



# Evaluating the environmental outcomes of the RMA

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Environmental Defence Society

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The Environmental Defence Society is a not-for-profit environmental organisation comprised of resource management professionals who are committed to improving environmental outcomes.

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# Overview

The purpose of this project is to explore whether the Resource Management Act 1991 (RMA) has delivered desired environmental outcomes for New Zealand. It is intended to complement wider assessments of the efficacy of the Act. The project is focused on gathering the best available information on the state of the environment in New Zealand and the influence of the RMA on that state. This evidence is intended to help enable an informed discussion on the future of the RMA.

The project is being undertaken in the following three stages which are being completed in succession:

- [Stage 1: The state of the environment and a framework for RMA evaluation](#)
- [Stage 2: The environmental outcomes of the RMA](#)
- [Stage 3: Addressing the key issues: recommendations for the future](#)

Stage 1 was completed in December of 2015 and comprised: (a) a brief outline of the background to the RMA; (b) an assessment of the present state of the environment; and (c) an indicative evaluative methodology for Stage 2. The findings of Stage 1 are reported in 'The state of the environment and a framework for RMA evaluation' report.

This document reports the findings of Stage 2 of the project which examines the influence of the RMA on the state of the environment. Where attribution is possible, we identify where the RMA has generated improved environmental outcomes and where it has failed to do so, with the likely reasons for the respective outcomes. In addition to assessing the influence of the RMA on the environment, we also outline its interaction with other legislation and processes. In Stage 3 of the project, we intend to further analyse the information gathered in Stages 1 and 2 and propose practical legal, policy and practice recommendations to improve outcomes.

This project has been undertaken concurrently with a number of other relevant thought leadership programmes in the public and private sectors. These include the Local Government New Zealand's 'blue skies' working group and the resulting report<sup>1</sup>, a report by the New Zealand Council for Infrastructure Development (NZCID)<sup>2</sup>, ongoing work by the Productivity Commission related to urban planning for the Government<sup>3</sup> and an informal working group convened by officials at the Ministry for the Environment. Cross-pollination of ideas from these projects will enrich the discussion on the future of the RMA, given their common focus.



# Report structure

The structure of this report is as follows. Part I provides a short introduction to the RMA system and a brief outline of methodology adopted for this study. It describes the scope of the Act and its environmental goals. It undertakes a brief comparative analysis of the RMA with other approaches taken in other jurisdictions and identifies the key elements of effective environmental legislation. Lastly, it examines the interactions between the RMA and other regulatory instruments to provide a contextual understanding of the legislative landscape and recommendations for further work.

Part II sets out the information gleaned from a range of endeavours, including a literature review of known evaluations of the RMA, analyses of five key case studies and three policy focus areas and the results of an extensive programme of interviews. Part II draws this information together tightly, draws some conclusions on the effectiveness of the RMA in achieving environmental outcomes and then identifies some of the key issues underlying poor performance. A digest of these key issues form the basis of an evaluative framework for any future scenario that contemplates even minor reform of the RMA system. This evaluative framework will be implemented in Part III, which investigates alternative scenarios. Appendix 3 of this report sets out an initially suggested methodology for Part III that requires further discussion and development.

# Executive Summary

The Resource Management Act has jurisdiction over many of the impacts of human activities on New Zealand's fragile island ecosystems, exceptional landscapes and unique wildlife. This report concludes that the environmental outcomes of the RMA have not met expectations, largely as a result of poor implementation, but also due to a wide range of other factors. Addressing air discharges, most point source freshwater discharges, implementing mitigation and offsetting to address unavoidable impacts, standardising decision-making and providing a framework within which most communities can function are all achievements it can claim.

The effectiveness of the RMA would seem to have been greatest where community aspirations are more easily reconciled with extractive interests, but has been weakest where resources are past comfortable allocation limits. The Act has been strongest on adjudicating individual permitting functions, and weakest on overarching management of cumulative effects and other longer term strategic issues. As a result, it has largely failed to achieve the goal of sustainable management to date.

Globally, studies on the scale and pace of environmental degradation indicate that these often outstrip the capacity and effectiveness of environmental law to protect the public interest in nature protection.<sup>4</sup> New Zealand reflects this trend, but we note that the wording of environmental law is only part of what determines its influence on outcomes. We identify a range of key issues. Some are symptoms of other key issues – they are all linked:

1. While the RMA has brought together a lot of decision-making processes, **it could be more integrated**. There are still key exclusions that should be better joined up to enhance overall environmental outcomes.
2. **A lack of effective strategy and oversight** of decision-making has reduced the potential to protect environmental values, including the capacity to manage cumulative effects.
3. The **incorrect jurisprudence** related to the 'overall balance' approach undermined the potential for environmental bottom lines to be applied. The reset of the case law and other amendments are likely to see this improve.
4. **Agency capture** of (particularly local) government by vested interests has reduced the power of the RMA to appropriately manage effects on the environment.
5. **A lack of national direction** has limited the potential of the RMA system to effectively and efficiently achieve its environmental goals.
6. **Agency capacity** has often been insufficient to successfully implement the RMA and opportunities for central government to provide financial and logistical support have generally not been taken.

7. **The design of implementing institutions and allocation of different mandates** requires systematic review to ensure it is the best means of delivering on statutory aspirations.
8. **Rigorous evaluation and monitoring of outcomes has been limited**, eroding the potential for adaptive governance and robust implementation.
9. **A narrow range of instruments** has been employed to generate behaviour change which, in many instances, has not been fit for purpose. Better outcomes are likely possible through employing a broader range of approaches, including economic tools.
10. Future reform of the resource management system for New Zealand should proceed only where the anticipated improvements are certain and where any changes are **based on robust evidence**.

The resetting of case law through King Salmon and the ongoing improvement in planning, availability of national direction and rising public expectations signal that the potential of the Act is only just being unlocked. The RMA is the flashpoint for New Zealand's efforts to grapple with sustainability and it would seem we have some work to do.

This challenge is far from dissipating. Projected population and economic growth will only sharpen pressures on the environment, and restructuring of economic systems will be required to achieve genuine sustainability (such as 'curbing the appetite of the affluent').<sup>5</sup> We must recognise the current failings of the RMA and act upon them, to marshal in a new era of more genuine adoption of sustainability.



# Part 1

## Introduction

The RMA was the first legislation internationally to enshrine the concept of sustainability in its overriding purpose which is ‘to promote the sustainable management of natural and physical resources’. Now in its 25th year, the profile of the Act remains high amongst observers of environmental and economic management and it is highly visible compared with other legislation. Often amended and much-discussed, the Act’s impact on economic and environmental outcomes is a common topic of conversation, although more the former than the latter.

Often missing from this discussion is an empirical element. The critical issue really is, has the RMA delivered on its environmental goals and if not, why not? This is the key question that this report seeks to answer.

Since its initial enactment, the Act has been amended 21 times, but retains broadly the same structure and principles. Part 2 contains the purpose (section 5), significant matters of national importance that must be recognised and provided for (section 6), and a range of ‘other’ matters to which decision-makers must have regard (section 7). Section 8 completes Part 2, directing that the Treaty of Waitangi be taken into account.<sup>6</sup> The regime provides for national, regional and local instruments which contain more specific direction on resource management matters, the latter two being devised by sub-national agencies. National policy statements and national environmental standards are developed through national-scale consultative processes and generally apply throughout the country irrespective of provisions at lower levels (although they can be tailored and applied to a limited area if desired).

The structure of the RMA regime was strongly influenced by local government reform that ran parallel to the review of resource legislation: the creation of regional and district/city councils that would mainly implement the Act. The Local Government Act 2002 extends the RMA ethos of localised decision-making and considerably empowers local government agencies.<sup>7</sup> Most of the broader environmental functions are delegated to regional councils. Regional governance did not materialise with the RMA although the legislation changes of the time significantly strengthened it. Forms of provincial government, regional authorities and catchment boards were among the predecessors (e.g. Auckland Regional Authority).<sup>8</sup>

For this report, we review not simply the Act, but the entire resource management system that it encompasses: the wording of the legislation, subordinate instruments, delegated functions and the behaviours of actors. Therefore when referring to the RMA, this report is referencing the RMA system holistically. The first place we look is at the present structure and the existing provisions within the Act to predict and track outcomes: Sections 32 and 35.

Considerable effort has been deployed into the RMA system. New Zealand has 11 regional councils, 12 city councils, 54 district councils and the Auckland Council (formed by special legislation). Some of the city and district councils have regional functions (unitary authorities). All in all there are 78 local authorities.<sup>9</sup> Regional and local councils do not solely work on the RMA, but it does constitute a significant proportion of their mandate.

Most of the authorities have at least one plan in place to implement the Act and sometimes multiple plans to recognise different aspects of their RMA responsibilities. First generation plans took an average of 2.5 years to promulgate and 3.5 years for resolution of appeals with an overall average of 8.2 years from start to finish. The average cost of first generation plans was \$1.9 million and each plan change (of which there are hundreds nationally) costs on average \$109,540.<sup>10</sup> Most second generation plans are still in progress, so overall figures are unavailable.

Regional councils also potentially have an oversight function to ensure that the district and city councils within their boundaries implement regional policy and planning provisions. This role has been exercised to varying degrees, from the former Auckland Regional Council which was often proactive in making submissions on district plans and resource consents applications, through to other regional councils that have been much more ‘hands-off’. Local Government New Zealand also acts as an umbrella body, providing support and codifying practice in some instances, while the Ministry for the Environment leads on other aspects.

The costs of policy and planning at a strategic level are primarily borne by regional and local ratepayers. The RMA consenting regime is a cost recovery system, in which applicants generally bear the cost of the time taken to process consents, the actions required to service the needs of decision-makers and all specialist reports and planning material. Decision-makers may also recover the costs of monitoring and enforcement of consent conditions. Other parties involved as submitters bear their own costs. All councils and other processing agencies set their own fees for consents, hearings and other activities within a permitting process. These costs can vary significantly and are difficult to predict at the outset.

There are clear and comprehensive statutory requirements to anticipate and monitor the outcomes of RMA interventions, most particularly in sections 32 and 35 of the Act. Section 32 performs a similar function to the regulatory impact analysis required of national agencies when they contemplate new national laws, policies and regulations. Other evaluation requirements exist in other legislation for the same agencies implementing the RMA (e.g. Local Government Act 2002). Section 32 was recently amended to include further criteria on quantification and consideration of economic implications of policies. While the amendments did not alter the sustainable management purpose of the Act, one commentator noted: ‘the effect of these changes will be an inclination to favour planning approaches that provide for economic growth and which, as a convenient consequence, also do not reduce opportunities for economic growth’.<sup>11</sup>

The Ministry for the Environment produced updated guidance to reflect those changes.<sup>12</sup> In summary, section 32 requires that:

- ‘new proposals must be examined for their appropriateness in achieving the purpose of the RMA
- the benefits and costs, and risks of new policies and rules on the community, the economy and the environment need to be clearly identified and assessed
- the analysis must be documented, so stakeholders and decision-makers can understand the rationale for policy choices’.<sup>13</sup>

The quality of section 32 analyses have often been questioned,<sup>14</sup> and seem to be an area in which (or because of which) poor implementation would manifest.

Section 35 gives all local authorities a duty to ‘gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under this Act or regulations under this Act’.<sup>15</sup> A review of the section 35 requirements in the Act affirmed that, in the researcher’s view, they were appropriate and enabled the right information to be collected.<sup>16</sup> Despite these statutory requirements, instances of comprehensive monitoring of policy outcomes are rare,<sup>17</sup> mainly due to poor agency capacity and weak national direction.<sup>18</sup> In the Literature review we briefly appraise a suite of the assessments which are available.

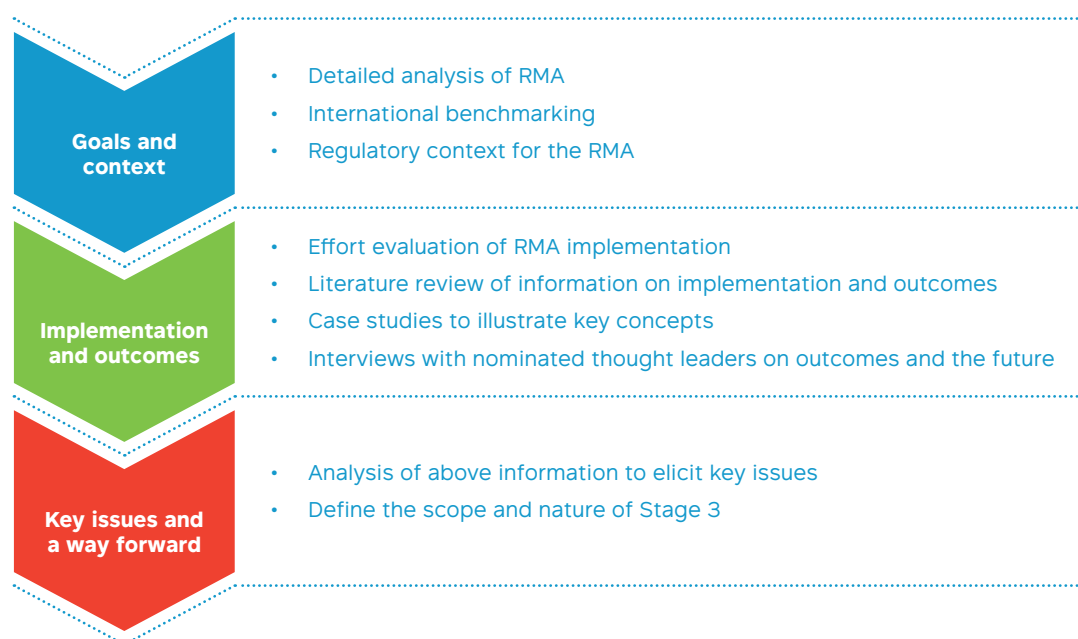
## Project methodology

An outcome assessment can only meaningfully contribute to policy evaluation if it can link changes in variables to the policy being assessed (attribution). Given the scope of the RMA, and the complexity of the environment, attribution is a significant challenge. Most policy evaluation studies include a mix of causal and non-causal approaches, usually due to the paucity of data to satisfy information requirements for the former.<sup>19</sup> A paucity of data certainly characterises this subject area, and the complexity of the legislative and the receiving environment make attribution very challenging when general purpose data is used to assess overall outcomes.

The methodology established for this project was based on our conclusion that collecting information from a wide range of sources was the best strategy to formulate an accurate picture of whether the RMA was ‘delivering for the environment’. The methodology was developed during Stage 1 of this project and approved by stakeholders. The methods are discussed in more detail in the earlier report. The overall structure of the project is set out in the diagram below.

This report does not specifically address the impact of the environmental outcomes of the RMA system on Māori. An important implication of loss of environmental quality is the very real impacts on cultural values. Loss of environmental values translates to loss of cultural identity and can have significant and often silent consequences for mana whenua.<sup>20</sup> This report does not go much further than to acknowledge these and to highlight their profound importance, but we recognise that there are others far more adept at setting them out than the authors of this report.

