ordinating Group (i.e. Chief Executives of DOC, MFish, MfE, MAF, MoRST, and TPK). This group is responsible for NZBS Green Package programmes, including the MPA strategy. DOC responsible for implementing actions under Marine Reserves Act and MFish for implementing actions under Fisheries Act.	Formal MFish Informal All fisheries stakeholders (commercial, customary and recreational fishers, science providers, NGOs, Maori, etc.) Exclusions	Formal Minister of Fisheries has formal role of approving plans. MFish provides technical assistance, develops standards and specifications for evaluating plans, provides advice to the Minister, delivers statutory responses and services during the implementation of plans, and monitors plan processes and outcomes. Tangata whenua, fisheries stakeholders, other relevant central and local government agencies, and service providers (e.g.

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
	The active <i>Fish Stocks</i> indicator is implemented by MFish. The bathing beach indicator is implemented by MfE working with regional councils. The MEC is being developed under a steering committee comprising MfE, MFish, DoC, regional councils, SeaFIC and NIWA	Informal Provides for “consultation and community participation”. Marine and fisheries stakeholders including community participation. Exclusions None		Fishserve, CRIs) may all have various formal to informal roles, including acting as proponents of a plan, negotiators, providing commentary/advice to the Minister, implementation, and providing technical advice and services.

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Commentary	There is no official governance structure for development and oversight of the indicators of the information they yield. MfE acts as lead agency and information clearing house and has developed processes that involve others as appropriate.	Responsibilities and reporting requirements are addressed through wider NZBS responsibilities and reporting requirements. The Strategy is expected to have an action plan with reporting requirements to Biodiversity Chief Executives.		While roles and responsibilities may vary from fisheries plan to fisheries plan, all stakeholders are likely to a formal role because all relevant stakeholders in the particular fishery plan under development in order to meet the input and participation requirements under the fisheries acts. Also because the explicit intention of the fishery plan framework is to involve all stakeholders in developing and endorsing the plan.
Policy Framework	International obligation/mandate There is no binding international obligation to prepare or implement environmental indicators. Environmental monitoring is however a critical dimension of environmental management. In that sense indicators are at least an implicit (and sometimes explicit) component of most multinational environmental agreements The pressure-state- response model used is consistent with that promoted by the OECD. Statutory Authority While the indicators programme itself has no statutory authority, the RMA and other management statutes do require monitoring of the environment by the Ministers (and others). The indicators programme is one means of fulfilling that requirement.	International obligation/mandate 1992 Convention on Biological Diversity provides umbrella mandate for NZBS, which has MPA strategy as one of its initiatives. Statutory Authority Not explicit but inherent in Fisheries Act 1996, Marine Reserves Act, RMA (regional coastal plans), Marine Mammals Protection Act, MSA (cable protection zones) Other New Zealand Biodiversity Strategy (NZBS) provides formal policy framework.	International obligation/mandate Statutory Authority Not explicit but inherent in Fisheries Act 1996, specifically s8 purpose (sustainable utilisation), s9 environmental principles, s10 information principles, and part 13 sustainability measures. Plus Marine Mammals Protection Act, Wildlife Act, and Antarctic Marine Living Resources and the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) Other New Zealand Biodiversity Strategy (NZBS) provides wider policy framework.	International obligation/mandate N/A Statutory Authority Fisheries Act 1996 Amendment Act 1999
Commentary			MFish note that worldwide there is increasing recognition of the need to manage the effects of fishing on the aquatic environment and note that <i>Ecosystem-based management and ecosystem approach to fisheries</i> are the terms commonly used to describe the type of management proposed to address ecosystem related issues	
Legislative provisions not implemented	None	N/A	N/A	Fisheries plans are provided for in the Fisheries Act, but are not mandatory. None have yet been implemented.

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Commentary			MFish believe that the key elements of the strategy can be implemented without legislative change. However, over time some amendments to the Fisheries Act "may be desirable to facilitate the operation of the proposed strategy". These are likely to relate to broadening the purpose for which regulations can be set to cover more explicitly the effects of fishing on the aquatic environment.	
Linkages and co-ordination	Between policy documents Between agencies Good linkage is established with agencies through inter-departmental processes	Between policy documents NZBS programmes, MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment, MfE's Environmental Performance Indicator Programme - Marine Habitat Classification, NZ Coastal Policy Statement, Vessel Routing Policy Review, Between agencies Primarily DOC and MFish, also MfE and MSA. Regional councils and MED are also likely to have a role.	Between policy documents Explicit links to NZ Biodiversity Strategy, Marine Protected Areas strategy, Seamount strategy, Seabird National Plan of Action, and other relevant strategies, e.g. regional policy statements, regional plans, management strategies or plans under the Conservation Act, and approved fisheries plans under the Fisheries Act. Also links with Environmental Performance Indicators programme, the marine protected areas strategy and DOCs species threat classification system. Also links with Environmental Performance Indicators programme and DOCs species threat classification system. Also links to Marine Reserves Act and Marine Mammal Protection Act. Between agencies MFish, DOC, MfE and other marine protection agencies. Also funding agencies such as FoRST.	Between policy documents Fishery plans are linked to all MFish policies and procedures in that fishery plans must meet all the Minister's obligations under the Fisheries Act (e.g. Treaty of Waitangi obligations, environmental and information principles, etc) Note: in the event of gaps in plans the default management regime continues to be that specified in the Fisheries Act 1996. Between agencies Primarily MFish, but also DOC, local government, and all other agencies who have jurisdiction over the area specific to each fishery plan.
Commentary		Strategy has direct relevance to current Marine Reserves Bill, Fisheries Act "environmental protection" mechanisms, NZ Coastal Policy Statement, etc.		
Relevance to Oceans	Significant. The EPI programme is developing the basic information and classification systems that will determine how the oceans are monitored and analysed in the future. The tools that the EPI programme has necessitated be developed will enhance understanding of the oceans and our ability to manage oceans in a scientifically rational way.	Highly relevant, one of the few strategies requiring agency collaboration towards a common purpose, and seeking integrated management across different statutes. Also a key strategy for implementing NZBS marine programme.	The move towards an <i>Ecosystem Approach to Managing Fisheries</i> is highly relevant to the Oceans Strategy – especially the move towards linking previously disparate decisions (i.e. fisheries sustainability decisions) with wider management of the marine environment for purposes beyond fisheries management (i.e. environmental management).	Relevance is likely to be mostly in the area of moving from a highly prescribed centralised decision-making process to a more devolved stakeholder driven decision-making process.