Figure 1: Overview of the structure of Stage 2 of the project



# Environmental goals of the RMA system

The RMA came about during a period of global awakening about how finite our resources are, and the corresponding necessity to manage human wants and needs within the limits of nature's capacity. While the global discourse revolved mainly around the concept of 'sustainable development', the words that found their way into the RMA were 'sustainable management'. The distinction between these terms has been examined at length. In summary, sustainable management is seen as the environmental (and fundamental) component of sustainable development – to be achieved without being compromised by social and economic aspirations.<sup>21</sup> The purpose of this section is to identify what the environmental goals of the RMA were beneath this banner, in order to be able to evaluate outcomes against these goals.

Prompted by these developments in international thinking on integrated resource management and sustainable development,<sup>22</sup> a wholesale reform of New Zealand's environmental laws occurred during the 1980s. This culminated in the enactment of the RMA, among other initiatives. The RMA was conceived as a framework for integrating and rationalising environmental law in New Zealand<sup>23</sup> under one common purpose – 'sustainable management of natural and physical resources'.<sup>24</sup> In reviewing the genesis of the Act we demonstrate that there are two levels of goals under the RMA: those relating to high level administrative goals (we call them 'structural' goals) and those relating to the values to be protected (we call these 'outcome' goals). Achievement of one set of the goals is in large part dependant on the achievement of the other, and we discuss this relationship further later in this report.

## Structural goals

The RMA reform process set out to achieve 4 underlying goals. First, it endeavoured to consolidate a complex legislative landscape<sup>25</sup> characterised by process duplication, multiple consent requirements, a plethora of decision-making bodies and high compliance and transaction costs.<sup>26,27</sup> The RMA was intended to consolidate, streamline and simplify these processes and provide a 'one-stop shop' for resource consents.<sup>28</sup>

Second, the RMA provided for integrated management<sup>29</sup> as a framework for identifying and resolving complex resource problems.<sup>30</sup> Integration was sought across 4 key areas: media (land, air, water), agencies (regional, territorial), legislation (management plans and strategies prepared under other Acts) and across actions over time (cumulative effects).<sup>31</sup> Integrated management was a key aspiration of the RMA. Integrated management was a response to the recognition that siloed consideration of environmental and development matters had limited basis in ecology and ultimately reduced the efficacy of environmental law. For example, the 1987 United Nations report *Our Common Future* (also known as the 'Brundtland Report') noted:

*'Failures to manage the environment and to sustain development threaten to overwhelm all countries. Environment and development are not separate challenges; they are inexorably linked. Development cannot subsist upon a deteriorating environmental resource base; the environment cannot be protected when growth leaves out of account the costs of environmental destruction. These problems cannot be treated separately by fragmented institutions and policies. They are linked in a complex system of cause and effect.'*

Third, the RMA was intended to install a regulatory regime which established non-negotiable 'bio-physical bottom lines' (in Part 2 of the Act) to ensure development occurred within the capacity of the environment and the ecosystems that supported it. This was clearly set out in the speech to Parliament by Simon Upton, when the Bill was introduced, which referred to the ecological aspects of sub-sections 5(2)(a)-(c) as constituting 'biophysical bottom lines' over and above which other activities could be considered.<sup>32</sup> In other words, breaching of bottom lines was not contemplated. In practice, the Courts took a radically different view when interpreting the legislation, as we will discuss later in our case study of King Salmon and further in the conclusion.

Whatever the trade-offs in the circumstances of a particular development, a higher level trade-off in favour of sustainability had already been made by the legislation in advance.<sup>33</sup> Beyond those bottom lines, resource users would be left to make their own decisions.<sup>34</sup> Through establishing clear and consistent bottom lines, the RMA was intended to achieve better environmental outcomes with fewer restrictions on use and development.<sup>35</sup> It was intended to be an environmental statute and was not designed to comprehend social purposes<sup>36</sup> or to make value judgements about the well-being of people or communities.<sup>37</sup>

Fourth, national and local government were intended to have specific roles.<sup>38</sup> Bottom lines were to be set at the national level. Responsibility for implementing national direction was allocated to local government.<sup>39</sup> The RMA was designed as a framework, not a blueprint, giving local authorities wide discretion to identify the most efficient means of achieving the Act's purpose and meeting the needs of the community. The framework, however, is not all encompassing.

This research focuses on matters within the control of the RMA, where attribution is both fair and possible. The RMA deals with land, air, freshwater and the coastal marine area in general with some specific exclusions – fishing being the most notable. Much legislation has been brought about since the RMA, to address specific issues, due to actual or perceived issues with the parent Act. For example, the Resource Management (Waitaki Catchment) Amendment Act 2004 was introduced to address transboundary issues and ambiguity between Otago and Canterbury Regional Councils with respect to river management. The Hauraki Gulf Marine Park Act 2000 and the Waitakere Ranges Heritage Area Act 2008 were also seen as necessary bespoke statutes due to similar jurisdictional issues (and failures of implementation of existing instruments).

## Outcome goals

The second set of goals related to the values to be recognised and provided for under the Act. These are contained within sections 5, 6 and 7. We focus on the environmental goals (natural environment), but note that the Act also addresses a range of other matters (e.g. historic heritage).

For the purpose of section 5, goals include:

- (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.

The section 6 matters of national importance are somewhat more directive and we focus primarily on sub-sections 6(a)-(c). The three bottom lines for the environment set out in this section are:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

In section 7, a suite of further matters are set out that are less important than the two preceding sections, but nevertheless enjoy particular priority over unreferenced values. Excluding recent additions (i.e. ‘the ethic of stewardship’) and excluding (strictly) non-environmental values (the efficient use and development of natural and physical resources) there are three key aspects of section 7 that relate to the protection of the environment.

(d) intrinsic values of ecosystems:

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

Taken together, these goals follow a clear hierarchy and recognition of environmental bottom lines and the need to manage resources having regard to intergenerational equity. These goals can be achieved via a range of means from outright avoidance of impacts through to the emerging tool of biodiversity offsetting.<sup>40</sup> We return to an assessment of whether these goals have been achieved in Part III.

## Effort evaluation

The intention was to collate current data on the implementation of the Act, including the actions taken by relevant agencies and the resourcing devoted to implementation efforts, to provide a picture of current practice. The inputs such as data on compliance costs, litigation expenses, personnel numbers of other stakeholders (NGOs, the private sector and the wider public) was also to be documented where possible.

Overall, the information was much harder to access than expected, particularly in a consistent format that could be easily compared and then be related to environmental outcomes. It is possible that the National Monitoring System from the Ministry for the Environment could, over time, collate a useful database of relevant information. What information on costs and effort that was available is included in this report in relevant sections.



# International benchmarking

Environmental management was once of only peripheral importance to governments around the world, but that has changed in the past few decades. It is now a central function of government in most countries to manage protected areas, address weeds and pests, protect threatened species and manage natural hazards. To that end, environmental law has been touted as one of law's 'great success stories of the twentieth century'.<sup>41</sup> These new dimensions of governance have wide implications for business, the public and the environment.<sup>42</sup> Therefore, one could argue that Western society is in the formative stages of developing coherent governance systems for natural resources. The Resource Management Act 1991 was at the forefront of this transformation and 25 years on, few other countries have attempted legislative reform so ambitious.<sup>43</sup>

The characteristics of good environmental policy are that it alters behaviour adequately and it does so in a way that is cost-effective and appropriate to the needs of the community. Other key aspects of effective environmental law, particularly in addressing cumulative effects, are the application of a strategic approach and integration of decision-making.<sup>44</sup> First and foremost in measures of success, however, is that the law is effective at altering behaviour in the way intended, in this case achieving its environmental goals. This is the overall question that this report seeks to answer, and we will return to it in the concluding sections. The second aspect is cost effectiveness, then relevance, accountability and integration. We briefly discuss these elements in that order.

## Cost effectiveness

Environmental laws are disruptive to economic aspirations by their very nature and the reasons for their existence are often not clearly evident to stakeholders. As such, their cost is a major point of contention. The costs and delays surrounding the processes within any regime are commonly criticised and certainly so in New Zealand. For example, the Ministerial foreword for the 2013 discussion document outlining proposed amendments to the RMA (including Part II) in 2013 noted: 'The costs, uncertainties and delays of the current resource management system are affecting New Zealand jobs, infrastructure and productivity, and they place an unfair burden on communities'.<sup>45</sup> Cabinet papers since appear to accept at face value that the costs are both high and unjustified, and cause unnecessary delays.<sup>46</sup>

Leading industry advocate Federated Farmers has also been a vocal critic. Federated Farmers estimated the costs of the RMA at \$80.9 million a year, and noted that 73% of the farmers affected by the RMA want it to be changed. Primary concerns listed are frustration at having to gain consents for 'normal farming activities', the impact on landowners of protection of significant sites, advocacy by non-local environmental groups, the time and expense incurred complying with the Act and dealing with the Department of Conservation through resource consent processes.<sup>47</sup>

However, the oft-cited concept that the RMA is too expensive and is a handbrake on economic growth should not be taken at face value. First because there has been little quantification of the benefit of constraining the impacts of human activities on public goods, in order to paint the rest of the picture. The 'costs' are incurred by interests that consume public goods, and the cost might otherwise be borne by communities. For example, a consenting charge and a discharge levy on effluent into a freshwater ecosystem might increase the costs, but is likely to substantially improve the public interest outcomes of the legislation. As such, cost in simple terms is a poor indicator of validity of a policy approach.

The findings of international research also often run counter to the notions of environmental law creating unnecessary costs and barriers to economic growth. For example, Yale Law Professor Daniel Esty demonstrated that stringent regulatory regimes and powerful legal institutions were catalysts of more widespread and rapid economic growth than in weaker contexts.<sup>48</sup> International research demonstrates that stringent environmental requirements are not necessarily obstacles to economic development, but that this relies on employing a range of efficient and fit-for-purpose mechanisms to drive behaviour change.<sup>49</sup>

Policy is about behaviour change, and there is a wide range of policy types that can be used. New Zealand – particularly with respect to environmental issues – tends to favour either non-regulatory approaches or traditional regulation. In 2015, the OECD concluded that New Zealand had the lowest use of economic instruments of any country surveyed.<sup>50</sup> This under-use of flexible instruments (e.g. economic instruments) has likely had implications for the RMA system's outcomes. For example, New Zealand's reticence to employ alternative approaches for water allocation, such as pricing and trading, has had major implications for our freshwater ecosystems.<sup>51</sup> The availability of flexible instruments is, therefore, potentially an area in which the outcomes of the RMA could be improved.

## Integration

Integration is a means of reducing compliance costs and improving overall environmental outcomes. The RMA set out to achieve integrated decision-making, through consolidating permit applications into a 'one stop shop'. This was also intended to enable a fuller consideration of the effects of a proposal compared with a more fractured regime. The RMA has been characterised, many times over, as an excellent example of integrated management: it was referred to as 'masterful' by Frieder.<sup>52</sup>

Recent evaluations have cast aspersions on this, although the detail is not available. For example, in 2015, the OECD noted that New Zealand ranked poorly with respect to '*single contact points, single applications and integrated permitting*'.<sup>53</sup> It is fair to say that some matters sitting outside the Act reduce the level of integration; such as effects on climate change of emissions arising from consented proposals and the extraction of fish. However, relative measures may be useful here. Integration, despite deficiencies in some specific areas, is an overall strength of the RMA compared with most other regimes.

## Accountability

A key determinant of success is whether there is accountability for the outcomes from legislation. Ensuring that there are consequences for not complying with the Act, or meeting its aspirations, is crucial for long term success. The RMA has a significant amount of accountability built in and around it for the effective exercise of procedures, but less for the achievement of outcomes. The Ministry for the Environment is charged with the administration of the RMA. Its role is to provide oversight, track progress and evaluate performance among other functions under section 24 of the Act. The Minister is able to intervene where councils are not performing under section 25(1) and in respect of a wide range of other matters (including proposals of national significance under section 141). There are no provisions that specifically give the Ministry for the Environment responsibility for the outcomes of the implementation of the Act, however.

A number of other statutory agencies have roles under the RMA. The Department of Conservation has a statutory advocacy role under the Conservation Act 1987 that – although significantly reduced in recent years<sup>54</sup> – has provided a valuable check and balance on decision makers. The Department also has a crucial role in coastal management, through assisting the Minister in formulating the New Zealand Coastal Policy Statement under the RMA itself. The Parliamentary Commissioner for the Environment is an Officer of Parliament, independent of government, charged with an important investigative role. The role of the specialist Environment Court has been very powerful indeed, providing a judiciary that is appropriately qualified, appointed for life and well able to adjudicate some of the tough and complex matters that a less specialised judge or commissioner might struggle with.

Local government organisations are primarily accountable to their electorates, although oversight bodies in addition to the Ministry for the Environment exist in respect of most of their functions. These include the Auditor General, the Ombudsman, the Department of Internal Affairs, the Minister of Local Government, the State Services Commission, the Serious Fraud Office and of course the police and other agencies on other matters (e.g. Worksafe New Zealand). Such oversight bodies are able to hold local authorities to account, but only within the scope of their own particular mandate. They have little ability to directly intervene and the accountability still does not extend to taking explicit responsibility for the environmental outcomes of the system.

Wide provision for public participation, and appeal rights, is also an important check on power of agencies under the RMA. The emphasis on public participation was a reaction to limited prior public engagement in environmental matters. It is an area where the RMA has often been recognised as a world-leading statute. Certainly the diligent efforts of non-vested participants in planning processes have been responsible for some important environmental outcomes over the life of the Act (e.g. King Salmon, discussed later). This important aspect of accountability has been steadily eroded through successive amendments to the RMA; with present reforms proposing to reduce it even further. The accountability provisions in the Act are strong compared with many other jurisdictions, but are at significant risk by attrition of public participation.

Monitoring and enforcement of the requirements of the Act is often lacking, despite comprehensive provisions and a range of tools being available. What little research that has been done in this area has generally reported poor overall rates of compliance,<sup>55</sup> weak exercise of compliance monitoring functions by agencies and a failure to follow through and use formal enforcement tools in many cases.<sup>56</sup> The reasons for this include poor allocation of resources to these functions, and a reluctance to exercise the functions especially where they are counter to vested interests. Without robust exercise of these functions, the effectiveness of the RMA is most certainly being undermined. There are clear signs of improvement however, particularly from regional councils, and these enhancements to practice require greater support from all levels of government.

# Regulatory context

## Summary

The RMA is 25 years old this year, and has retained international renown as a revolutionary piece of legislation, despite frequent and often ill-considered amendments. Enshrining sustainable management and denoting a range of cutting edge concepts for its time (e.g. life supporting capacity of ecosystems) made it a world first. While there are doubtless areas in which improvement of the regime are possible, there is little evidence that the basis for the Act, and framework it provides, is seriously lacking. Primary weaknesses are found in the interpretation and implementation of the provisions, as we will discuss later.

The interactions of the RMA with related legislation and processes (both direct and indirect) have an important bearing on its functionality and the outcomes it enables. Interplay of the RMA and other legal instruments can be direct (intertwined processes that always or usually occur together) and indirect (rules that address similar environmental issues to those covered by other legislation, but from a different perspective). The RMA interacts with a large range of national legislation. Some – though not all – of these have material implications for the environment.

A much more detailed analysis is necessary, than is feasible within the scope of this project, to unpack these issues. We do however set out the key interfaces divided into 5 categories: Infrastructure, Conservation, Social and Cultural, Extractive and Administrative. Some legislation spans a number of interfaces due to its broad implications for resource management (e.g. Local Government Act 2002).

Table 1: Table of legislation that interacts directly or indirectly with the RMA

Infrastructure and planning	Local Government Act 2002 Land Transport Management Act 2003 Public Works Act 1981
Conservation	Conservation Act 1987 Wildlife Act 1953 Reserves Act 1977 Marine Mammal Protection Act 1978 Marine Reserves Act 1971 Local protection acts
Social and Cultural	Health Act 1956 Te Ture Whenua Māori (Māori Land) Act 1993 Treaty of Waitangi Act 1975 Marine and Coastal Area (Takutai Moana) Act 2011 Heritage New Zealand Pouhere Taonga Act 2014
Extractive	Fisheries Act 1986 Forests Act 1949 Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 Crown Minerals Act 1991
Administrative	Local Government Act 2002 Environment Act 1986 Property Law Act 1952 Crown Pastoral Land Act 1998 Local Government Ratings Act 2002

## Infrastructure and planning

Economic and community development, including infrastructure, is managed within a suite of legislation which has a strong interface with the RMA, including the Local Government Act 2002 and the Land Transport Management Act 2003. While most infrastructure development sees these Acts all being relevant at the same time, there is only limited formal interaction between them. The New Zealand Council for Infrastructure Development has long criticised this weak relationship, particularly in respect of institutional alignment and the process for making funding decisions.<sup>57</sup> The confined space, high need for revised transport networks and high populations of urban areas exacerbate the effects of these interactions. In 2015, the government charged the Productivity Commission with investigating urban planning in New Zealand. It is likely that this inquiry will recommend alterations that will affect the RMA.<sup>58</sup>



## Conservation legislation

The RMA interacts with a wide range of conservation and associated legislation. All these acts cover separate but related aspects of conservation and environmental management and their years of assent span nearly forty years. Conservation legislation is generally concerned with preservation of species, ecosystems and their habitats. The Conservation Act 1987 and the Reserves Act 1977 are also the primary legislation for the management of land protected for the purposes of conservation, while the Marine Reserves Act 1971 is the marine equivalent. The Wildlife Act 1953 and the Marine Mammal Protection Act 1978 both focus on species (although habitat protection is possible under both). In preparing policy and planning instruments under the RMA, decision-makers are directed to have regard to matters covered by other legislation (including plans and instruments formulated under them).

Where an activity requires permission under more than one Act, their interaction can be troublesome. For example, the RMA and the Wildlife Act 1953 interaction has been studied at some length in recent years. The studies have concluded that under-implementation of the Wildlife Act 1953 and over reliance on RMA processes has had negative implications for wildlife, because the RMA does not have such a strong focus on protection and is more likely to allow loss.<sup>59</sup> Losses may also be uneven. For example, the protection of individual species is often 'easier' to deal with than ecosystem or habitat level impacts, and may be focussed upon to the overall detriment of the environment (i.e. the species may be translocated out of harm's way, but ecosystem damage proceed).

The lack of integration between the RMA and marine legislation more generally has been examined in depth, and recommendations include statutory changes to achieve a better basis for integrated management.<sup>60</sup> The patchy regulatory regime in the marine area has deleterious consequences for the environment, exacerbated by the large expanse of ocean requiring management, the relatively poor amount of information about marine ecosystems, and the weak funding model that limits resources to do so.<sup>61</sup> Resolving the patchiness is likely to require regulatory reform to make clear the roles of various relevant agencies and to ensure mechanisms for both protection and use interact coherently. In the meantime, various non-statutory processes have been initiated to develop alternative approaches, such as the *Sea Change – Tai Timu Tai Pari* process.<sup>62</sup>

## Resource extraction

Regulation governing resource extraction is partly contained within the RMA (management of environmental externalities, land use etc) but is mainly outside it. Key Acts include the Fisheries Act 1996, Forests Act 1949, Crown Minerals Act 1991 and several others. The main interplay of these regimes is where proponents of development must seek permissions under two or more Acts to undertake a single activity or where the activities under one Act may have implications for activities conducted under another or the values it provides for.

For example, the Fisheries Act 1996 and the RMA overlap in several respects and link weakly.<sup>63</sup> Fishing activity is managed under the Fisheries Act 1996 but regional councils also have marine biodiversity functions under the RMA. The impact of fishing activity on marine biodiversity falls into this overlap, which has largely become a gap. Conversely, impacts of activities on habitats of importance to fisheries, are managed by regional councils under the RMA, but few linkages have been made between catchment and fisheries management.

## Social and cultural issues

A key dimension of the RMA – and perhaps the area which is least understood – is its interaction with social and cultural legislation including the Health Act 1956. However the health interaction has been instrumental in the effectiveness of the RMA approach to addressing air quality (see our discussion later). Where environmental and social concerns are aligned, the instruments can work together to achieve outcomes with broad benefits. The interplay of these two has recently been evident in the Canterbury Region, in which human health impacts of water contamination have sparked concerns from the Canterbury District Health Board.<sup>64</sup>

The relationship between the RMA and Māori rights and interests has been much more fraught – whether based on statute or agreements. The RMA contains specific instruments to recognise Māori (e.g. transfer of powers and iwi management plans), but in the main they have been weakly implemented and decision-making powers have rarely been delegated to iwi as anticipated. Under the Wai262 claim to the Waitangi Tribunal, these and other grievances were set out. The Tribunal recommended a range of changes to how the RMA is implemented to address these issues.<sup>65</sup>

The dominance of the RMA in day-to-day development is perceived by some to ‘crowd out’ other more defined Acts. For example, Gregory and Stoltz expressed concern that the relationship between the RMA and the Heritage New Zealand Pouhere Taonga Act 2014 will result in historic heritage values slipping through the gaps due to overlaps and poor institutional design. The authors recommended giving RMA agencies full jurisdiction over permissions and enforcement functions, while Heritage New Zealand retained the broader special interest function of advocacy and education.<sup>66</sup> The identification of this ‘uneasy’ relationship demonstrates another situation where an overlap may become a gap.

The RMA is a large and influential piece of legislation that has interactions with many other statutes. Where these interactions are not coherent, where roles are not defined or where there are overlaps or gaps, negative impacts on the environment do transpire. [Any comprehensive work anticipating reform of the RMA system should turn its mind to institutional design, alignment and the interplay of other legislation and functions with the RMA.](#)

## Part 2

# Literature review of existing information on RMA outcomes

This section sets out a range of known information on the effectiveness of the RMA at protecting the environment. Overall, there is a surprising dearth of empirical analysis of the outcomes of the RMA for the environment. Appendix 1 contains a summary of 19 national scale and 4 regional studies; they span a time period from the mid-1990s through to 2015. While the list is not exhaustive, it contains most of the empirical studies on RMA outcomes undertaken at a national scale. While many are based on interviews with key informants and policy analysis of instruments, several examine in detail the environmental outcomes of the Act on the ground. A subset of regional studies is also included, generally carried out by councils under section 35. Given that 25 years has passed since the RMA was enacted, a more detailed and comprehensive evaluative literature might be expected.

Sir Geoffrey Palmer drew attention to this gap in monitoring and evaluation in 2015. He identified some likely causal factors as being the cost of research, low priority given to such activities, complexity of problems and methods to assess them, and lack of interest in outcomes particularly at a political level. The long term consequences of a lack of empirical evaluation has also meant that legislative change has been 'seat of the pants' and based on 'popular sentiments', where more robust amendment would arise from more systematic approaches.<sup>67</sup>

What evaluation has been carried out has a common theme of finding underwhelming outcomes for the environment, particularly with respect to strategic issues such as cumulative effects. Failings, however, appear less to do with the wording of the Act itself and more to do with related matters, such as political will, resourcing, agency capture, institutional design and the influence of distorted jurisprudence. The evaluations to date identified very similar drivers of poor environmental outcomes. The most commonly identified constraints were predictable and generally uniform.

The factor most commonly cited was poor capacity of agencies. Constrained capacity referred to lack of financial resources (the local government funding model is the subject of concern), low research capacity, little funding to investigate policy innovations

and underqualified staff. The second most common factor cited for poor implementation was a lack of national guidance. In 2008, Enfocus prepared a paper for the Environmental Defence Society that set out the seven key obstacles to the development of national instruments under the RMA. Those factors include national direction only addressing topics when they are difficult and highly contentious, the difficulty 'government' experiences in reaching a single policy position in the face of different and opposing mandates and highly variable support for these initiatives by local government agencies (i.e. those that will ultimately implement the policy and store much of the required information to do so).<sup>68</sup> This lack of national guidance has been noted for some time and national direction has been more forthcoming in recent years.

Weak implementation is also attributed to agency capture (such as lack of enthusiasm for setting strong limits for freshwater due to a preponderance of agricultural interests in the council)<sup>69</sup> and poor institutional design (see the Parliamentary Commissioner for the Environment's discussion of air quality). These findings echo outcomes elsewhere in our research and we return to them at the end of this report. The limited amount of empirical information is certainly concerning. Any future reform considerations must deeply engage with the need for better monitoring of policy effectiveness, greater transparency of outcomes and a robust link of outcomes to mechanisms for effecting agency accountability.

# Case Studies

The literature review of existing information on RMA outcomes, summarised in the previous section, has highlighted a significant lack of information on policy effectiveness and outcomes throughout the RMA system. New Zealand has rich experience of the implementation of the RMA over 25 years, across a wide range of settings, and detailed learnings are possible. To help elicit such learnings, a case study approach was used, focussing on five high profile cases determined under the Act and three broader areas of environmental management. The specific case studies were chosen to collectively represent a broad suite of activity types impacting on different types of environments. The role of the RMA in influencing the environmental outcomes was evaluated through analysing submission, decision, consent, monitoring and reporting documents and undertaking key stakeholder interviews.

Table 2: Table of five case studies

Case study	Brief description	Reason for selection
1. King Salmon	Proposal was for 9 additional salmon farms in the Marlborough Sounds (it included both a private plan change and resource consents).	EDS v King Salmon is pivotal case law under the RMA, as it hit the 'reset button' on more than two decades of jurisprudence (see key issues).
2. Pomahaka Minimum Flows	Proposal was a plan change to refine water allocation in a catchment in Otago.	Declining water quality and the absence of coherent allocation regimes are widespread challenges under the RMA, so a case study focusing on this will likely provide useful insights.
3. Waterview Tunnel	Proposal was a large roading infrastructure upgrade in Auckland to remove reliance upon a single transport route to West Auckland. It went through a fast-track RMA process	Major infrastructure in urban areas commonly attracts significant attention and is necessarily disruptive. The Waterview Tunnel project provides an opportunity to unpack those issues.
4. Matiatia Marina	Proposal was for a marina on Waiheke Island, including berths, car-parking and other structures with ecological and landscape impacts.	Coastal marine area management is an important component of the RMA. This case study showcases the influence of the NZCPS also.
5. Denniston mine	Proposal was for a 157ha coal mine on the West Coast.	The environmental effects of mining are addressed under the RMA, and the Denniston case is both controversial and illustrative.

# 1. King Salmon

In addition to the case studies set out above, three focus areas were chosen to elicit key learnings about the RMA's effectiveness at managing wider goals. These focus areas are:

6. Avoiding, remedying or mitigating the adverse effects on freshwater ecosystems
7. Sustaining the life-supporting capacity of air
8. Preservation of the natural character of wetlands and the protection of them from inappropriate subdivision, use, and development

Each will be discussed in brief and an overall summary will combine findings to determine relevant learnings for this project.

## Background

In October 2011, the New Zealand King Salmon Company (King Salmon) sought to establish 9 salmon farms in addition to the 6 it already operated in the Marlborough Sounds. For 8 of the proposed sites, marine farming was a prohibited activity under the Marlborough Sounds Resource Management Plan. King Salmon sought a private plan change to amend the activity status to discretionary for those sites and lodged concurrent resource consent applications. At the 9th site resource consent was sought as a discretionary activity.

The proposal was heard in the first instance by a Board of Inquiry as a matter of national importance. The Board granted plan changes making salmon farming a discretionary activity for 4 of the proposed sites at Papatua in Port Gore, Ngamahau, Waitata and Richmond, and also granted resource consent for those sites. It refused consent for the remaining 5 sites, including the White Rock site where a plan change was not required.

EDS and Sustain Our Sounds Inc (SOS) appealed the decision on separate grounds. Sustain Our Sounds appealed the Board's decision with respect to all 4 sites. It had 3 main arguments on appeal: that there was inadequate information on water quality issues for the Board to reach a decision, that the Board was incorrectly influenced by adaptive management measures, and that even if adaptive management was available those measures should be part of the plan and not in the resource consent. The Supreme Court unanimously dismissed the SOS appeal. Importantly, because EDS's appeal in respect of the Papatua site was successful, in practical terms the failure of the SOS appeal only affected the 3 remaining sites: Ngamahau, Waitata and Richmond.

EDS opposed the plan change and consent in respect of the Papatua site. The Board had recognised that Papatua in Port Gore is an outstanding natural landscape (ONL) and an area of outstanding natural character (ONC), and that the proposed salmon farm would have significant adverse effects on those values. It recognised that as a consequence, if the plan change was granted in respect of this site, policies 13(1)(a) and 15(a) of the NZCPS would not be complied with. Despite this, the Board granted the plan change. The Board found that that under section 67(3) of the RMA it was required to 'give effect to' the NZCPS 'as a whole', and to reach an 'overall judgement' on King Salmon's application in light of the principles in Part 2 RMA.



EDS appealed this decision to the High Court which dismissed the appeal and confirmed the Board's approach. Leave was then granted to appeal directly to the Supreme Court. The two key questions in front of the Supreme Court were:

- Whether the NZCPS and its standards must be complied in relation to ONCs and ONLs and, if so, whether the Port Gore plan change complied with section 67(3)(b) of the RMA even though it did not give effect to Policies 13 and 15 of the NZCPS.
- Whether the Board was correct in its use of the overall judgement approach.

### **Analysis of the outcomes for the environment**

The Supreme Court decided by majority that the appeal must be allowed. It found that the plan change in relation to Port Gore did not comply with section 67(3)(b) of the RMA because it did not give effect to Policies 13 and 15 of the NZCPS. This meant that the salmon farm proposed for the Papatua site did not proceed. The outcomes for the environment were positive in that Papatua and Port Gore retained higher quality and more intact natural landscapes and greater natural character. Development was directed towards areas more able to absorb the impacts: the 3 remaining sites at Ngamahau, Waitata and Richmond for which the Supreme Court confirmed the plan changes and consents subject to adaptive management conditions.