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Commentary	Successful implementation will depend on the EPI information and classification systems being adopted and endorsed by all relevant agencies. Also of relevance is the National Aquatic Biodiversity Information System (NABIS). MFish is developing NABIS in a separate exercise to the EPI programme. Linkages between the two approaches will need to be addresses to ensure integration. NABIS will consist of a number of electronic maps (GIS format) containing a limited number of pre-defined layers of information. It may link to the MEC (discussed above) in the sense that MEC might provide one (or more) of the information layers. NABIS is, however, intended to be a more detailed and factual (rather than predictive) biodiversity information system. Its primary aim is to support decision makers and planners in making decisions that affect aquatic biodiversity. Note though that NABIS is still in initial stages of development, and has been slower than anticipated to get underway.		MFish see the Oceans Policy as the umbrella strategy for their Strategy for Managing the Effects of Fishing on the Aquatic Environment.	The draft fisheries plan framework is accompanied by a statement from MFish that the current highly prescribed centralised decision-making fisheries management regime is not fully "delivering a long-term strategy for New Zealand's fisheries and [meeting] peoples expectations regarding long-term sustainability and efficient utilisation of fisheries" (see page 8 of draft framework).
Decision-making	Process overview Technical decisions on the nature of the indicators and the detail of how, when and where they should be applied are taken by officials working through inter-departmental and multi-agency processes. Stakeholder and public input MfE has consulted widely on the development of the indicators Delegations	Stakeholder and public input "Effective and high-quality public consultation" is required but no clear guidance on what this is or how it would feed into decision-making. Delegations Not yet specified. Indications are that existing statutory delegated authority for establishing and managing current tools will continue to be used under the Strategy. Accountability for running the implementation process will however need to be specified. The draft strategy also indicates that MFish and DOC are will develop a protocol to establish how they will work together.	Process overview MFish are proposing to set species specific and habitat-specific environmental standards, rather than fishery-specific standards. Standards will include process and performance standards relating to: Consultation, data quality, monitoring, fishery risk assessment, and reporting. Stakeholder and public input Through usual MFish consultation processes (although this is not yet fully specified in regards to this strategy), including use of existing working groups such as the Aquatic Environment Research Planning Group, the Aquatic Environment Working Group and MFish Regional Iwi Forums. Fisheries stakeholders may also have input into this strategy through the development of fisheries	Process overview Stakeholder and public input See comments above – providing for fisheries plans is a deliberate attempt by MFish to move from a highly prescribed and centralised decision-making regime to a more devolved stakeholder decision-making regime. Delegations

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
			plans. A new "Aquatic Environment Working Group" is proposed to facilitate stakeholder involvement in setting standards. Delegations None	
Commentary			These standards will be expressed as policies that describe how the Minister intends to give effect to the purpose and principles of the Fisheries Act 1996. Standards will include process and performance standards relating to: Consultation, data quality, monitoring, fishery risk assessment, and reporting.	
Compliance and Enforcement	Many of the indicators do rely on the support of local government adopting and applying the indicators in a consistent way across the country. There is currently no means of enforcing this. (MfE has tended to encourage the use of preferred indicators by coercion and through funding their development).	Not specified – assume compliance & enforcement will be dealt with under key implementation statutes (Marine Reserves Act, Fisheries Act, etc)	MFish say that consideration will be given to a wide range of compliance measures, and that sanctions for non-performance against environmental standards will be required.	The proponents of fisheries plans are responsible for monitoring and enforcement. However, MFish "will also monitor aspects of the plan, to ensure that the purpose and principles of the Fisheries Act are being complied with and the Government's core objectives are being met".
Commentary	Provisions in the 1999 Resource Management Bill would enable the government to promulgate national standards in relation to the use of particular environmental indicators.			The framework states, "what will monitored should be agreed and set out in the plan". However the relative compliance and enforcement responsibilities are not completely clear. It is likely that they will become clearer as plans begin to be implemented, although this is likely to be some time away.
Overview of operation and effect	Information on particular environmental indicators is collected according to an agreed methodology either directly by government agencies, by others under contract to government agencies or by local government. This information is made publicly available (on the indicators website and in used by management agencies to improve understanding management of the environment	N/A – still in draft and yet to go before Ministers, and then on to public consultation	N/A – still pre-consultation draft, although former versions of the framework have been consulted on.	No fisheries plans have been implemented and framework is still in pre-consultation draft, although former versions of the framework have been consulted on and some parts of the fishing industry are working on developing fisheries plans in accordance with the draft framework.

2. Strategies in progress	Environmental Performance Indicators Programme	DRAFT Marine Protected Areas Strategy	DRAFT MFish Strategy for Managing the Effects of Fishing on the Aquatic Environment	DRAFT MFish Fisheries Plan Framework
Commentary			MFish are proposing to develop measures of the effectiveness of the strategy as part of the implementation of the strategy. They also propose to draw on existing monitoring mechanisms such as the Environmental Performance Indicators, the Marine Protected Areas strategy and DOC's species threat classification system	The Hoki Fishery Management Company (NZ's largest fishery) appears to be the most advanced in terms of developing a fisheries plan, and is aiming to have an operational fisheries plan in 2004. The slow up take of fisheries plans may be partially due to a lack of clear direction from MFish as to what fishery plans should contain and how they should be developed. Lack of resources in the fishing industry and other fisheries stakeholder groups to develop fishery plans, may also be slowing uptake. The current MFish draft fishery plans frameworks addresses the former issue by clearly setting out roles and responsibilities, etc. It may, however, be difficult for stakeholders to pick up the required responsibilities and deliver comprehensive fishery plans. In the event of gaps in plans the default management regime continues to be that specified in the Fisheries Act 1996.
Key Milestones	Two marine indicators are already in operation. The remaining 17 draft marine indicators will progressively become available over the next few years. Timing of full implementation of marine indicators is dependant to some extent on the availability of the Marine Environment Classification system. It is expected that this will be available by March 2003, though untested at the EEZ (1km grid scale). MEC at the regional scale isn't proposed until the 2003/2004 financial year.	Reporting on implementation of MPA strategy to be integrated with annual reporting to Ministers on wider NZBS: - First annual report 15 Oct 2002 - Second annual report 15 Oct 2002	No milestones or timeframe set in strategy, although there is to be an accompanying "implementation plan" which will set milestones. These include some immediate actions mostly relating to start up of the strategy and increasing MFish capability in this area.	No milestones or timeframe set
Commentary			Milestones from draft implementation plan are still draft form and may change.	

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
Purpose and Principles	<i>This section refers to the draft MFish Seamount Strategy. It is drawn from the "Draft Strategy to Address the Impacts of Fishing on Seamounts" dated December 1999 and supplied by MFish.</i> To implement a strategy with management measures to avoid, remedy or mitigate the adverse effects of fishing on seamounts, in particular the effects on benthic (bottom) communities. The strategy is "directed solely at the impacts of fishing on seamounts". (Note – MFish defines seamount for the purpose of the strategy as "protruding irregularities, or bottom features, that rise greater than 100 metres above the sea floor in any depth of water".)	<i>This section refers to a draft MFish Strategy. It is drawn from a document entitled "MFish Treaty Strategy Pre-consultation Report". This document is dated 27 February 2002 and was supplied by MFish.</i> This is an <u>internal</u> MFish strategy. The stated purpose is to provide a framework/strategy better deliver on MFish's obligations under the Fisheries Settlement 1992 and the principles of the Treaty of Waitangi.	To ensure New Zealand takes advantage of economic development opportunities and other benefits from the bioprospecting of our biological resources, while safeguarding associated environmental, social and cultural values. The proposed principles and objectives are: ▪ New Zealand has a right to gain benefit from the use of its own biological resources; ▪ Bioprospecting can contribute to the growth of an innovative economy, and to increasing the skills of New Zealanders; ▪ There is a requirement for an integrated policy and legislative framework for managing bioprospecting, including arrangements for sharing benefits; ▪ Policy should facilitate responsible access to biological resources, with prior informed consent of the owners / managers of the resource, on mutually agreed terms; ▪ There should be a fair and equitable sharing of benefits arising from bioprospecting activities; ▪ Bioprospecting policy should recognise the principles of the Treaty of Waitangi; ▪ The value of Maori knowledge about biological resources should be recognised and protected; and ▪ The environment should be protected from any possible adverse effects of bioprospecting.
Commentary		There has been some consultation on the draft strategy with some iwi as MFish work with Maori to work out a way to engage with each other in a positive manner. MFish staff have expressed the view that the strategy is seeking to put a tangible framework around a partnership approach to managing fisheries by working on "putting the relationship with Maori first and fisheries second".	Bioprospecting is the examination of biological resources (e.g. plants, animals, microorganisms) for features that may be of value for commercial development. Submissions closed with the Ministry of Economic Development on 6 September 2002.
Goals and Objectives	MFish's objective is to develop a strategy to manage the impacts of fishing on a representative sample of seamounts within New Zealand's fisheries waters. The aim of the management measures is to "take steps to towards ensuring sustainability of seamount ecosystems while providing for utilisation, maintaining biodiversity, and meeting the foreseeable needs of future generations".	There are six stated objectives: ▪ MFish 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	To achieve the purpose of the Strategy by: ▪ Establishing clear rules about access to biological resources on Crown-owned/managed areas; ▪ Ensuring bioprospecting policy recognises the principles of the Treaty of Waitangi; ▪ Establishing mechanisms to facilitate the capture of benefits from bioprospecting activities; ▪ Gathering information on bioprospecting activities to ensure New Zealand can track the use of its biological resources; and ▪ Ensuring clear and consistent rules to manage the environmental effects of bioprospecting activities in

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
		- MFish recognising and providing for use and management practices of Maori in the management of fisheries - Active protection of the fisheries taonga	Crown-managed areas.
Commentary			
Scope and jurisdiction	Territorial sea and EEZ. MFish does not restrict application of strategy to deep-water seamounts and say that features within the 12 n.m. territorial sea will be encompassed by the strategy.	Same as Fisheries Act – i.e. New Zealand fisheries waters: EEZ, territorial sea, all internal waters of NZ and all other fresh or estuarine where fish found.	Proposed to apply to NZ's area of jurisdiction, including the EEZ and Continental Shelf.
Commentary		Given the special significance of "freshwater" fish to Maori (e.g. eels) one can assume that the strategy will be relevant/applied to NZ internal and fresh waters.	
Participants	Formal MFish, DOC, MfE Informal NIWA had a semi-formal role in providing information for development of the strategy and for on-going implementation of strategy.	Formal MFish and Maori The following agencies/experts were consulted during development of the strategy: TPK, DOC, OTS, Te Ohu Kai Moana and key experts identified from within Maoridom.	Formal Prepared by Natural Resources Policy Group of the Ministry of Economic Development.

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
Commentary	Fisheries stakeholders, including the fishing industry and NGOs, were consulted during development of the strategy as follows. In August 1999 MFish released a draft strategy as a discussion document. This was revised and reissued in December 1999, following stakeholder submissions on the earlier draft. Following further submissions on the December draft, MFish held a stakeholder workshop in April 2000 to discuss the draft strategy, where it is understood that stakeholders still expressed major concerns with the draft strategy. There has, however, been no closure on this consultation because MFish has not provided stakeholders with any feedback on the issues raised at the April 2000 workshop. Consequently stakeholders do not know whether or not their comments have been addressed and the strategy remains in draft form. (No new version has been released to stakeholders since the December 1999 draft.) MFish have worked with MED / Crown Minerals to resolve some implications relating to the Seamount closures for a particular prospecting application. It is unclear whether Crown Minerals were consulted during the decision-making process.	The strategy is not explicit about roles and responsibilities; however, it is primarily about MFish working in partnership with Maori to deliver the Crown's obligations under the Fisheries Settlement and the Treaty.	Comments and submissions on the Strategy are presently under review.
Policy Framework	International obligation/mandate MFish cite the following international obligations as providing mandate for the strategy: UNCLOS Convention on Biological Diversity 1992 FAO Code of Conduct 1995 Noumea Convention Statutory Authority Not explicit but MFish cite the following provisions in the Fisheries Act 1996 S8 – sustainable utilisation of fisheries S9 – maintenance of associated and dependent species, protection of aquatic biodiversity, and protection of habitat of particular significance for fisheries management. S10 – fisheries decisions should be precautionary and based on best available information.	International obligation/mandate Statutory Authority Not explicit but inherent in Fisheries Settlement 1992, Fisheries Act 1996 and the Treaty of Waitangi.	International obligation/mandate New Zealand has signed and ratified the 1992 Convention on Biological Diversity. - Article 15(2) of the Convention states that parties should "endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other contracting parties". Access should be through the prior informed consent of the sovereign state and on mutually agreed terms." - Article 8j is directly relevant to Maori traditional knowledge and practices, calling on parties to: "...respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices."

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
			The World Intellectual Property Organisation ('WIPO') is an international organization dedicated to protecting the rights of creators and owners of intellectual property. WIPO has established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Statutory Authority The legal framework for the ownership of biological material is fragmented. ▪ The Wildlife Act 1953 grants Crown ownership over all indigenous land mammals, most birds, reptiles and some invertebrates. ▪ Common law vests ownership of specimens of plants, micro-organisms and fauna not covered by the Wildlife Act with the relevant landowner (including private landowners). ▪ The Continental Shelf Act 1964 exerts Crown jurisdiction over sedentary organisms on the seafloor. Where species are not vested, the Crown may nonetheless assert management rights for the public good. Crown management rights over marine fauna are provided in the: ▪ The Fisheries Act 1996 and ▪ Marine Mammals Protection Act 1978 The Department of Conservation is responsible for access to, and granting possession of, indigenous plant or animal material in areas administered by the department. It is also responsible for the preservation of indigenous freshwater fisheries and the protection of recreational freshwater fisheries and freshwater fish habitats. Bioprospecting activities are considered under the Concessions Regime established under Part 3B of the Conservation Act 1997.
Commentary	The international conventions cited by MFish provide a broad mandate for conservation of the marine environment and sustainable use of the marine environment. They do not specifically address conservation on seamounts. Likewise the Fisheries Act provides a broad mandate, but does not specifically refer to seamounts.		3 framework elements are proposed: ▪ A proposed government policy statement on bioprospecting; ▪ Mechanisms for enhanced co-ordination and information sharing – including a single co-ordinating authority; ▪ A framework for benefit-sharing arrangements.
Legislative provisions not	N/A	N/A	

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
implemented			
Commentary			
Linkages and co-ordination	Between policy documents Links with Environmental Performance Indicators programme, and the NZ Biodiversity Strategy Between agencies Links with DOC, MfE and MED.	Between policy documents Indirect links with other MFish policy documents. Between agencies Links with TPK, Office of Treaty Settlements, DOC.	Between policy documents - New Zealand Biodiversity Strategy: The purpose of the New Zealand Biodiversity Strategy is to establish a strategic framework for the conservation, sustainable use and management of New Zealand's biological resources. The strategy is a means of implementing New Zealand's obligations under the Convention on Biological Diversity, and is the key policy instrument for the consideration of bioprospecting issues. - The Biotechnology Strategy will include a vision, principles and actions encompassing the governance structure, regulation, social, science, infrastructure, and commercialisation aspects of biotechnology. It is intended to launch the Strategy early in 2003. - The Patents Act Review is currently considering issues around the patenting of life forms, and the protection of traditional knowledge. Between agencies - Toi te Taiao: the Bioethics Council, whose role is to advise, provide guidelines and promote dialogue on the cultural, ethical and spiritual issues associated with biotechnology. Other Parties - The Wai 262 claim, part of which relates to indigenous flora and fauna, was lodged with the Waitangi Tribunal in 1991 by members of Ngati Kuri, Ngati Wai, Te Rarawa, Ngati Koata, Ngati Porou, Ngati Kahungunu, and Whanau a Rua.
Commentary	The Strategy is an MFish strategy and uses MFish tools. DOC and MfE were consulted in development of draft strategy, but it is unclear whether these agencies will be involved in the implementation of the strategy. To date it has been implemented through MFish's sustainability measures process – a centralised MFish decision-making process.		
Relevance to Oceans	The Strategy is relatively narrow in scope and probably not of direct relevance to Oceans Policy, other than as an example of an approach to interpreting and implementing the "conservation/environmental" provisions of the	Main relevance to Oceans is in area of Crown's relationship with Maori. The strategy explicitly acknowledges a partnership relationship and seeks to put a tangible framework around a partnership approach to managing fisheries. Oceans policy will	Bioprospecting is an activity that can take place within the marine environment; work on bioprospecting policy should retain consistency with the direction of the Oceans Policy review.