### **Reasons for the outcome**

The Court held that the protection and preservation of the environment are a core part of sustainable management as expressed by Part 2. The NZCPS gives substance to Part 2 in the coastal environment. Although Part 2 of the RMA does not give primacy to environmental preservation or protection, lower order planning documents can and Policies 13(1)(a) and 15(a) do in requiring protection of ONCs and ONLs. The requirement to 'avoid' adverse effects in these policies is a strong direction that, when 'giving effect' to the NZCPS in lower order planning documents, must be implemented. This means that, in the context of a plan change, they are not merely relevant considerations to factor into a broad overall judgement, but they are environmental bottom lines which must not be compromised. Plan provisions are to be read together and reconciled, with those provisions with the more directive wording prevailing. The Court found that there were three limited exceptions to this: invalidity, incomplete coverage or uncertainty of meaning.

## Comparative analysis

A number of similar applications also in ONLs have been declined:

- KPF Investments Limited's application<sup>70</sup> for resource consent to convert a mussel farm to a salmon farm at Danger Point in Pelorus Sound, an ONL under the Marlborough Sounds Plan: In 2014 the Environment Court reversed the Council's decisions and declined consent. Importantly, the Court found that in the context of resource consent decisions the overall judgment approach still applies because decision-makers are only required to 'have regard' to plan provisions not 'give effect' to them. Nonetheless, it refused consent on the basis that, after placing all relevant considerations in the balance, the purpose of the RMA would be better achieved if consent was declined.
- Clearwater Mussel Limited's application<sup>71</sup> for resource consent for a non-complying activity to extend an existing marine farm off Camel Point at the mouth of the Tennyson Inlet, an ONL under the Marlborough Sounds Plan: In 2016 the Environment Court confirmed the Council's decision to refuse consent.

In contrast, similar applications (not in ONLs) have been granted:

- Knight Somerville Partnerships' application<sup>72</sup> for resource consent to establish a mussel farm in Beatrix Bay, Pelorus Sound, not identified as an ONL under the Marlborough Sounds Plan. (2014): In 2014 the Environment Court confirmed the Council's decision to grant consent. The Court found that Policies 13 and 15 of the NZCPS did not apply and the application was consistent with Policy 8 of the NZCPS.
- West Mussels Distributors Limited's application<sup>73</sup> for a marine farm located off the western coast of Stephenson Island in Whangaroa Bay, Northland, which the Court determined was not an ONL: In 2014 the Environment Court confirmed the Council's decision to grant consent.

## Summary

The effect of the Supreme Court's decision extends far beyond the Marlborough Sounds. Stronger protections now apply to areas identified as exhibiting outstanding natural values, in particular in the coastal environment. The decision confirmed that the RMA contemplates, and is partly premised on, the concept of environmental bottom lines. The RMA provides for a hierarchy of planning documents to flesh out the principles in Part 2 in a manner that is increasingly detailed in both content and location. Each document must 'give effect' to, or implement, those that precede it. This is not a balancing exercise at a policy level. It requires decision-makers to identify those policies that are relevant and pay careful attention to the way in which they are expressed in order to reconcile them. Some provisions are expressed in such directive terms that the decision-maker has no option but to implement them and those provisions can require protection or preservation of the natural environment. For example, 'avoid' in the context of the NZCPS means to not allow, or prevent the occurrence of, and is a stronger direction.

## 2. Pomahaka Minimum Flows

It is evident from planning processes post the King Salmon decision that the RMA is now more effective in protecting outstanding and high natural value areas in the coastal environment. Questions still remain over the implications for other parts of the natural environment. The Courts have indicated that the same approach should be taken to the National Policy Statement on Freshwater Management.<sup>74</sup> There is ongoing debate about how (or if) the management framework for outstanding areas in the NZCPS, for example ONLs, should be applied to ONLs outside the coastal environment given that section 6 of the RMA affords the same level of protection to all ONLs.

Further, the Supreme Court's decision was focused on the requirement for lower order plans to 'give effect to', or implement, higher order ones. Different wording applies to decision-making on resource consent applications, where decision-makers are only required to 'have regard to' directive provisions, including numerical bottom lines. This undermines the effectiveness of the RMA in achieving its goal of providing for development within the capacity of the environment. Possibly the most critical learning from the King Salmon decision is the importance of case law from the Supreme Court in providing clarity of purpose and interpretation.

### Background

The Pomahaka Minimum Flows project was to be implemented by Proposed Plan Change 3B undertaken by the Otago Regional Council. The plan change introduced a primary and supplementary allocation regime for the Pomahaka catchment, in southwest Otago, a tributary catchment of the Clutha River. Prior to the RMA, the values of the Pomahaka were recognised and protected by a Local Water Conservation Notice which expired in 1991 when the new legislation was enacted. There had been growing concerns in the catchment over deteriorating water quality since the late 1990s, primarily as a result of significant conversion to intensive farming, and a network of mole and tile drains being installed throughout the catchment.

The introduction of the National Policy Statement on Freshwater Management in 2011 (revised in 2014), together with existing provisions of the Otago Regional Plan: Water prompted the introduction of minimum flows and an allocation regime through the plan change. The plan change was notified in August of 2014 after four community workshops. These workshops unpacked the key issues with stakeholders present, before a solution was reached. The decision of the Council was released six months later (February 2015), and with no appeals being lodged, the change became operative in June of the same year.<sup>75</sup>

## Analysis of outcomes

The Otago Fish and Game Council stated that the plan change was a 'significant step in the protection of the river' while the Otago Regional Council noted it was a 'positive outcome' to not have to litigate the matter, as a result of energy being put in early with collaboration through workshops.<sup>76</sup> Strong recreational interests were undoubtedly a factor in the protection of the river which illustrates that the cultural, recreational and amenity values of river protection are potentially influential in planning decisions, and perhaps more so than intrinsic values. The plan change was made operative on 1 June 2015.

There were many existing consents for abstraction in the catchment. These had varying minimum flows which had been set on an *ad hoc* basis. Some consents lacked a minimum flow entirely. All consents in the catchment were subsequently called in under section 128 of the RMA, and the minimum flows were applied to all but two of them. Several irrigators wished to be heard on this matter. However, the Council only granted two exceptions to the minimum flow, with these being for very small takes (< 5 litres per second) in mountain tributaries far from the minimum flow site.

## Reasons

Strong interest from anglers and other recreational users of freshwater somewhat 'smoothed the way' for this plan change to occur, and enabled a demonstration of the functionality of the Schedule 1 process. Federated Farmers and Fish and Game came to a compromise in which water abstraction and environmental values were both able to be protected to their satisfaction, and in a way that met legislative requirements and was accepted by the community. This plan change one was rapid, inexpensive compared to more contentious processes and achieved an outcome that appeared to have broad community buy-in. The Otago experience demonstrates that a plan change is more likely to escalate to the Environment Court where a compromise is difficult to strike.

## Summary

The plan change was developed through early consultation with all stakeholders, was not appealed and was operative within one year of its notification, proceeding through a Schedule 1 process. The plan change was a positive step for the environment and demonstrated timely compliance with emerging national and regional direction. The plan change process demonstrates the efficacy of the Schedule 1 process where a compromise is able to be reached between the relevant interests at the table.

### 3. Waterview tunnel

#### Background

The Waterview Connection will complete the Western Motorway Ring Route, a 48km motorway route between Manukau in the south and Albany in the north of Auckland. It provides a bypass route around central Auckland, ending the city's reliance on a single motorway spine for road travel across the region. The New Zealand Transport Authority's application for notices of requirement and resource consents for the proposal was publicly notified in 2010. It was considered by a Board of Inquiry, in the first instance, as a proposal of national significance. A nine month fast-track process, with appeal rights limited to points of law, applied. It was not subject to appeal.

The project included the construction of twin tunnels, 2.4km long, each carrying three lanes of traffic. There was also an interchange at Great North Road consisting of four ramps connecting the southwestern and north-western motorways to complete the Western Ring Route. The project also included community infrastructure such as recreational facilities, upgraded parks and improved and extended cycling and walking connections. The original design was for an overland road instead of a tunnel: tunnels were opted for to expedite the decision-making process and reduce the level of community opposition (at much greater financial cost). The magnitude of the proposal, even in its modified form, meant the potential environmental effects were extensive including effects on landscape, coastal natural character, vegetation, fresh and sea water quality, coastal processes, natural ecology, air, and amenity. The Board found that Policies 6 and 10 of the NZCPS pointed towards the appropriateness of the proposal.

#### Analysis of the outcomes for the environment

The Board of Inquiry granted the designations and consents applied for in mid-2011. The project will result in both negative and positive environmental outcomes. Likely negative impacts include wildlife impacts (although some wildlife was translocated out of harm's way), and permanent loss of sections of the foreshore and seabed, existing mangrove habitat, ecotones, and natural recreation space. Notably, a section of mangroves in the proximate marine reserve will be removed. However, there will be numerous positive environmental effects including restoration and extension of open space, extensive re-vegetation and new planting, protection requirements, extensive weed and pest management and better water treatment for runoff. Monitoring requirements also form part of the conditions to help track actual environmental outcomes and to ensure they are what were anticipated.

#### Reasons for the outcome

The Board approved the proposal on the basis that the safeguarding of the life supporting capacity of air, water, soil and ecosystems could be ensured by the imposition of appropriate (and complex) conditions. These conditions required a combination of avoidance, remediation, mitigation, restoration, environmental compensation and financial contributions, all underpinned by extensive management and monitoring plans. The specificity and complexity of the conditions was critical in ensuring that restoration and environmental compensation activities adequately responded to the adverse effects. Their implementation will be important over time. In relation to the permanent occupation of the coastal marine area, the mitigations proposed were intended to address the adverse environmental effects.

#### Comparative analysis

Other large scale motorway proposals have also been consented, again subject to extensive and complex conditions (e.g. Waikato Expressway in 2009). Wellington's Basin Reserve Flyover was not consented however, being declined in the High Court in August 2015. Transmission Gully (also in Wellington) was approved with extensive mitigation actions being required, provoked by experts in other agencies taking part in the proceedings (e.g. Department of Conservation under its advocacy functions).

## 4. Matiatia Marina

### Summary

The outcomes for the environment were considered by the Board to be negative in the short term and most likely positive in the long term. Whether this in fact occurs cannot be determined until a number of years post cessation of construction in 2017, and when the full extent of environmental remediation, restoration and compensation actions have been undertaken. It will also rely on effective implementation of the long term management and monitoring plan. The proposal shows that, if high expectations are placed on developers to adequately address adverse environmental effects, positive outcomes can be achieved and within tightly defined timeframes. These expectations are in part communicated by expert witnesses from other organisations working to improve the proposal under their advocacy functions.

### Background

In late 2013 Waiheke Marinas Limited applied to establish a marina in Matiatia Bay, Waiheke Island. The original project included 160 berths, two breakwaters, reclamation providing 55 car-parking spaces, 20 new piles for moorings, dredging and related works. Near the end of the hearing the size of the proposal was reduced to 112 berths and the reclamation was abandoned in favour of a parking deck.

The proposal had a number of potential adverse effects on the environment, the most significant being impacts on the landscapes and natural character of the Bay. The proposal would also fundamentally change the coastal ecology of the area where the marina structures were to be located, but this was found not to contain any rare or unique features and so any effects were largely dismissed (apart from pollution from anti-fouling which was considered in some depth). The proposal was heard in the first instance by the Environment Court, as a non-complying activity, under the direct referral provisions of section 87G of the RMA.

### Analysis of the outcomes for the environment

The Environment Court refused to grant consent to the proposal in December 2015. The applicant did not appeal and subsequently went into liquidation. The outcomes for the environment were positive, in that Matiatia Bay retained higher quality landscapes, greater natural character and more intact coastal ecology.

## Reasons for the outcome

The Environment Court largely declined the proposal on the basis of landscape effects, despite the Bay not containing any outstanding natural landscapes or any high or outstanding natural character in its entirety (although some elements had higher natural character values). In the Court's summary of its decision it stated that 'the adverse landscape effects, particularly in reference to the breakwaters and deck, were significant and largely unmitigated and therefore contrary to relevant provisions. The Court also found that there would be detracting from the future enhancement of the environment, as the vegetation in the areas matures [75% of the landscape catchment was in permanently protected conservation and covenanted areas]. The balance between encouraging location in areas of already compromised natural character, and protecting those remaining natural elements were not struck by the proposal.'

The Court noted that it was not possible to provide any meaningful mitigation for the marina. It was not possible to screen it say with planting, or to nest it into a valley, as can be done on land. It was either in the right place or it wasn't, so it was essentially an all or nothing decision as to whether it was appropriate within the context of the Bay. In addition, the relevant planning documents contained provisions that emphasised the importance of maintaining the landscape character of Maitiata Bay and these appear to have helped the Court to reach the conclusion that the proposal was inappropriate within the setting of the Bay.

Other contextual factors which may have contributed to the outcome was the high level of conflict over the proposal in the local community, the failure of the applicant to engage meaningfully with local iwi, and Maitiata Bay being the gateway to Waiheke Island for numerous visitors.

## Comparative Analysis

Other recent similar applications have gone ahead.

- [Whangamatā marina: Granted consent for 209 berths in 2008](#)
- [Tairua marina: The original application for a 150-berth marina was declined. Subsequently a proposal for a 95-berth marina was granted consent by commissioners in 2009, with appeals to the Environment Court subsequently resolved.](#)
- [Sandspit marina: Granted consent for 131 berths in 2012](#)

## Summary

The RMA is capable of protecting coastal landscape and natural character values even where these are not outstanding. The stronger provisions of the NZCPS 2010 assist with this, as does having strong clear direction in the Council planning documents and credible and appropriately qualified experts involved. Protection seems more likely to be achieved where it is an all or nothing decision, in that the activity is appropriate or not in the proposed location and effects cannot be effectively mitigated, so a 'half-way' house is not available to the decision-makers. This demonstrates that mitigation strategies may be invoked under the Act to enable inappropriate development to proceed, and confirms the need to exercise caution with their application.

## 5. Denniston mine

### Background

In 2012 Buller Coal Limited applied for resource consents to establish an open-cast coal mine on 157ha of the Denniston Plateau. The proposal was a discretionary activity under the district plan. Coal was to be extracted from a single seam and the overburden removed to access the coal would eventually be placed in an engineered landform designed to resemble as far as possible the existing landforms. Recognising that it could not avoid, remedy or mitigate completely the adverse effects of the mining activity, the applicant proposed to establish an offset mitigation and compensation package, including site rehabilitation and predator and pest control areas.

It was accepted by the parties that, if granted, the proposal would have a number of adverse effects on the Plateau's landscape and ecology, in particular on significant indigenous vegetation and habitats of indigenous fauna, including locally and nationally endangered plant species and ecosystems. The report for the Access Arrangement by the Department of Conservation listed many species that are of conservation concern which had been found within the footprint of the proposed mine.<sup>77</sup> Further, the life that the post-mining rehabilitated ecosystems might support in future would be less fit, rich and diverse than those presently existing. The landscape effects were of less significance than the ecological impacts because the Plateau was not an outstanding natural landscape.

### Analysis of the outcomes for the environment

The proposal was granted by the Council and appealed to the Environment Court by the West Coast Environmental Society and the Royal Forest and Bird Protection Society (Forest and Bird). The Environment Court, after a number of intervening decisions from superior courts, confirmed grant of consent subject to extensive conditions. Central government called on the appellants to withdraw their objections, prompting concerns being raised by Forest and Bird about the appropriateness of political intervention in a legal process.<sup>78</sup>

The overall outcome for the environment is difficult to assess. In the area where mining activities will take place the outcomes will be negative in that the existing flora and fauna will be lost or relocated and the landscape further scarred. Some of the loss (including of local endemic species) was known to be permanent and irreversible. In areas where the offset and compensation conditions apply the environmental effects would be positive with existing flora and fauna enhanced, better protected and monitored. Post-closure rehabilitation of the site aims to achieve positive environmental outcomes also. It is unclear, however, whether the positive impacts effectively address the irreversible losses enabled by the approval (i.e. the trade-off).

### Reasons for the outcome

The Environment Court took an 'overall balance' approach in reaching its decision. It weighed the adverse and positive environmental effects against the regional and national economic and employment benefits of granting the proposal. In effect, it concluded that the purpose of the Act would be best met, and both considerations addressed, through granting the consent subject to stringent environmental management conditions. Environmental gains in areas other than the application site, to be achieved through biodiversity offset conditions, were critical.

## 6. Management of discharges to freshwater

### Comparative analysis

Other similar applications for mining activities have also been granted. For example, Solid Energy's application to establish and operate a coal mine in the Waimangaroa Valley was granted by the Environment Court in 2005.<sup>79</sup> The mine footprint affected 105ha of a 1,600ha area of significant indigenous vegetation which was home to kiwi and endangered snail species. The Court concluded that post-closure rehabilitation of the site, translocation of the significant red tussock wetland vegetation and predator fencing around non-mine affected areas would meet the protection requirement under section 6(c) of the RMA subject to robust monitoring. Granting consent was considered to provide for the economic well-being of the region.

### Summary

Resource consents for high impact activities can still be granted despite adverse environmental effects. In situations where total avoidance, remediation or mitigation of adverse effects is not possible an applicant can offer a biodiversity offset or environmental compensation to cover the deficit. The environmental gains or losses associated with these steps are not certain. Grant of resource consent on the basis of a proposed offset or compensation means that environmental loss at the subject site will occur, and the environmental gains made from the offset or compensation may not exactly match those losses. Economic gains appeared to justify grant of consent despite uncertainty around environmental protection.

### Background

The requirement to avoid, remedy or mitigate adverse impacts on freshwater (when applied to point source pollution) would logically require sensible curtailment of existing discharges, restriction on new ones in addition to an overall management of the cumulative effects of many 'minor' discharges together on ecosystems. Regional councils have the primary responsibility for the management of discharges to freshwater bodies. Council freshwater mandates are generally exercised in two ways: the establishment of objectives, policies and rules within policy and planning documents and implementation of non-regulatory programmes. Industry groups also have standards to which some operators adhere and social license to operate can be an important driver for 'beyond compliance' improvements.



## Analysis of outcomes for the environment

Prior to the RMA, point source discharges were considered to be the primary concern over diffuse discharges. In the past few decades, significant progress has been made in clearing up or better managing all but a few of them.<sup>80</sup> Management of point-source pollution to freshwater bodies is an area in which the RMA appears to have been relatively successful. Point source pollution now accounts for only a small minority of discharges to freshwater (3.2% of total nitrogen and 1.8% of total phosphorous to the sea).<sup>81</sup>

The most obvious improvement has been in the improved management of visible and unappealing discharges (blood, carcasses, agricultural chemicals and raw sewage) although these do continue in some areas. For example, many regulatory bodies continue to operate ailing sewage schemes that are non-compliant with their own controls on point source discharge. This has generated significant controversy, particularly when the cost of rectifying the scheme has been significant (it usually is) and ratepayers are unwilling or unable to fund it. For example, the Manawatu District Council's Feilding wastewater scheme has been periodically non-compliant for some 16 years.<sup>82</sup>

A commensurate improvement in water quality has not been noted overall, however, due to rising diffuse pollution rates (brought about by agricultural intensification) which are now considered to be the primary proximal driver of poor water quality.<sup>83</sup> The value of dairy exports increased from \$2.5 billion to \$11.4 billion between 1992 and 2012.<sup>84</sup> In 2015, New Zealand had 6.3 million dairy cattle compared with 3.5 million in 1992.<sup>85</sup> Between 1989 and 2013, total nitrogen levels in rivers increased 12 percent, with 60 percent of the 77 monitored sites showing statistically significant increases). These trends are the reverse of trajectories of improvement of freshwater quality almost everywhere else in the OECD.<sup>86</sup> This increase has undermined the progress made in addressing point source discharges.

## Reasons for the outcome

Despite difficult circumstances, many councils have made genuine efforts to manage environmental effects on freshwater and have curtailed most point source discharges relatively effectively since the advent of the RMA. Public pressure has also been influential, as point source discharges are easy to spot and are often smelly or otherwise very noticeable. The aesthetic impacts of these discharges, and the relative simplicity of addressing them through treatment innovations, likely enabled substantial progress too. Simple and low-cost solutions are less likely to be available for non-point sources and managing these may require restrictions on land use and other rules with significant economic consequences.

## Summary

The case study of point source pollution management compared with diffuse pollution demonstrates many of the key themes found in analysis of RMA outcomes. The RMA appears to have been relatively successful in addressing 'easy' issues for which technical solutions are available. However, the failure to coherently address diffuse pollution has undermined these advances. Weak national direction, poor agency performance, the influence of political pressure towards enabling development with weak regard for environmental bottom lines and an absence of flexible tools that could smooth the way for better outcomes have all forced water quality decline. Rising public expectations, supportive case law such as King Salmon and renewed energy from central government all signal a phase shift in freshwater management, however, that will likely help to turn the tide of decline.

## 7. Sustaining the life-supporting capacity of air

### Background

The RMA concept of ‘life supporting capacity’ is important in its intention, but subtly misguided by definition. In scientific terms even the most hostile air quality can still play host to certain (specially adapted) forms of life. However, taking a pragmatic view of its objective, it can be presumed that – like water – it would logically require sensible curtailment of existing discharges, restriction on new ones, and overall management of the cumulative effects of many ‘minor’ discharges on the ‘life-supporting capacity’.

Section 5 of the Act includes an overarching reference to air, but specific direction is not found in sections 6 and 7. All councils have air quality management roles under the RMA. Regional councils have primary responsibilities for air discharge management. District councils perform a more limited, but important, role. They can employ a range of mechanisms to control where activities with air effects are located and how they operate (including under the RMA, bylaws under the Local Government Act 2002 and in respect of domestic fires, the Building Act 2004). Other central government agencies, including the Energy Efficiency and Conservation Authority have provided significant support to achieve good outcomes for air quality.

### Analysis of outcomes for the environment

In 2004, National Environmental Standards for Air Quality were made operative, setting a minimum level of health protection for New Zealanders (introduced as Resource Management (National Environmental Standards for Air Quality) Regulations 2004). These were revised later in 2004 and in 2005, 2008 and 2011. There is strong evidence to indicate an improvement in air quality since the RMA came into force. For example, premature deaths due to air-borne particulate matter dropped by 14% between 2006 and 2012.<sup>87</sup> In Auckland, airborne particles have reduced by 75% over the past fifty years.<sup>88</sup> Technological advances in home heating (such as with heat pumps) have been influential in improving air quality, prompted by regulatory approaches and Australia New Zealand Standards.<sup>89</sup>

### Reasons for the outcome

The significant investment in regularly updated and well-monitored national direction on air quality has produced results, in tandem with other measures such as technological advances in home heating. The effort is in contrast to other environmental measures. The key drivers for this attention under the RMA have been human health and the aversion of future health costs.<sup>90</sup> Little of the motivation has come from wider environmental concerns, demonstrating that where human wellbeing is at risk, attention is timelier than for ecological concerns alone. This is expected and logical. This echoes previous analysis that noted that NESs are most likely to eventuate where there is clear evidence that avoiding duplication of lower level policy development is beneficial and where human health is at risk.<sup>91</sup>

### Summary

A combination of regulatory change and technological improvement has improved New Zealand’s air quality, primarily motivated by human health concerns. This case study illustrates that where technical solutions are available, and national direction is clear, good environmental outcomes can be achieved.

## 8. Preservation of the natural character of wetlands

### Background

Wetlands (including estuaries) are widely identified as being imperilled globally, and New Zealand is no different. Less than 10% of our original wetlands remain nationally, and they are patchily distributed throughout the country.<sup>92</sup> The RMA defines the preservation of the natural character of wetlands as a matter of national importance under section 6. The New Zealand Coastal Policy Statement 2010 provides further and more detailed clarification on these requirements in Policy 13(2). Natural character is a continuous variable, varying from pristine through to highly modified and excludes built structures.<sup>93</sup> The protection of wetlands is undertaken in a range of ways, mainly through voluntary initiatives and regulation under the RMA.<sup>94</sup>

### Analysis of the outcomes for the environment

At a national level, no dedicated policy for wetlands exists. While an estimated 70 wetlands meet the criteria to be recognised as a Wetland of International Significance (under the Ramsar Convention) just six have formally been granted this status. This is despite the limited legal consequences that follow from listing (i.e. all Ramsar sites are automatically added to Schedule 4 of the Crown Minerals Act 1991). Wetlands are considered to only a minor degree in the National Policy Statement on Freshwater Management, and suitable attributes are not yet found in the National Objectives Framework.

Notwithstanding slow progress nationally under the RMA, regional and district councils have made significant headway on the protection of wetlands compared with the situation prior to the RMA. A recent study of the protection of wetlands by the RMA demonstrated that all regional plans have some kind of regulatory barrier to wetland loss, however 60% only restrict activities in scheduled wetlands rather than all wetlands.<sup>95</sup> The research also showed that rules are most restrictive in areas that have suffered the most loss and with the highest populations of people (likely in recognition of their rarity). Indeed, losses – particularly of smaller wetlands – have continued since the advent of the RMA, particularly in areas that have experienced high levels of agricultural intensification (e.g. Southland).<sup>96</sup>

The RMA has likely constrained the loss of wetlands and prompted the restoration of existing ones and the creation of further wetlands through mitigation requirements within consents. Because councils do not collectively record the scale and nature of mitigation requirements, it is difficult to know this for sure. Wetland areas are often vested in adjacent reserves or otherwise set aside in consent processes. Outside of the RMA many wetland reserves have been added to the conservation estate through other means. Between 1990 and 2013, the extent of wetland protected by the Department of Conservation increased from 48% to 60% (an increase of 29,000 ha) of the remaining amount (10% of original extent) –largely attributable to tenure review.<sup>97</sup> While losses in extent are ongoing, reducing the vulnerability of areas through legal protection is a positive step.

## Reasons for the outcome

The policy emphasis on scheduled wetlands demonstrate that values which are of high importance and which can be easily identified are more likely to be protected under the RMA than more dispersed values (lots of smaller wetlands impacted by cumulative loss). This is because the focus on 'significance' under the RMA (section 6) may – when not applied well – actually undermine aspirations to 'maintain biodiversity' (as per section 30). This concern is mitigated by the increasing assessment of all wetlands as significant (e.g. such as under the Proposed Auckland Unitary Plan).

Wetlands can be impacted by activities some distance away, such as the draining of water tables, and this impact is unlikely to be highlighted in a relevant consent processes. Wetlands, like all freshwater systems, are often more severely impacted by the downstream consequences of poor land use (diffuse pollution etc.) than by direct damage. As a result of this somewhat indirect relationship, such impacts have been less well managed than direct physical impacts to wetlands themselves and are harder to track and address.

The removal of wetland drainage subsidies in the 1980s, more comprehensive inclusion in protected areas and other factors such as improved public understanding of wetlands have likely also been influential in slowing their loss: in addition to RMA planning instruments.

## Summary

The RMA has sufficient mechanisms to adequately protect wetlands from degradation and would seem to have been partly successful in doing so (by recognising significant wetlands in plans, undertaking monitoring and building public appreciation through community engagement projects). The RMA has performed more effectively in protecting the extent of wetlands, and most particularly scheduled wetlands than protecting condition. Performance has been poorer on managing cumulative impacts on smaller and more dispersed wetlands and on managing indirect impacts of land use on wetland ecosystems. Weak monitoring and enforcement has also undermined outcomes, and must be strengthened across all activities where wetland ecosystems are at risk.



## Summary of case studies and focus areas

A detailed analysis of five case studies and three focus areas was undertaken to elicit some key learnings. The case studies enable a richer analysis of specific themes that can be fed into the overall assessment. However, specific case studies do not enable a discussion of whether the Act is performing with respect to wider matters, such as cumulative effects. The three policy focus areas achieve this and demonstrate that the RMA is likely more effective in respect of specific matters than in addressing wider, more strategic and long term issues.

In the King Salmon analysis we learned that jurisprudence has been incorrect for much of the time the Act has been in place. Having had that aspect corrected, it is likely that an overall improvement in RMA outcomes for the environment will be seen in coming years. For example, the overall balancing process undertaken in the Denniston case may not have played out had it occurred post-King Salmon, and as a result, significant loss of indigenous fauna and flora may not have been consented.

The Pomahaka Minimum Flows case study demonstrates the functionality of Schedule 1 when applied with sufficient community buy-in and the presence of a workable compromise, while the Matiatia Marina case also shows that declining of consent is possible even where a landscape is not 'outstanding'. The Waterview Tunnel case demonstrates the challenge of provision of infrastructure in a confined urban space, but even in that case, substantive gains for the environment can be planned into the project. The case studies do illustrate that the widely held perception that the RMA has likely slowed or prevented some inappropriate development is probably true.

The three focus areas included the management of discharges to freshwater, the protection of the life-supporting capacity of air and the protection of the natural character of wetlands. All three areas demonstrate that agencies have undertaken some effort to address these matters of importance, although success has been variable across and within focus areas. They also demonstrate that in some cases the influence of human activities on the environment has been far more effectively avoided, remedied or mitigated under its auspices than might have been possible under previous legislation (e.g. point source pollution and loss of wetlands).

The advances in the management of point source pollution are positive, and an evolving policy context for freshwater and tools to manage diffuse pollution are promising. The air focus area demonstrates that, where there are human health imperatives and technical solutions, progress has been greater. The wetlands and freshwater cases demonstrate that agencies are struggling with the management of cumulative (particularly indirect) effects. The ongoing loss of wetlands also demonstrates that the focus on 'significance' may beget more loss and undermine broader 'maintenance' approaches for environmental values.