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
	Fisheries Act.	need to explore options for working with Maori and could learn from strategies such as this.	
Commentary			
Decision-making	Process overview MFish are proposing to implement the strategy on an incremental basis through their sustainability measures processes. This is a centralised decision-making process where the Minister of Fisheries makes sustainability decisions based on advice from MFish. The Minister has endorsed the strategy and made decisions to close seamounts to fishing on the basis of the strategy. Stakeholder and public input Fisheries stakeholders have an opportunity to comment on MFish's advice to the Minister, which is presented to them in the form of an "Initial Position Paper". The public does not generally provide input into this process, other than through environmental NGOs. Delegations None	Process overview N/A – strategy still draft Stakeholder and public input	Process overview Not yet determined – likely to be the Ministry of Economic Development and/or new proposed Authority Stakeholder and public input
Commentary	As with many of the Minister's sustainability decisions, the decision-making process is difficult and there are tensions between MFish and their stakeholders. The fishing industry remains unhappy with the way the strategy was developed and implemented – see comments above under "Participants". To date "specific management measures" for implementing the strategy have been interpreted by MFish as closure of seamounts to fishing.		
Compliance and Enforcement	The seamount strategy has resulted in the closure of 19 seamounts to fishing. Enforcement of these closures is addressed through the general enforcement provisions of the Fisheries Act.	N/A – strategy still draft	Not yet specified – likely to be the Ministry of Economic Development and/or new proposed Authority.
Commentary	It is interesting that a strategy that is still in draft form has been used to justify seamount closures.		
Overview of operation and effect	Strategy remains a draft but is operational in that current seamount closures to fishing are based on the strategy. No further seamounts have been closed other than the initial closures in 2000, when the	N/A – strategy still draft	Not yet specified – likely to be the Ministry of Economic Development and/or new proposed Authority.

2. Strategies in progress	DRAFT MFish Seamount Strategy	PRECONSULTATION DRAFT MFish Treaty of Waitangi Strategy	Draft Bioprospecting Strategy 2002
	strategy was developed. MFish say that the strategy is to be implemented on an incremental basis. They are currently "rewriting" the strategy and intend to consult with stakeholder to develop a 2003 revised version of the strategy.		
Commentary	19 seamounts were closed to fishing in the 2000/01 fishing year when the draft strategy was developed. No further seamounts have been closed, possibly due the very negative response by the fishing industry to the initial closures, or perhaps because the strategy contained no specific objectives and milestones beyond the 2000 year. MFish have worked with MED / Crown Minerals to resolve some implications relating to the seamount closures for a particular prospecting application. It remains theoretically possible for seamounts to be closed for fishing under this strategy and yet remain open for prospecting under the Continental Shelf Act. This issue points to a lack of integration in the policy framework and a reliance on the goodwill of officials to resolve policy gaps.		
Key Milestones	The draft strategy set some objectives for 2000, which largely related to identifying seamounts for specific management measures and implementing those management measures (closures) through regulation. These 2000 objectives have been met and the strategy contains no further specific objectives.	N/A – strategy still draft	
Commentary			

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
Purpose and Principles	To state policies in order to achieve the purpose of this [the Resource Management] Act in relation to the coastal environment of New Zealand Principles In addition to the principle set out in the RMA itself, to provide for the special context of the coastal environment, the NZCPS identifies the following general principles: 1. Some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to 'the social, economic and cultural well-being' of 'people and communities'. Functionally, certain activities can only be located on the coast or in the coastal marine area. 2. The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places. 3. The proportion of the coastal marine area under formal protection is very small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected. 4. Expectations differ over the appropriate allocation of resources and space in the coastal environment and the processes of the Act are to be used to make the appropriate allocations and to determine priorities. 5. People and communities expect that lands of the Crown in the coastal marine area shall generally be available for free public use and enjoyment. 6. The protection of habitats of living marine resources contributes to the social, economic and cultural	To promote energy efficiency, energy conservation and renewable energy within the context of a sustainable energy future.	The purpose of the New Zealand Marine Oil Spill Response Strategy is to minimise the overall cost of oil pollution by ensuring that a world class oil spill response system is in place around the New Zealand coast. Under the Maritime Transport Act 1994 (section 284) the purposes of the strategy are to: - Describe the actions to be taken, and by whom, in response to an oil spill in New Zealand marine waters; - Promote a standard response to marine oil spills in New Zealand; - Promote the co-ordination of marine oil spill contingency plans and the action taken in response to marine oil spills under such plans. The Strategy establishes 16 "basic principles": - Industry has a responsibility to undertake its business without creating unacceptable risks, and is responsible for the risks it does create; - Those industries and other maritime activities which create the risk of a marine oil spill should contribute to the costs of maintaining the Strategy; - The polluter pays principle is fundamental. Responsibility for meeting the full cost of any spill response, clean-up and restoration efforts rests with the spiller; - The responsibility for ensuring that the public interest is protected rests with the Government of New Zealand through the Maritime Safety Authority and regional councils acting under the Maritime Transport Act 1994; - Protection of human safety, health and welfare is of importance in preparing for and responding to marine oil spills. This includes the health and safety of the	There is no purpose stated in the regulations themselves. However, in general terms, the purpose of the regulations is to: - Establish national standards relating to the dumping of waste, oil spills and the discharge of sewage from vessels in the CMA; and - In so doing meeting New Zealand international obligations.

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
	wellbeing of people and communities. 7. The coastal environment is particularly susceptible to the effects of natural hazards. 8. Cultural, historical, spiritual, amenity and intrinsic values are the heritage of future generations and damage to these values is often irreversible. 9. The tangata whenua are the kaitiaki of the coastal environment. 10. It is important to maintain biological and physical processes in the coastal environment in as natural a condition as possible, and to recognise their dynamic, complex and interdependent nature. 11. It is important to protect representative or significant natural ecosystems and sites of biological importance, and to maintain the diversity of New Zealand's indigenous coastal flora and fauna. 12. The ability to manage activities in the coastal environment sustainably is hindered by the lack of understanding about coastal processes and the effects of activities. Therefore, an approach which is precautionary but responsive to increased knowledge is required for coastal management. 13. A function of sustainable management of the coastal environment is to identify the parameters within which persons and communities are free to exercise choices. 14. The potential for adverse effects of activities to spread beyond regional boundaries may be significant in the coastal marine area.		public, industry personnel and the spill responders; ▪ Oil spill planning and response systems must be comprehensive, integrated and cost-effective; ▪ All people and agencies associated with planning and response should be aware of and committed to their agreed responsibilities; ▪ Risk assessment is an integral part of response planning, preparation and levy allocation; ▪ The National Marine Oil Spill Contingency Plan must provide the means for the National On-scene Commander (NOSC) to be able to control any marine spill regardless of size; ▪ A progressive, tiered approach is required for all preparation and planning for, and response to, marine oil spills; ▪ For every marine oil spill response, one person, the On-Scene Commander (OSC), will be appointed to have the responsibility and authority to undertake the necessary response; ▪ Resources, training and equipment will be allocated according to national and regional needs and risk to ensure that in the event of a spill there will be a prompt first reaction; ▪ Response operations will use net environmental benefit to determine appropriate clean-up standards; ▪ National consistency and co-ordination occurs in preparation, planning and response, and all guidelines, marine protection rules and regulations are published accordingly; ▪ Where practical, the known or suspected spiller will be expected to participate in and contribute to all phases of the response operation; ▪ Salvage of a vessel and/or its cargo is recognised as an important primary means of avoiding or mitigating the	

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
			effects of a marine oil spill.	
Commentary	The purpose of the NZCPS is specified in section 56 of the RMA. The important limitation of the NZCPS is that it may only state <i>policies</i>. It may not state rules (i.e. it does not have regulatory power in its own right). The policies of the NZCPS take effect through influencing the provisions of district and regional plans (particularly regional coastal plans) and through being a relevant consideration in decisions on resource consents.		This Strategy means that New Zealand maintains a system of oil spill preparedness and response based on the concept of "contingent capability". The Strategy is deliberately risk assessment based, and pays particular attention to the threats to: ▪ Sensitive coastal resources - MSA intends to collate regional data to produce a national marine oil spill coastal atlas. ▪ Community health and safety	
Goals and Objectives		Goal 1: Reduce CO2 emissions • Energy efficiency and renewable energy measures will reduce CO2 emissions and help New Zealand meet its international climate change responsibilities. The overall response to climate change will be wider than this, but the Strategy's initiatives are recognised as a sensible place to start. Goal 2: Reduce local environmental impacts • Energy efficiency and conservation will reduce local environmental effects of energy production and use. It is recognised that the local impacts of expanded renewable energy supply will also need appropriate management. Goal 3: Improve economic productivity • Cost effective energy efficiency measures will improve New Zealand's economic performance and improve the value the economy derives from the use of energy resources. Goal 4: Promote industry development • Energy efficiency and renewable energy initiatives can result in profitable business opportunities and regional development. The Strategy aims to realise this potential. Goal 5: Improve economic resilience • Energy efficiency, conservation, and a diversified portfolio of renewable energy supply can improve the resilience of the New Zealand economy to future energy supply disruptions or energy price shocks.	The stated Aim is: ▪ The development and maintenance of a national domestic response capability commensurate with being able to respond to a national spill event with a probability of exceedance level (PEL) of 1% - [Based on the results of the 1998 Marine Oil Spill Risk Assessment, this equates to a nominal national spill size of 7000 tonnes of oil.] In conjunction with: ▪ Established arrangements for international assistance with other nations, through the provisions of the International Convention on Oil Pollution Preparedness, Response and Co-operation; And within the context of: ▪ The adoption and implementation of an effective marine oil spill response plan Command and Control System.	

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
		Goal 6: Improve health and welfare - Energy efficient homes reduce energy deprivation and improve occupant health and welfare. The Strategy's energy efficiency measures aim to improve community wellbeing by enhancing the provision of adequate energy services for all in the community. Two targets are also included Energy efficiency: - At least 20 percent improvement in economy-wide energy efficiency by 2012¹¹. Renewable energy: - Increase renewable energy supply to provide a further 25-55PJ of consumer energy by 2012.		
Commentary				
Scope and jurisdiction	The NZCPS applies to the "Coastal Environment" – a term not defined by either the Act of the NZCPS. The coastal environment is generally regarded as applying to the Coastal Marine Area and land adjacent to the first landward ridge.	Scope is defined sectorally rather than spatially. Actions plans are developed for: - Transport - Energy Supply - Industry - Central and Local Government The spatial scope will be that area within which Government can influence these sectors	This strategy applies to marine oil spills within the internal waters of New Zealand, New Zealand marine waters and those waters beyond, both to the outer limit of the Exclusive Economic Zone (EEZ) of New Zealand and over the continental shelf of New Zealand. Baseline of the territorial sea: is the low water mark along the coast of New Zealand, including the coast of all islands, except where, in the case of the sea adjacent to a bay, the baseline will be a straight line or series of straight lines across the bay, where the entrance to that bay exceeds 24 nautical miles The Strategy does not cover spills that occur: - Outside the jurisdiction of the MTAAct – normally otherwise covered by the RMAAct; or - Within the Ross Dependency / Sea, Antarctica	The Regulations apply to the Coastal Marine Area only (inside 12 nm). Importantly the regulations do apply to foreign flagged ships as well as New Zealand vessels. The regulations therefore extend the jurisdiction of the Act. The regulations either prohibit, limit or specific the nature of the control to be exercised over: - Dumping of waste from any ship, aircraft or offshore installation; - Incineration of waste - Discharge oil - Discharge noxious liquids - Discharge of treated and untreated sewage - Discharge of garbage

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
Commentary	The scope of the NZCPS (the marine environment) is wider than the the scope of a regional coastal plan (the CMA). (Although, regional coastal plans may be prepared as part of a wider regional plan to promote integrated management of the CMA and any related part of the coastal environment). The scope of the NZCPS acknowledges the need to manage the land and water interface in an integrated way.			
Participants	Formal The formal participants are those who must apply the NZCPS's policies. That is, regional councils and territorial authorities. Informal Those who use the policies of the NZCPS to support the arguments at local authority of environment Court hearings Exclusions All those agencies with responsibilities in the coastal environment outside of the Resource Management Act.	Formal Action plans specific particular roles/tasks for government agencies and Crown Enterprises (mainly EECA, MfE, MED, Treasury, Transfund, Transit NZ, MoT, MoH) and local government. Informal Commitments are often made to work with other (government and non government) players including industry, research providers, education providers, professional associations etc Exclusions None	Formal Director of Maritime Safety Oil Pollution Advisory Committee (OPAC) PIEAC: Petroleum Industry Emergency Action Committee. Regional councils: Informal Exclusions	Formal There are no participants except that regional councils must enforce the regulations and regional councils may choose to make the standards that apply to sewage more stringent if the circumstances justify.

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
Commentary	The NZCPS does not set out governance structures or action plans so there are no active participants in the sense of agencies or organisations being allotted specific tasks			
Policy Framework	International obligation/mandate No specific requirement but could be argued to be consistent with a number of international agreements Statutory Authority The NZCPS is required by section 57 of the RMA. In essence, the NZCPS is an instrument to provide national guidance and direction in a devolved decision-making regime. The fact that the NZCPS is the only mandatory National Policy Statement (NPS) indicates that special national interest that the Act accords coastal issues. The NZCPS also establishes the framework for special consideration to be given to activities that have a potentially significant impact on the coast by identifying restricted coastal activities (RCAs). Activities identified as RCAs are subject to a more stringent decision-making process.	International obligation/mandate No specific obligation but arguable consistent with obligations under the FCCC and the Kyoto Protocol and Agenda 21 Statutory Authority The NEECS is required Energy Efficiency and Conservation Act 2000.	International obligation/mandate International Convention on Prevention of Pollution from Ships 1973 and its 1978 Protocol. [MARPOL 73/78] International Convention on Oil Spill Preparedness, Response and Co-operation 1990. International Convention on Civil Liability for Oil Pollution Damage (1992 CLC). International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 Fund). Statutory Authority Maritime Transport Act 1994 Health and Safety in Employment Act 1992	International obligation/mandate The standards and controls are consistent with, and required by, the International Convention for the Prevention of Pollution from ships 1973/78 (MARPOL) and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 ("London Dumping Convention). The regulations enable New Zealand to become a party to those international agreements. Statutory Authority Regulations are provided for in section 360 of the RMA. The regulations relate specifically to sections 15A, 15B and 15 C of the Act. The approach is generally to either prohibit particular activities outright; authorised particular levels of discharge; or to ensure that regional councils regulate particular activities. In the case of sewage particular technology is specified.
Commentary	The limitation of the approach is simply that it is limited by the scope of the resource management Act. The integration required to manage the marine environment is twofold: (a) integrated management of resources controlled by the RMA, and (b) integration across all marine management functions. The NZCPS can promote the first of these but cannot promote the second. The success of promoting integrated		Three tier approach: Tier 1 = site-specific, industry Tier 2 = regional councils to Territorial sea; Tier 3 = Maritime Safety Authority beyond control of above. Responses determined on the basis of a net environmental benefit analysis Funding access through dedicated Oil Pollution Fund – from OPLV in MTAct.	The framework of the regulations is generally contrary to the effects based approach of the RMA. MARPOL and the London Dumping convention takes an approach to the control of these activities that does not fit well with the domestic approach to controlling activities. An amendment was required to the RMA (the insertion of section 15A, 15B and 15C) to allow the international; approach to fit within the domestic legislative framework.