# Interviews

Much knowledge about the implementation of the RMA has yet to be documented, and so remains in the heads of end-users. As a result, interviews were identified as a potentially rich source of information on the effectiveness of the RMA. This approach is supported by the literature which recognises that conducting interviews with key informants is an effective means of eliciting contemporary issues in a given subject area.<sup>98</sup> For this project semi-structured interviews were conducted with a range of key experts and practitioners on the performance of the RMA in achieving good environmental outcomes and the results analysed. Semi-structured interviews were chosen as a methodological approach, because they enable participants to elaborate on their experiences more richly than closed questionnaires.<sup>99</sup>

Interview participants were selected purposefully, based on their known involvement in RMA implementation. A range of different sectors and areas of expertise were represented relatively evenly throughout the pool of interviewees. Questions were not provided in advance of interviews, which were conducted over the phone or by Skype (one was in person due to scheduling constraints). A combination of open and closed fixed-value questions were used and a full list of questions is included as Appendix 2.

All potential participants were invited for an interview on 7 March 2016. Most replied very rapidly and interviews were conducted throughout the month of March, concluding on the 31st of March. Where an initially nominated interviewee was unavailable, or did not respond, a suitable replacement was found. A total of 48 interviews were completed, taking an average of 22 minutes each. Interviewees and their organisations have been kept confidential and are recorded and analysed based only on their sector. The participants shared their personal view, and may not necessarily have had a view in line with their organisation or sector's overall perspective. Some scene-setting questions were asked to provide context.

Table 3: Distribution of sector membership among interview participants

#	Sector	N
1	Central government	5
2	Local government	6
3	Māori representatives	5
4	Consultants	7
5	Resource users	9
6	Public interest advocacy	7
7	Legal profession	5
8	Academia	4
Total		48

**Question 1:**  
**Please self-rate your knowledge of the RMA, its subordinate instruments and agencies on a scale of 0-10.**

The first question asked all participants to self-rate their knowledge of the RMA system on a scale of 0 (very poor knowledge) to 10 (very high knowledge). Self-ratings ranged from 2 to 10 with a median of 7.1 and a mean of 7.2. These results indicate that interviewees generally viewed themselves as being relatively experienced with the Act. Only 2 responded with a value below 5; one from the 'Resource Users' group and one from a community group in the 'Public Interest Advocates' group. Overall, central government respondents and resource users rated their knowledge lowest overall, while academics rated their knowledge the highest. Different personalities will of course rate their own knowledge differently, so the comparative value of the figures is limited. However, these numbers do reflect that most people felt they were very familiar with the Act and therefore able to comment in some depth.

**Question 2:**  
**How would you rate the present quality of the different areas of the environment (Private Land, Public Land, Freshwater, Marine) in NZ on a scale of 0-10?**  
(With zero being very poor and 10 being very high quality).

The second question required participants to rate the quality of different areas of the environment on a scale of 0 (very poor quality) to 10 (very high quality). The purpose of this array of sub-questions is to both 'warm up' participants to considering the state of the environment and to elicit some notion of their views on the absolute state of the different areas of the (natural) environment. Participants were not asked to explicitly rank areas in terms of quality but their answers were analysed to provide such rankings in the second half of Table 4.

All sectors rated public land as being the highest quality overall, although 11 specifically noted that a failure to manage it sufficiently for pests and other uses was eroding its value. The second highest rating overall was for the marine environment, although several noted that they understood it least well of all four areas and 5 declined to answer the question on that same basis. Nine participants rated fishing impacts as a significant concern in the marine area, along with others including marine biosecurity threats and the impacts of run-off.

Private land was ranked variously throughout the sectors but was third overall, while freshwater was fourth (lowest) overall with an average rank of 4.3 on the scale of 1-10. Many participants found it difficult to nominate a single figure for private land and freshwater (in particular) due to a large spatial variation. For example, there is a significant difference in quality of upland and lowland areas, the latter greatly more degraded; and between private lands actively managed for conservation purposes and that being developed or intensively farmed. An average across all areas was requested and the relatively low score for freshwater and private land does suggest that degraded areas would have been scored very low indeed.



Table 4: Responses to Question 2 about quality of different areas of the environment (top level is percentages, bottom is ranking)

Sector	Private	Public	Freshwater	Marine
Central government	4.8	7	6	6.1
Local government	5.3	5.8	3.5	3.5
Māori representatives	4.4	6.8	3.8	5.8
Consultants	4.8	5.6	3.4	5.2
Resource users	5.3	7	5.5	6.9
Public interest advocacy	3.1	5.8	3.7	5.6
Legal profession	5.3	5.5	3.3	5
Academia	5	6.2	5.5	5.2
Total	4.7	6.2	4.3	5.8

Sector	Private	Public	Freshwater	Marine
Central government	4	1	3	2
Local government	2	1	3=	3=
Māori representatives	3	1	4	2
Consultants	3	1	4	2
Resource users	4	1	3	2
Public interest advocacy	4	1	3	2
Legal profession	2	1	4	3
Academia	4	1	2	3
Overall	3	1	4	2

### Question 3:

#### Overall, has the quality of the environment declined or improved under the RMA?

(Declined significantly/declined somewhat/stayed the same/somewhat improved/significantly improved).

People are uniquely connected to place, and it is likely that the condition of people's local areas or the areas they most frequently spend time in would influence their choices in this regard. Only 9 respondents thought it had improved or stayed the same, with those responses distributed across most categories. It is clear that most people are aware of, and are concerned by, declines in the natural environment, and noted them as being recent (post 1991 as opposed to being historical).

Indicators commonly mentioned for negative trends included impacts of intensive land uses (conversion, non-point source discharges and abstraction for irrigation), increases in sediment discharge from forestry, poor quality coastal development and a failure to address climate change. Drivers for positive trends identified included community and landowner conservation initiatives in addition to those of agencies.

Table 5: Responses to Question 3 on environmental decline or improvement

Q3	Rank	1	2	3	4	5
Sector	N	Dec Sig	Dec Some	Same	Imp Some	Imp Sig
Central government	5	0	3	1	1	0
Local government	6	1	5	0	0	0
Māori representatives	5	4	1	0	0	0
Consultants	7	2	3	0	0	2
Resource users	9	1	5	0	3	0
Public interest advocacy	7	3	3	0	1	0
Legal profession	5	2	3	0	0	0
Academia	4	3	0	1	0	0
<b>OVERALL</b>	<b>48</b>	<b>16</b>	<b>23</b>	<b>2</b>	<b>5</b>	<b>2</b>
%		33.3	47.9	4.2	10.4	4.2

The results show that 81.2% of respondents thought the environment had declined since 1991, either somewhat or significantly.

Enhanced on-farm and industrial practice, management of point source discharges, management of air emissions, and technological advances in home heating were all cited as examples of improvements. Several participants noted that, overall, the RMA has avoided more significant declines and that we were 'better off' under the RMA than under the prior regime. The influence of the RMA on the protection of the environment is examined further in Question 4.

**Question 4:**  
**How influential do you think the RMA is on the protection of the environment?**

(Not influential at all/somewhat influential/very influential).

The RMA is only one component of our environmental management system and it does not apply to the entire environment. In response to Question 4, 60.4% of all participants noted it was ‘somewhat’ influential and 35.4% said it was ‘very influential’. A common theme among free-text responses was that the influence of the Act was diminished due to poor implementation including as a result of political pressures and the power of vested interests. Examples cited included the aggressive advocacy of the agricultural industry to reduce constraints on intensification, and individual efforts in defence of private property rights in general. One participant described the Act as essentially a dispute resolution tool that could not be blamed for underlying failures to reconcile our economic and environmental aspirations:

*‘Blaming the RMA for the state of the environment, is a little like blaming marriage guidance for the rate of divorce’*  
Participant, Local Government.

Several others noted things would have been much worse in the absence of the Act, although most acknowledge that that assertion is hard to confirm in the absence of a real-life counterfactual.

**Question 5:**  
**What is your view of what the environmental goals of the RMA are? What does success mean to you?**

The open response provided for in Question 5 reflected the assumption that people’s impressions of the environmental goals were likely to vary (particularly given difficulties in establishing exactly what they are in the legal system). There was remarkable congruence on responses however, with most participants making reference to ‘sustainability’ or ‘sustainable management’. Many highlighted the importance of integrated decision-making within the Act and the need for environmental bottom lines.



## Question 6: Have these goals been achieved?

(Yes/Partly/No) and (Why/why not?)

Only one participant of the 48 said the goals of the RMA have been achieved, and this response was caveated (as being relevant only to their home region as they considered themselves unfamiliar with other areas).

Table 6: Responses to question 6 on whether the RMA has achieved its environmental goals

Q6	Rank	1	2	3
Sector	N	No	Partly	Yes
Central government	5	2	3	0
Local government	6	0	5	1
Māori representatives	5	5	0	0
Consultants	7	2	5	0
Resource users	9	2	7	0
Public interest advocacy	7	4	3	0
Legal profession	5	2	3	0
Academia	4	1	3	0
<b>OVERALL</b>	<b>48</b>	<b>18</b>	<b>29</b>	<b>1</b>
%		37.5	60.4	2.1

A little more than a third of respondents said the Act had not achieved its environmental goals, while the majority felt it had been 'partly' successful in doing so. Reasons for perceived failure or suboptimal outcomes include:

- That the culture of planning (ie. agency behaviour, institutional capacity and resourcing) didn't alter to match the visionary ambitions of the Act
- That proactive strategy has been absent and big picture changes have not been able to be made, such as toward lower impact industries and away from favouring incumbents, positivist strategies and the management of cumulative effects.
- That sufficient guidance and direction were not given by central government to the agencies given new mandates with no idea how to give effect to them and agency accountability was minimal for poor outcomes.
- That political pressure has constrained the ability of councils to execute their environmental responsibilities and eroded political will to apply positive measures.



*'The RMA sat over a system geared up to deliver something very different and wasn't capable of delivering the vision of the Act.'*

Participant, Public Interest Advocacy

Where goals were noted to have been achieved, at least in part, that was often cited as being a result of community or public advocacy actions (such as by NGOs) rather than those of agencies. The positive influence of the sole compulsory National Policy Statement (New Zealand Coastal Policy Statement) for providing direction and clarity was commonly highlighted as an area of relative success.

*The RMA was, however, widely noted as an improvement on prior regimes and good compared to elsewhere, and improvements were also noted to the RMA system over time.*

While recognising that improvements could be made to procedures, one respondent noted that RMA processes are rather more integrated than most other areas of the world.

*'A decade into the RMA implementation I spent some time in the US. I put up a picture of my process that was linear – and compared with their processes it was excellent. Their processes looked like spaghetti. New Zealand's RMA is fantastic in an international context – that criticism is less about the machinery and more about every resource management decision in the world having winners and losers. Those who lose, criticise the process – but actually they are mostly lashing out at the fact that they have lost.'*

Participant, Resource Users

Questions 7-9 focussed on the different levels of implementation of the RMA. Participants were asked to rank on a scale of 0-10 the effectiveness of central government, regional councils and district councils at *exercising their environmental responsibilities under the RMA*. The phrasing of this question was specifically designed to direct participants toward considering the environmental roles of these bodies and away from potentially conflicting roles in economic and social development. This is to assist in pinpointing the elements of the regime that are generally meeting expectations and those that form the greatest or most obvious barriers to good environmental outcomes.

#### Question 7:

The RMA is implemented in a devolved way, but there is a role for central government. On a scale of 0 to 10, how effectively has central government exercised its responsibilities to the environment under the RMA?

The effectiveness of central government in exercising its environmental responsibilities was ranked overall at 3.3 on a scale of 0–10. Highest overall rating was given by resource users (4.8), closely followed by central government proponents themselves (4.6). Lowest ratings (2.4) were given both by Public Interest Advocacy and Māori representatives. Legal Professionals and academics also favoured low scores. The ranges of scores varied considerably within all groups with the exception of Legal Professionals.

Table 7: Responses to Question 7 on effectiveness of central government (0–10)

Q7	Rank	1	2	3
Sector	N	Ave	Min	Max
Central government	5	4.6	3	7
Local government	6	3.7	2	5
Māori representatives	5	2.4	0	6
Consultants	7	3.1	1	5
Resource users	9	4.8	2	8
Public interest advocacy	7	2.4	0	6
Legal profession	5	2.6	2	3
Academia	4	2.5	1	5
<b>OVERALL</b>	<b>48</b>	<b>3.3</b>	<b>1.4</b>	<b>5.6</b>

The free-text responses demonstrated significant congruence in the concerns held about central government effectiveness. Two key observations stand out, commonly highlighted across all sectors:

- (a) Central government has demonstrated significant reluctance to provide national guidance to lower level agencies
- (b) Where central government has become involved, it often has not been for the benefit of the environment, but more resembled unsophisticated intervention for political purposes

These findings demonstrate widely held disappointment with the actions of central government in relation to the RMA.

It is evident that, had these weaknesses not been present, more positive and consistent environmental outcomes might have been achieved. This is not a new observation, indeed since its promulgation the languid contribution of central government has been earmarked as a major factor undermining the Act's potential.

### Question 8:

**The RMA (day to day) is primarily implemented by local government. How effectively (on a scale of 0-10) in your view, have regional councils exercised their responsibilities to the environment under the RMA?**

Overall effectiveness of regional government was ranked at 4.8, although more than half (25) participants noted significant variation in the effectiveness of regional government throughout the country. As such, scores were often expressed as averages on a spectrum of perceived effectiveness. From responses it was also clear that there was a gulf between the potential of the regional governance model and the outcomes it has achieved. In theory, there is clear loyalty to the structure. As Lindsay Gow earlier noted; *'I championed the creation of regional authorities and consider they have been, and still are a most effective means of discharging integrated resource management responsibilities'*.<sup>100</sup> That may be so, but the limited scores suggest that while the model may have promise in theory, that promise is not translating into practice.

Table 8: Responses regarding effectiveness of regional councils (0-10)

Q8	Rank	1	2	3
Sector	N	Ave	Min	Max
Central government	5	5.6	5	6
Local government	6	5.6	4	7
Māori representatives	5	3.8	0	6
Consultants	7	4.7	2	6
Resource users	9	5	0	7.5
Public interest advocacy	7	3.3	1	7
Legal profession	5	4.3	3	5.5
Academia	4	6.2	5	7
<b>OVERALL</b>	<b>48</b>	<b>4.8</b>	<b>0</b>	<b>7.5</b>

Academics ranked regional councils highest overall, with an average score of 6.2, followed by central and local government, both giving averages of 5.6 on the scale of 0-10. Public Interest Advocacy gave regional councils the lowest score, followed by Māori representatives. There was greater overall variation in the figures given (a range of 7.5 compared with 5.2 for central government), perhaps reflective of variation in agency effectiveness nationally. Many participants were complimentary of council efforts despite the difficult circumstances, while others were very dismissive of their efforts to date.

*'Regional councils are a very mixed bag – not necessarily broken and I think they have developed some good policy, but they are fundamentally conflicted in many areas.'*  
Participant, Resource Users

Political interference, lack of resourcing, failure to undertake monitoring and compliance, failure to reconcile conflicting mandates and a general absence of accountability for outcomes were commonly cited in the negative. These were in addition to Q7 matters such as a lack of central government direction. Several practitioners noted that a combination of a lack of guidance and oversight and political pressure had led to significant use of discretion in what aspects of their mandate they exercised most energetically (and that generally this has meant economic aspirations have won out over public interest aspirations).

*'By and large they have been a total disappointment and a big mistake and are generally disconnected and focussed on rural relationships and vested interests.'*  
Participant, Public Interest Advocacy

### Question 9:

**The RMA is primarily implemented by regional and district councils. How effectively (on a scale of 0-10) in your view, have district councils exercised their responsibilities to the environment under the RMA?**

The effectiveness of district and city councils was ranked only very slightly below regional councils overall, with one participant declining to comment. Māori, Public Interest Advocacy and Academics ranked district and city councils lowest of all (3.6-3.8), while Local Government ranked themselves highest in effectiveness (6). Where participants ranked this level of government higher than regional councils, several noted that it was because their job was more 'narrow' and therefore 'easier' than that of regional councils. On the other hand, it was widely noted that city and district councils are commonly significantly under-resourced to cope with their mandate and somewhat overwhelmed by it. Another strong theme was that they summarily disregard their environmental responsibilities and 'pretend they just don't exist'. A few participants also highlighted sometimes excessive attention to detail to the exclusion of appropriate focus on the 'bigger issues'. Some participants identified this level of government as being particularly vulnerable to agency capture by vested interests, while others stated the opposite: that they were much less vulnerable than their regional counterparts.

*'They don't seem to focus much on protecting existing natural areas – they don't seem to know the purpose of the RMA. They also pander to farmers. Council is farmers and therefore the RMA's mana is taken away by bureaucrats who have an interest in the agricultural industry.'*  
Participant, Māori

Table 9: Responses regarding effectiveness of district and city councils (0-10)

Q9	Rank	1	2	3
Sector	N	Ave	Min	Max
Central government	4	5	3.5	6.5
Local government	6	6	4	7
Māori representatives	5	3.6	0	6
Consultants	7	5	2	7
Resource users	9	4.9	2.5	7.5
Public interest advocacy	7	3.8	0	6.5
Legal profession	5	5	3	7
Academia	4	3.7	2	7
<b>OVERALL</b>	<b>47</b>	<b>4.7</b>	<b>0</b>	<b>7.5</b>

## Questions 7-9

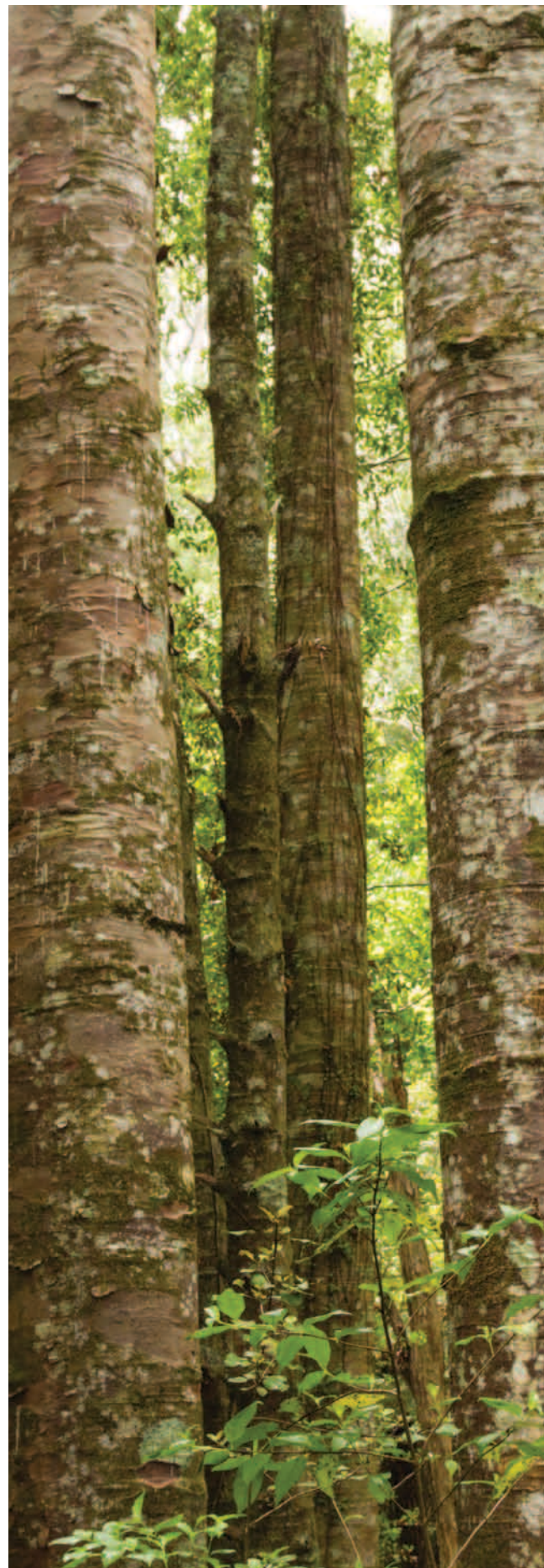
Summarising the data across central, regional and district/city councils there are some interesting patterns that emerge. Table 10 represents the relative score of each level of government in Questions 7-9.

The overall trends note that all sectors gave the lowest score overall to central government (including Central Government).

Regional Councils and District and City Councils were ranked most effective an equal number of times. Regional councils were ranked highest by Central Government, Māori, Resource Users and Academics, while Local Government, Consultants, Public Interest Advocacy and Legal Professionals gave highest scores to District and City Councils. This likely reflects a theoretical support of the concept of regional government, but disillusionment due to poor day to day outcomes.

Table 10: Comparison of ranked responses on agency effectiveness

Q7-9	Rank	1	2	3
Sector	N	Central	Regional	District
Central government	5	3	1	2
Local government	6	3	2	1
Māori representatives	5	3	1	2
Consultants	7	3	2	1
Resource users	9	3	1	2
Public interest advocacy	7	3	2	1
Legal profession	5	3	2	1
Academia	4	3	1	2
<b>OVERALL</b>	<b>48</b>	<b>8</b>	<b>4</b>	<b>4</b>



#### Question 10:

The RMA interacts with a range of legislation, sometimes addressing similar issues or different dimensions of issues covered by other instruments. How effectively does the RMA function with or alongside other legislation?

Participants were asked to consider the interplay of the RMA with other legislation and consider how well the Act interacts with others on a scale of 0-10. Participants were able to outline case studies relevant to their specific area of expertise. Most responses were commonly ring-fenced to the participant's area of interaction/expertise only, and four participants declined to comment at all.

Table 11: Responses on interaction of the RMA with other legislation

Q10	Rank	1	2	3
Sector	N	Ave	Min	Max
Central government	4	5.25	3	8
Local government	6	6.3	4.5	7
Māori representatives	4	4.6	0	7.5
Consultants	7	5.8	3	7.5
Resource users	8	4.8	2	9
Public interest advocacy	6	5.2	3	8
Legal profession	5	5.2	2	7
Academia	4	5.5	2	8
<b>OVERALL</b>	<b>44</b>	<b>5.3</b>	<b>2.4</b>	<b>7.7</b>

There was a great degree of variation in responses to this, probably reflecting the various interfaces respondents are familiar with. The mid-range score from all sectors sometimes obscures wide variation within sectors as evident from the ranges noted. It should be noted that where difficulties were identified, another participant often noted that same area as one that functioned reasonably well.

More fundamentally; participants' views of how well they expect the Act to function with or alongside others were evidently very different. Several noted that the RMA does not have to work well with other Acts, and conflicts and overlaps are normal and navigable. Others felt that the opaque regulatory interactions undermined the effectiveness of the system significantly, by increasing discretion:

*'I think that government has resorted to ambiguous wording (e.g. appropriate) resulting in a highly discretionary system that draws different balances from one day to the next.'*  
Participant, Resource Users

Others cited instances where there was no alignment and should be, while others specifically noted that area as being one where interaction is particularly functional. It is clear from this survey that unpacking the mechanics of regulatory interplay is much needed, and at a deeper level than the scope of this project.

**Question 11:**  
**How important, in your view (on a scale of 0-10),**  
**is public participation to the environmental**  
**outcomes of the RMA?**

Public participation is a controversial area of the RMA. This survey was an opportunity to gather perspectives on its importance in relation to the environmental outcomes of the Act. Participants were asked what their view of *the importance of public participation to the environmental outcomes of the RMA* was? They were to rank its importance on a scale of 0-10. All participants responded to this question, and most had well developed and strong views on it. Given its prominence as a ‘talking point’ of the RMA, that is perhaps not surprising.

Table 12: Responses on the importance of public participation (0-10)

Q11	Rank	1	2	3
Sector	N	Ave	Min	Max
Central government	5	6.8	2	9
Local government	6	8.2	8	9.5
Māori representatives	5	9.4	8	10
Consultants	7	8.1	5	10
Resource users	9	7.2	1	10
Public interest advocacy	7	8.6	8	10
Legal profession	5	9.4	8	10
Academia	4	8.2	7	10
<b>OVERALL</b>	<b>48</b>	<b>8.2</b>	<b>1</b>	<b>10</b>

Overall, the importance of public participation was ranked very high at an average of 8.2. Māori and Legal Professionals rated it highest (9.4) while Central Government rated it lowest (6.8). Erring to the lower end of the scale were Resource Users, while Public Interest Advocacy was one of the groups that rated it highest (perhaps logically so). There was significant variation in the scores given and much discussion within free-text responses.

Those that rated it lowest did so because they felt that public participation was a good thing in theory, but that it was often misused or poorly carried out, such that its role and value were undermined. Equally, others rated it very highly with a caveat that it ranked highly only where it was effective and meaningful. Māori were particularly vocal about rapid and meaningless consultation that was not based on good practice and did not have any influence on eventual outcomes.

This suggests that public participation is generally acknowledged by everyone to be important in principle, but its quality undermines that. Two commonly identified key roles of public participation were (a) the ability to provide information the decision-maker may not otherwise find out from the agency or the applicant, and (b) the ability to establish community buy-in for the proposal.

*‘Important and expected element of processes, but the act also allows for it to be misused to delay proceedings.’*  
Participant, Central Government

Several participants identified early public consultation (i.e. at the planning/strategy stage) as being much more effective than consent-stage engagement. Several participants observed that public participation was sometimes misused to advance private property interests (e.g. NIMBYs) rather than being for a public interest purpose.

*‘A lot of urban stuff is just bickering – and the RMA is a low cost dispute resolution service when there is no real environmental issue at all – need to yank that out and stop it swamping the system.’*  
Participant, Academia

The RMA’s success in limiting trade-competition motivated participation was noted by several participants as a positive step, but the tendency for public participation to be more about protecting self-interest is widely noted. Overall, the importance of public participation was high, but there was a strong sense that it needed to be more meaningful and better implemented on all sides. The present proposed changes that would further restrict participation directly and reduce the likelihood of consent notification were generally viewed as a negative step, as it did not address the quality issue.

## Questions 12 and 13

Participants were asked two questions on the future of the Act. Question 12 was *'in your view, are there changes needed to improve environmental outcomes from the RMA?'* Participants could answer Yes or No. Following this question, participants were asked a further 'blue skies' question: *'Have you considered what "life after the RMA" might be like and what kind of framework might eventually take its place? If so, what are your thoughts?'* Where a participant suggested significant change, the timeframe over which they thought that change should occur was also sought. For ease of analysis, these questions are analysed conjunctively.

Virtually no participant felt the status quo was delivering for the environment. In respect of Question 12 (are there changes needed?) all but 1 respondent answered yes.

Key issues identified included poor agency accountability, complexity and slowness of processes and a lack of appropriate guidance and resourcing. 47 of 48 respondents were of the view that change was necessary to improve the outcomes of the RMA. However, the scale and extent of suggested changes differed substantially between participants. Overall, there was a strong preference for small to medium changes, in preference to large scale and highly disruptive processes – see out in Table 13.

A retrospective categorisation ranked the level of change needed from small to medium and then large. Small was defined as minor changes, largely directed at improving implementation with only minor changes to the Act (for example, more national guidance or minor amendments to address known anomalies or areas where there was a lack of clarity, such as section 32). The majority of most groups fell into this category. This was consistent with the significant emphasis placed by participants on failures of implementation being more influential than the Act itself on suboptimal environmental outcomes.

Medium changes were those that necessitated some significant review of the Act and its subordinate instruments but retaining the overall structure as it stands (for example, an overwrite to simplify and tighten the Act or the inclusion of the ability to consider the impacts of a proposal on climate change). Just under one third of participants were categorised in this way. The final group were those that posited substantial regulatory change, such as entirely new Acts or starkly different institutional design, even if they were uncertain of what that change was. Best judgement was used in these categorisations, and they were not made on the basis of an explicit selection by participants.

More than half of participants thought there was certainly case for change, but that case is primarily for only minor tweaks and external improvements to other factors. The need to strengthen implementation was usually cited, with participants being generally united on the fact that implementation had been sub-par, such that the potential of the Act had not really been unlocked. Improvements such as increasing agency oversight, national direction and changing funding arrangements were commonly proposed.

In the medium category (a little under one third of participants) suggested changes were more significant, but generally retained the overall structure of the Act and the present institutional arrangements. Cumulative as they are (in that the changes in section 2 also include the minor changes in section 1), further changes were recommended by this group. Examples of more significant proposals include a specific process for urban planning matters, the inclusion of impacts on climate change within the present Act and enhanced strategic planning functions within or above the current legislation. Urban development was cited as an area of concern by a number of sectors – whether due to insufficient legislation or poor implementation, the notion that urban planning was not a strength of the present system was widely held.

Table 13: Responses regarding the issues with and future of the RMA

Q12-13	Rank	1	2	3
Sector	N	Small	Medium	Large
Central government	5	2	2	1
Local government	6	5	1	0
Māori representatives	5	3	2	0
Consultants	7	5	1	1
Resource users	9	2	4	3
Public interest advocacy	7	4	1	2
Legal profession	5	3	2	0
Academia	4	3	1	0
<b>OVERALL</b>	<b>48</b>	<b>27</b>	<b>14</b>	<b>7</b>
%		56.2	29.2	14.6

Far fewer participants occupied the third category – just 14% (7) of participants. Proposals mooted in this category include the splitting of the present RMA functions into a dedicated environmental protection Act and providing a separate planning framework, dividing urban and rural planning and substantive reviews of institutional arrangements. While this is a minority view for the purpose of this survey, the prospect of major reform should still be entertained as a possibility, particularly if it is deemed capable of also improving the lower level issues commonly highlighted across the dataset. However, it would appear that the perception of a need for extensive change is not widely held at this stage.