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
	management within the RMA scope is itself debatable.			
Legislative provisions not implemented	The NZCPS does not commit to reviewing any legalisation, nor does it leave any legislative provisions unimplemented. The NZCPS itself does state that the NZCPS should be reviewed nine years after it is first gazetted (which was May 1994). That review is being planned at present and is expected to commence in 2003 as required. The RMA states that the Minister of Conservation shall monitor the effect and implementation of the Statement.	The action plans commit to the development of a number of regulations and statutory instruments.		None
Commentary	Little formal or structured monitoring of the NZCPS has in fact been carried out. Although the departments review of plans and submissions together with the Ministers sign off of Coastal plans arguably meets the requirement. The Department of Conservation has recently sought to increase its monitoring effort of the NZCPS through a monitoring project that examines case law and reviews other studies. Meetings have also been held with local government. The NZCPS itself reiterates the statutory monitoring requirement and adds that the Minister will work with councils to establish a national state of the coastal environment monitoring programme. This commitment has not been followed through.	None of these appear relevant to oceans issues		
Linkages and co-ordination	Between policy documents The NZCPS provides an overarching provide framework both regional coastal plans and other regional and district plans that relate to the coastal environment. In that sense the	Between policy documents Direct linkage to Climate Change Policy (NECCS is one of the so-called "foundation" policies).	Between policy documents National and Regional Oil Spill Contingency Plans Marine Protection Rules Co-ordination with the New Zealand Co-	Between policy documents The regulations were designed to create a seamless management regime across the EEZ [to check]. Corresponding standards are imposed as Marine Protection Rules under the

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
	NZCPS provides a degree of policy co-ordination in coastal management (to the 12 nm limit) under the RMA. There are no specific linkages to other policy documents or to related legislation Between agencies The NZCPS provides for some level of co-ordination between regional councils and between regional councils and the Department of conservation.	Between agencies Action plans establish specific roles and intended working relationships.	ordinated Incident Management System used by a wide range of emergency response agencies (Police, Fire Service, Ministry for Emergency Management, etc) Between agencies National and Regional On-Scene Commanders Notification to Police, Fire Service, Coastguard, coastal radio stations (national and local), port companies, Civil Aviation Authority, Department of Conservation and New Zealand Defence Force – provided through Plan. Use of a modified version of the "Incident Command System" (ICS) developed in the United States to combat forest fires. Memoranda of Understanding with other agencies – e.g. a Memorandum of Understanding between the Maritime Safety Authority and the Australian Maritime Safety Authority is already in place. Appendices to the Strategy state functions and responsibilities of various actors – e.g. Appendix 7 states roles etc for 16 government agencies.	Maritime Transport Act 1994. Thus although different mechanisms are used the management regime is consistent both inside and outside 12 nm Between agencies Co-ordination between regional councils and MSA??
Commentary	The "co-ordination" offered by the NZCPS is often resented by local authorities, many of whom question the value added by the NZCPS. As a "top-down" national instrument, the NZCPS is often viewed as inconsistent with the RMA's devolved management system. This does lead some tension between regional councils and central agencies.			
Relevance to Oceans	The NZCPS is directly relevant to the exercise of Resource Management Act functions in the CMA (territorial sea) and in those areas of land that have most potential to affect the quality of the marine environment.	Peripheral. The commitment to promote renewable energy might have long-term consequences for use of the energy of the coastal and marine areas but this is entirely speculative at this point. Also commits to some investigation into energy advantages of coastal shipping.	Primarily in terms of identifying areas of ecological or species sensitivity for the purpose of defining contingency plans and marine protection rules, emergency response mandates, methods of treatment.	Directly affect the quality of coastal waters and the discretion available to regional councils to vary standards.

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
Commentary	The NZCPS potentially affects: - Land subdivision and development in the coastal environment - Reclamations of foreshore and seabed - Disturbance of the foreshore or seabed (including excavating, tunnelling, drilling or deposition of material) - Occupation of the CMA - Removal of sand and shingle - Taking, using, damming or diverting coastal water (including heat or energy from the water) - Discharges into coastal water			
Decision-making	Process overview The NZCPS involves no decision-making in its own right. Decision-making processes that involve the NZCPS are as discussed in respect of the Resource Management Act.	Process overview The NEECS reflects the	Process overview Maritime Safety Authority Stakeholder and public input Industry Delegations Regional Councils	Process overview There are no decision-making processes under the regulations themselves. Where a regional council wishes to impose a standard more stringent than the regulation (which it may do only in the case of sewage) the decision making processes of the RMA apply
Commentary				
Compliance and Enforcement	The NZCPS having no regulatory effect in its own right is not strictly enforceable. However, regional and district councils are required by law to be "not inconsistent" with it. DoC (and others) encourage compliance by making submissions, preparing evidence and lodging references and appeals to the Environment Court as necessary to ensure the provisions of the NZCPS are appropriately reflected in regional and district plans	Not relevant	Both the Maritime Transport Act 1994 and Resource Management Act 1991 have marine pollution offence provisions. To assist regional councils, the Maritime Safety Authority has provided, within the National Plan, recommendations about best practice for evidence collection, prosecution and cost recovery.	Enforcement is carried out by regional councils using the enforcement provisions of the RMA
Commentary				
Overview of operation and effect	The NZCPS takes effect through the RMA provisions that require regional councils and territorial authorities shall not be inconsistent	Not relevant	Maritime Safety Authority Regional Councils	The regulations have had a fraught introduction to the RMA and needed to be amended shortly after coming into force.

3. Policies/Regs with specific authority	New Zealand Coastal Policy Statement	National Energy Efficiency and Conservation Strategy	NZ Marine Oil Spill Response Strategy 1999/2000	Marine Pollution regulations
	with it when: - Developing regional and or district plans - Making decisions on resource consent applications.			The effect of the regulation is to provide a consistent approach nationally (and internationally). In that sense
Commentary				
Key Milestones	The NZCPS must be reviewed by May 2003. No other milestones are specified.	Many specified for individual actions. None relevant to oceans		No relevant milestones specified.
Commentary				

Appendix 5 – Stocktake of International Instruments

Listed below are international instruments (treaties and non-treaties) that have been reviewed in detail for the purposes of this stocktake. This is not intended to be a comprehensive list (or review) of all oceans-related international instruments. Other relevant instruments will be reviewed in separate papers to be produced by the Oceans Policy Secretariat as part of Oceans Policy development.

International Instruments Reviewed:

- Convention on Wetlands (Ramsar, 1971)
- Agenda 21, 1992
- World Heritage Convention
- MARPOL and the London Dumping Convention
- Convention on Biological Diversity.

	Convention on Wetlands (Ramsar, 1971)	Agenda 21, 1992	World Heritage Convention	MARPOL and the London Dumping Convention
Long Title	<i>"The Convention on Wetlands of International Importance especially as Waterfowl Habitat"</i>	Report of the United Nations Conference on Environment and development - Agenda 21	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	International Convention for the Prevention of Pollution from Ships, 1973; and Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1971
Commentary	The official name (above) reflects the convention's original emphasis on the conservation and wise use of wetlands primarily to provide habitat for waterbirds. Over the years, however, the Convention has broadened its scope to cover all aspects of wetland conservation and wise use, recognizing wetlands as ecosystems that are extremely important for biodiversity conservation in general and for the well-being of human communities. For this reason, the increasingly common use of the short form of the treaty's title, the "Convention on Wetlands", is entirely appropriate.	Agenda 21 is one of 5 key documents on sustainable development issues adopted by consensus at the 1992 Earth Summit in Rio. It is one of the 3 non-binding or "soft law" outcomes of the Conferences. The other two are the- the Rio Declaration and the Forest		These conventions are generally considered together because of the close relationship between the means of given effect to them. The MARPOL Convention is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. It is a combination of two treaties adopted in 1973 and 1978 respectively and updated by amendments through the years.
Purpose	Purpose not specifically identified. However purpose is clearly about the protection (and "wise use") of wetlands.	Agenda 21 has not single stated purpose but it is generally given that its purpose it to promote sustainable development	To define and conserve the world's heritage for all humanity and to ensure their protection through a closer co-operation among nations.	MARPOL aims to eliminate pollution of the sea by oil and other toxic substances which might be discharged during normal operations, or released accidentally as a result of collisions or stranding of ships. The London Dumping Convention regulates the dumping and incineration at sea of wastes and other matter.
Commentary	Ramsar is the first of the modern global intergovernmental treaties on conservation and wise use of natural resources, but, compared with more recent ones, its provisions are relatively straightforward and general. Text was, however, amended in 1982 and 1987, and its application has been developed by conference decisions.	The UN describes Agenda 21 as " a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment". Agenda 21 is a very large document for the purpose of this analysis the key section is considered to be Chapter 17 that deals with "Protection Of The Oceans, All Kinds Of Seas, Including Enclosed And Semi-enclosed Seas And Coastal Areas And The Protection Rational Use And Development Of Their Living Resources".		"Dumping" has been defined as the deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures, as well as the deliberate disposal of these vessels or platforms themselves.

	Convention on Wetlands (Ramsar, 1971)	Agenda 21, 1992	World Heritage Convention	MARPOL and the London Dumping Convention
Principles	Principles are not explicitly stated. The preamble to the Convention notes the following: - the interdependence of Man and his environment; - the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl; - that wetlands constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable; [the need to] to stem the progressive encroachment on and loss of wetlands now and in the future; - waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource; - the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with co-ordinated international action;	Though not part of Agenda 21 itself, principles for action on sustainable develop were set out in the accompanying "Rio Declaration on Environment and Development". These 27 principles are often considered in the context of Agenda 21. Key principles include: intergenerational equity - that there should be equity between the rights and needs of the current generation and of generations to come precautionary approach - that lack of full scientific certainty of the causes and effects of environmental damage should not be a reason for delaying action to prevent such damage polluter pays - that polluters should bear the cost of pollution, and that the costs of environmental damage should be reflected in cost/benefit analyses of actions affecting the environment participation – that environmental issues are best handled with the participation of all concerned citizens, at the relevant level. responsibilities - that the world community has a common responsibility for protecting the global environment. However, countries that pollute more should do more for environmental protection than countries that pollute less.		The 1996 Protocol to the London Dumping convention introduces the precautionary approach principle and the polluter pays principle.
Commentary				
Spatial jurisdiction	The spatial jurisdiction is contained within the Conventions definition of wetland. It states: "wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent	Not limited.	Not specified but limited by sovereign jurisdiction (i.e. will be limited to land and territorial sea). The convention applies to both cultural and	The requirements of MARPOL are to be implemented by a Party in respect of its flag vessels and also in areas where vessels are operating under the authority of the Government of that State.

	Convention on Wetlands (Ramsar, 1971)	Agenda 21, 1992	World Heritage Convention	MARPOL and the London Dumping Convention
	or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters"		natural heritage and defines these as follows: "cultural heritage" is a monument, group of buildings or site of historical, aesthetic, archaeological, scientific, ethnological or anthropological value. "Natural heritage" designates outstanding physical, biological, and geological features; habitats of threatened plants or animal species and areas of value on scientific or aesthetic grounds or from the point of view of conservation	The requirements of the London Dumping Convention are to be implemented by a Party in relation to vessels and aircraft flying its flag; loading in its territory or territorial seas matter which is to be dumped; or vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping.
Commentary				
Obligations of parties	Contracting Parties commit themselves to (inter alia): Designate at least one site that meets the Ramsar criteria for inclusion in the List of Wetlands of International Importance (the Ramsar List), and ensure the maintenance of the ecological character of each Ramsar site. Countries are expected to include in the List as many wetlands that meet the criteria as possible. Listed sites do not necessarily require protected area status, provided their ecological character is maintained through a wise use management approach; Include wetland conservation within their national land-use planning, so as to promote the wise use of all wetlands within their territory; Establish nature reserves on wetlands, and promote training in wetland research, management and wardening; - Consult with other Parties about the implementation of the Convention, especially with regard to transfrontier wetlands, shared water systems, shared species, and development projects affecting wetlands.	Agenda 21 is a plan for use by governments, local authorities and individuals to implement the principle of sustainable development contained in the Rio Declaration. It is not a binding international agreement. Governments can implement aspects of the Agenda in many different ways A huge range of actions is specified in respect of each chapter. Themes of the oceans chapter are: - Integrated management and sustainable development of coastal areas, including exclusive economic zones; - Marine environmental protection; - Sustainable use and conservation of marine living resources of the high seas; - Sustainable use and conservation of marine living 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. Each section has comprehensive objectives and a lengthy list of actions.	Each country pledges to: - list heritage sites; - protect those sites; - co-operate internationally in protection of sites - submit to the World Heritage Committee a schedule of sites that are suitable for inclusion on the World Heritage List Thus, by signing the Convention, each country pledges to conserve not only the World Heritage sites situated on its territory, but also to protect its national heritage.	MARPOL includes regulations aimed at preventing and minimizing pollution from ships - both accidental pollution and that from routine operations - and currently includes six technical Annexes: - Annex I - Regulations for the Prevention of Pollution by Oil - Annex II - Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk - Annex III - Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form - Annex IV - Prevention of Pollution by Sewage from Ships (<i>Not yet in force</i>) - Annex V - Prevention of Pollution by Garbage from Ships - Annex VI - Prevention of Air Pollution from Ships (adopted September 1997 - not yet in force) States Parties must accept Annexes I and II, but the other Annexes are voluntary. Accepting these Annexes effectively means developing domestic regulation that gives effect to the prescriptive standards specified in the Annexes. Annexes to the London Dumping Convention list wastes which cannot be dumped and others for which a special dumping permit is required. The criteria governing the issuing of these permits are laid down in a third Annex which deals with the nature of the waste material, the characteristics of the dumping site

	Convention on Wetlands (Ramsar, 1971)	Agenda 21, 1992	World Heritage Convention	MARPOL and the London Dumping Convention
				and method of disposal. Again, accepting these Annexes effectively means developing domestic regulation that gives effect to the prescriptive standards specified in the Annexes.
Commentary	There are presently 133 Contracting Parties to the Convention, with 1224 wetland sites, totalling 105.8 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance. A definition of "wise use" and guidelines (criteria) have been developed and were adopted at the Regina Conference, 1987, and the Kushiro Conference in 1993. Guidelines for assessing the importance of wetlands have also been developed. New Zealand has Ramsar 5 sites: ▪ the Firth of Thames; ▪ Wangamarino; ▪ Kopuatai Peat Dome; ▪ Farewell spit; and ▪ Waituna Lagoon		The World Heritage Committee has inscribed 730 properties on the World Heritage List (563 cultural, 144 natural and 23 mixed properties in 125 States) Sites are recommended by parties and assessed by the World Heritage Committee. Guidelines specifying assessment criteria have been developed. New Zealand has 3 World Heritage Sites being: ▪ Tongario National Park ▪ Te Wahipounamu south- west NZ ▪ NZ Sub Antarctic Islands None of these sites include marine areas. However the Convention would seem to provide for marine areas to be included should the criteria apply.	
Information gathering mechanisms	Contracting Parties report on progress in implementing their commitments under the Convention by submission of triennial National Reports to the Conference of the Contracting Parties. The National Reports become part of the public record	Internationally, monitoring is carried out by the Commission of Sustainable Development (CSD) an entity established UNCED specifically for the purpose.	The credibility of World Heritage stems from countries' regular reporting on the condition of sites, on measures taken to preserve them, and on their efforts to raise public awareness of cultural and natural heritage. The states parties to the Convention in the Asia-Pacific region are preparing the first of a series of six-yearly reports to the World Heritage Committee on their application of the Convention. This report is to be considered by the 27th session of the Committee in June 2003.	Information of compliance with MARPOL and relies on reporting by vessels in accordance with the Convention and on the monitoring by central and local government agencies. Among other requirements of the London Dumping Convention, Contracting Parties undertake to designate an authority to deal with permits, keep records, and monitor the condition of the sea. Other articles are designed to promote regional co-operation, particularly in the fields of monitoring and scientific research.
Commentary				
Implementation in Domestic legislation	The Convention is given effect through the Conservation Act (under which wetlands in public ownership are managed) and the Resource Management Act which influences	Compared with many other countries, New Zealand's legislation (Resource Management Act, Biosecurity Act, Local Government Act etc.) is largely in accord with the themes in	All three of New Zealand listed sites are protected as public conservation lands (two as national parks).	Regulations enabling NZ to give effect to MARPOL and enabling domestic implementation of the London Dumping Convention have been prepared, under the

	Convention on Wetlands (Ramsar, 1971)	Agenda 21, 1992	World Heritage Convention	MARPOL and the London Dumping Convention
	the management of all wetlands including those on private land). The RMA specifically	Agenda 21. In our case, therefore, the action needed is to implement that legislation satisfactorily.	Other sites are protected through the Historic Places Act and Resource Management Act regimes	powers granted to the Minister by section 360 of the RMA. (In fact the regulations go further than necessary at this point) Rules have been prepared under the Maritime Transport Act to control pollution from vessels and installations outside the 12 nm limit. (Rules for sewage from boats outside the 12 nm limit have not yet been introduced and are not required until Annex IV comes into force)
Commentary				See discussion of marine pollution regulations under the strategies section of this report

	Convention on Biological Diversity, 1992	UN Convention on the Law of the Sea 1982
Full Title	United Nations Convention on Biological Diversity (CBD), 1992	United Nations Convention on the Law of the Sea
Commentary	The Convention was one of the two "hard law" outcomes of the 1992 Earth Summit in Rio.	
Purpose/Objective	Article 1 Sets the objective of the CBD as follows: The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.	UNCLOS has no single stated purpose but a number of purposes may be derived from its 320 articles. In essence UNCLOS provides for the territorial sea, contiguous zone, exclusive economic zone, and the continental shelf, High Seas and the Area. Furthermore it specifies the sovereign rights and responsibilities within the various zones/areas. Means of settling disputes between states are also provided for. With respect to living resources, the Convention (article 62) requires states to promote: <i>the objective of optimum utilisation of living resources 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</i> However many other purposes may be derived from other Parts, particularly Part XII – <i>Protection and Preservation of the Marine Environment</i>. This says: <i>States have the obligation to protect and preserve the marine environment.</i>
Commentary		A theme of sustainability can be derived from the convention as a whole as rights to utilisation are subject to obligations to protect the environment
Principles	Article 3 sets out the basic principle underpinning the Convention. It states: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction	Formal principles governing the AREA [= seabed outside the continental shelf] of the EEZ re stated in Section 2 of Part XI. Other "derived" principles are: - Principles of sovereignty, sovereign rights and innocent passage are specified - The principle of due regard for the rights and duties of other states is expressed. - The high seas are open to all States.

	Convention on Biological Diversity, 1992	UN Convention on the Law of the Sea 1982
		No state may claim sovereignty or sovereign rights over any part of the Area or its resources.
Commentary		
Spatial jurisdiction	The jurisdictional scope of the Convention is set out clearly in Article 4 as follows: Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party: (a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and (b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.	The Convention sets out the spatial prescriptions for the territorial sea, contiguous zone, exclusive economic zone, the high seas, the continental shelf, and the area. Sovereign rights and jurisdiction are specified. 1. Sovereignty of coastal state o/ Territorial Sea 2. right of innocent passage 3. sovereign rights of EEZ continental shelf resources 4. freedom (navigation, overflight, laying of submarine cables and pipelines, construction of islands, fishing) of high seas and the area 5. duties of conservation and cooperation
Commentary		
Obligations of parties	Key obligations include - Adoption of general measures for conservation and sustainable use (including the development of national strategies, plans or programmes and the integration of biodiversity into other plans and programmes - Identification and monitoring of biodiversity - Promotion of in-situ conservation of biodiversity (whether in protected areas or outside) - Adopt measure and develop facilities for the ex-situ conservation of biodiversity - Provide for sustainable use of components of biodiversity - Adopt measures that act as incentives for the conservation and sustainable use of components of biodiversity. - Maintain programmes of training and research - Promote public understanding and awareness of biological diversity. - Introduce environmental impact assessment of projects that are likely to affect biodiversity - facilitate access to genetic resources for environmentally sound uses and the sharing of benefits from their uses - respect for and maintenance of indigenous and local communities' traditional knowledge relates to the conservation an sustainable use of biodiversity	Key obligations include: - General obligation on States to protect and preserve the marine environment. - Specific marine environment obligations under other special conventions to be exercised in a manner consistent with this Convention. - Parties have a good faith obligation with respect to the Convention not to operate in such a manner as to constitute an abuse of right. - Freedom of navigation, overflight and the laying of submarine cables and pipelines in the EEZ. and on the continental shelf. - Coastal states to determine allowable catches of living resources in EEZ. - Coastal states to ensure proper conservation and management measures in EEZ to avoid over-exploitation and maintain populations for maximum sustainable yields. - Coastal states to take into consideration effects on dependent and associated species to ensure population sustainability. - Coastal states to promote optimum utilisation of living resources in EEZ. - Prohibit, manage and regulate the exploitation of marine mammals. - Necessary measures to ensure the effective protection of the

	Convention on Biological Diversity, 1992	UN Convention on the Law of the Sea 1982
	[This mentions only 2 of the 3 pillars of the CBD, namely conservation and sustainable use, not [illegible] benefit sharing]	marine environment are to be taken – the [Seabed?] Authority is to adopt rules, regulations and procedures to that end.
Commentary		Key protection and preservation responsibilities are stated in Part XII; and marine scientific research in Part XIII. Key conservation responsibilities in Part VII Section 2.
Information gathering mechanisms	As noted above contracting Parties are required to monitor biological diversity. Article 17 also states that: Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity	The International Seabed Authority Commission for Limits of the Continental Shelf is established, along with various judicial bodies [the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea]. Conference of the states' parties.
Commentary		
Implementation in Domestic legislation	The Convention is implemented through the policies and operational plans and programmes of the Department of Conservation and through the implementation of the RMA. The preparation of a New Zealand Biodiversity Strategy (NZBS) in 2000 allowed New Zealand to meet a key commitment of the CBD.	Part XI relating to the Area is already in place through the United Nations Convention on the Law of the Sea Act 1996. Definition of the limits of the continental shelf are to be lodged with the Commission on the Limits of the Continental Shelf before May 2009. Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977 Continental Shelf Act 1964 Fisheries Act
Commentary	The NZBS promotes a range of further actions that will enhance New Zealand's adherence to the CBD. See discussion in the Strategies section of this report	