## Question 14

Participants were invited to make additional comments on anything related to the questionnaire subject. The answers sometimes fitted easily within the scope of earlier questions, but many were broader in scope and addressed more fundamental matters. Several themes appeared including:

- The need for a cultural shift toward sustainability (instead of attempting to manufacture it with law when the context is hostile to it).
- The need for a stronger focus on the outcomes, rather than procedural matters
- The need for evidence-based changes, in preference to ‘knee-jerk solutions to non-existent problems’

## Summary of interview outcomes

Overall, the survey elicited a surprising depth of information on what people thought of the regime. Some areas demonstrated significant convergence, while others evidenced a wide variety of often conflicting views. While it is a small sample size compared to the number of people involved in some aspect of resource management, the range of views expressed suggested it captured an ample variety of perspectives.

Key trends indicate that most participants are concerned about the declining quality of the environment and note that decline to have been recent. This runs counter to the often dominant view that the decline in New Zealand's environment was historical and that it has improved. Scientific data supports the notion of much recent loss across most ecosystems<sup>101</sup> and it is positive to note that most participants have a realistic view of the overall state and trends of environmental quality.

A second key trend is that the underperformance of agencies, most particularly central government, is considered material to the poor outcomes under the Act. This widespread concern demonstrates that any future reforms of the RMA must necessarily delve into institutional design to ensure that aspirations can be met – this is in line with earlier research recommendations.<sup>102</sup> Another key theme was the emphasis on the importance of public participation in principle by virtually all participants. Strikingly however, was the preponderance of concerns about its quality – both the quality of the engagement from agencies and the coherence of community input. There is clearly much work to be done to better unlock the potential of public participation under the RMA, and it would seem that proposed reductions in public participation are not moving in the right direction.

Finally – the most key learning from the interviews – from responses to the questions and also in general discussion – is that New Zealanders are quite loyal to the overall framework of the RMA and broadly support the principles. That the principles can resonate still so loudly 25 years on is a testament to their strength. This drives home the message that poor implementation is the major failing of the RMA system to date. It calls into question whether large scale change will really achieve more if the implementation issues are so profound. Perhaps more pragmatically, this finding demonstrates that any future reform of the system must play close heed to power relationships, funding models, distribution of capacity and expertise and accountability if it is to achieve materially improved environmental outcomes.



## Part 3

# Key issues and a way forward

### Summary of findings

Of the evaluative studies identified and reviewed, virtually all of them demonstrated suboptimal outcomes for the environment and primarily (but not exclusively) as a result of weak implementation. Suggested reasons were common across many studies and included a lack of national direction, often poor agency capacity, political capture and weak monitoring and enforcement. It will always be challenging to form a conclusive view of the efficacy of the Act in achieving its environmental goals in the absence of sufficient factual information, but the foregoing information is comprehensive and does paint a relatively clear picture.

The series of interviews were interesting and very enlightening. They demonstrated the views from many quarters on the RMA, its subordinate instruments and the agencies implementing it. While there were a wide variety of perspectives some significant convergence was obvious. The interviews provided useful input into the analysis of the other sections of this report. Overall they demonstrate a loyalty to the overriding principles of the Act and its general framework, despite clear and significant concerns with its interpretation and implementation.

**Overall, participants attest to underwhelming outcomes of the Act and largely blame implementation.** From the information preceding, it is clear that while the RMA has certainly been effective in some areas, outcomes have failed to meet most expectations. The scale and rate of environmental degradation provides a clear indication of this, as do the findings of the empirical evaluations that have been undertaken. There is a significant gap between the statutory aspirations of the RMA and the outcomes actually achieved. All of this information in combination paints a picture of a world-leading piece of legislation implemented relatively poorly from day one. Outcomes for the values it was to protect are commensurately underwhelming.

### Key issue identification

This section draws out the key issues which have been identified through the various elements of this study and aligns them with the two sets of goals of the RMA as identified in Part 1. We provide further comment where relevant on matters that are not directly related to environmental outcomes, but are overall concerns evidenced in our analysis. The issues identified in this report are not exhaustive. There are many more reasons for the failure of the Resource Management Act 1991 to achieve many of its environmental goals. Identifying the key issues helps to direct attention to the areas most in need of analysis, enhanced implementation or change. The relative influence of each key issue will likely vary geographically and in respect of the area of planning being considered.

## A consolidated decision-making process

The Resource Management Act undoubtedly drew together a suite of previously entirely disconnected processes. The ability to address planning and permissions for a diverse range of activities under a single piece of legislation (and usually a single agency) has most certainly introduced efficiencies not available before its assent. Where an application must be made under both regional and district planning instruments, it is possible that the applications can be heard together reducing time and cost expenditure (section 102(1) RMA).

Notwithstanding this progress, interactions on the periphery of the Act do warrant further analysis. There are areas of relevant decision-making that are excluded by the Act or disconnected when they should or could occur together. For example, the effects of emissions from consented activities under the RMA on climate change cannot be taken in to consideration by decision-makers. At the time of the amendment, the rationale was that an effective Emissions Trading System (ETS) would be promulgated alongside the Act (and that it would address the national interest in emissions mitigation and avoid duplication). While this was arguably sensible at the time, the failure of the ETS to drive such behaviour change has been well noted.

The interplay of the RMA and other legislation is a complex issue and we recommend that further research be undertaken to establish clear problems definitions and determine the benefits or otherwise of amalgamating matters of concern. Short-sighted or knee-jerk changes without a clear understanding of the actual consequences of them, or a narrow consideration of those consequences, is likely to result in perverse outcomes that may harm both the economy and the environment.

**Key outcome:** While the RMA has centralised a lot of decision-making processes, there are still key exclusions that could be better joined up to enhance overall environmental outcomes

## An integrated decision-making framework

Integrated management was a key aspiration of the RMA. Integrated management was a response to the recognition that siloed consideration of environmental and development matters had limited basis in ecology and ultimately reduced the efficacy of environmental law. Achieving integrated management is reliant upon a functional strategic layer of analysis above day to day procedural aspects. This review demonstrates two key issues arising from poor implementation of integrated management:

1. An inherent favouring of incumbent users of resources
2. A failure to manage cumulative effects<sup>103</sup>

The RMA system's inherent favouring of incumbents contributes significantly to the poor environmental outcomes of the Act. Commonly raised in interviews was the absence of sufficient strategy to favour low-impact activities over high-impact existing activities. Examples include the 'first in, first served' nature of freshwater allocation and the rolling over of consents that authorities are generally reluctant to challenge. That concern appears reflected in recent comparative research that noted that New Zealand (among other countries) has a preponderance of policy mechanisms that are 'vintage-differentiated', meaning they favour incumbents over new entrants (irrespective of relative environmental impact).<sup>104</sup>

Environmental outcomes are often undermined by poor strategic decision making – this means we do not necessarily look at the best economic use for an area, we just bow to existing users. This characteristic has doubtless prevented better environmental outcomes, perhaps most particularly in the area of freshwater management. The weak strategic aspect of RMA implementation has arguably prevented it from effectively dealing with many complex issues including climate change, biodiversity loss and urban development.

The favouring of existing uses was commonly highlighted in our interviews, particularly by resource users of non-dominant industries, as not enabling us to have the ‘big conversations’ about where we want to go economically. This quote exemplifies this perspective:

*‘When you put in an RMA application, there is not an assessment of whether this is the best use of the resource. It concentrates on what’s the effect. We’ve not made the big picture choices successfully; we focus on the application by application.’*

Participant, Resource Users

Failure to manage cumulative effects stands out as a key failing of the RMA system in this respect. They have been poorly managed under the RMA, most particularly with respect to diffuse pollution from agricultural activities.<sup>105</sup> Evaluations of cumulative effects management pin this failure on a common set of issues, including (and most particularly) a lack of effective strategic oversight of decision-making coupled with often a lack of political will and low agency capacity to undertake necessary tasks (also identified elsewhere as key issues in of themselves). It is fundamentally very difficult to manage cumulative effects on a case by case basis. While Regional Policy Statements and other high level instruments have often set strategic goals, implementation of them has generally been weak – too weak to constrain cumulative effects in many respects.

There are clear signals that our implementation of strategy is the subject of concern and fairly so. However, it could be argued that the architects of the Act intended for this to be the case. Upton’s vision for the RMA was one in which proactive planning would not occur: bottom lines would be set and economic development was to occur over and above those according to market drivers. If such a view no longer reflects public aspirations for the RMA, then this is potentially an area in which change is needed.

Key outcome: A lack of effective strategy and oversight of decision-making has reduced the potential to protect environmental values, including the capacity to manage cumulative effects



## Protecting environmental bottom lines

The RMA was predicated upon the need to develop stringent minima over and above which economic activities could occur. It is abundantly clear that, these controls have generally not been set or reliably observed. As noted by Dr Jan Wright in her submission to the Government on *Improving our Resource Management System: a Discussion Document* in 2013, ‘the primary purpose of the RMA is to protect the environment, and in so doing, it must inevitably lead to restrictions of various kinds’.<sup>106</sup> Limited political will to sufficiently curtail economic development and rigorously exercise environmental functions is a common finding of research into the outcomes of law in New Zealand.

Unfortunately, agencies have been slow to set environmental bottom lines, and development has hardly waited for them. Until the King Salmon case law, the ‘overall balance’ approach of the RMA system undermined the prospective influence of bottom lines anyway. Given that the reset button has been pushed, it would seem that setting and observance of environmental bottom lines is rather more likely in the years to come than in those past.

**Key outcome:** The incorrect jurisprudence related to the ‘overall balance’ approach undermined the potential for environmental bottom lines to be safeguarding. Resetting the case law is likely to see this improve.

## Political pressure to weaken controls

Agency capture and the duelling economic and environmental mandates of councils arose time after time as drivers of poor outcomes throughout the interviews. Concerns about capture vulnerability were highest among participants in the Local Government and Public Interest Advocacy groups and to a lesser extent Resource Users and Legal Professionals.

*‘Huge variation throughout the country. The politics is very significant. Farmers dominated [regional council] and goldminers got a hard time and farmers got away with everything.’*  
Participant, Local Government

*‘Those dominated by farming interests are less likely to give appropriate attention to environmental outcomes. There is very poor enforcement and poor resourcing to that function.’*  
Participant, Legal Profession

*‘Without higher level direction, the regional councils are vulnerable to sector group capture. In [region] – the council chairman is a Fonterra board member.’*  
Participant, Local Government

Concerns about the preponderance of agency capture as a driver of poor outcomes is also found in the literature, including recognition that the principle of subsidiarity that the RMA is built upon, leaves lower tier agencies more vulnerable to capture.<sup>107</sup> A small ratepayer base and therefore limited budget, a remote area and poor services may mean individual agencies have difficulty attracting competent councillors, staff or contractors and effectively constraining the political power of vested interests.

**Key outcome:** Capture of (particularly local) government by vested interests has reduced the power of the Resource Management Act to appropriately manage effects on the environment.

## National direction

Central government's reticence in providing promised national direction has generally left the 78 regional and local government agencies to formulate their policies and plans in the absence of any clear notion of the end game. It should be noted that variation in practice and approach between agencies is not in itself a certain driver of poor environmental outcomes. There are stark differences throughout New Zealand between ecosystem types, community make-ups and other variables that preclude detailed one size fits all approaches. A bespoke regional or district approach in respect of some matters may in fact improve the likelihood of a positive environmental outcome. However, a combination of poor direction, low capacity and the effects of capture have likely rendered the lack of central direction more damaging.

To manage capture and 'rise above' its influence, subordinate agencies need support and direction. Central government activity regarding the RMA has mainly focused on repeat amendments to the Act, often without evidential background, and with significant public opposition. The same enthusiasm was not applied to the provision of either direction or direct support to agencies charged with day to day implementation. Any financial savings at the central government level of minimising the leadership role were more than offset by ballooning costs borne by councils, their communities and developers. A specific example is the allocation of water rights. The Act fails to directly address allocation, and there is broad scope for agencies to implement whatever scheme they consider appropriate. This hands-off approach is recognised as being a key driver in the failure of regional councils to adequately manage water under the RMA.<sup>108</sup> This area is however going through significant reform, the consequences of which will take time to materialise.

**Key outcome:** A lack of national direction has limited the potential of the RMA system to effectively and efficiently achieve its environmental goals



## Agency capacity

The agencies charged with implementing the RMA have undoubtedly struggled: and some much more than others. The paucity of even non-statutory good practice guidance emerging from central government was quickly evident soon after the RMA was promulgated, and the then Parliamentary Commissioner for the Environment – Helen Hughes – initiated a Local Government Review Programme in 1994 to ‘raise strategic issues about the role of the RMA in continuing to contribute to the goal of sustainable development and to propose some actions to advance the RMA’s contribution to this end’.<sup>109</sup>

The OECD in 1997 also recommended much more action in this regard early on and has continued to do so.<sup>110</sup> The capacity of agencies to deliver on the RMA has been a prevailing concern of those that have evaluated the RMA. It has been commonly identified as a key contributor to poor outcomes (see Literature review).<sup>111</sup>

*‘Generally the Act has done a lot to empower local government and it should be doing more to hold them to account to produce improvements. They have loads of power to do things, including the power to do nothing.’*  
*Participant, Academia*

In respect of some councils, lack of effort has not been the problem – they have diligently tried to exercise their mandates to the best of their ability. But this has often led them to being embroiled in high levels of local conflict and expensive legal proceedings, which could have been substantially reduced or even avoided by the provision of clear, strong national direction. Coupled with a lack of formal direction, there is clear evidence of a failure of central government to provide support to local government when needed.

It was evident from the interview responses and literature review, that the agencies charged with responsibilities under the Act often do not have access to the resources to match their delegations. Further, the funding arrangements would seem to be barriers to effective management. Capacity is also to some extent a result of political will. The resources allocated to different functions vary in accordance with the political priority of different tasks. It is not fair to simply blame councils for not achieving outcomes – there are systemic issues at play. Many agencies under the Act would presumably have better exercised their roles had they been resourced to do so. Reviewing funding of local government would provide an opportunity to address the resource shortfall, to put in place a more resilient fiscal basis and to enable local government to have capacity where it matters. It would be sensible that a review of these elements would form part of any reform related analysis.

**Key outcome:** Agency capacity has often been insufficient to successfully implement the RMA and opportunities for central government to provide financial and logistical support have generally not been taken.



## Institutional design

Separate but related to the above point, is the fundamental design of the RMA system and whether it is optimised for the delivery of good outcomes. There are several areas in which clearer demarcation of agency roles could be useful, where governance models need refining or where decision-making functions could be combined. For example, the PCE identified that better institutional design could enable air quality aspirations to be more effectively met. Wallace and others have noted that the institutions charged with managing the RMA and Wildlife Act 1953 interplay do not work together well. Peart also identified that institutional arrangements for the administration of urban planning were far from optimal<sup>12</sup> – particularly major infrastructure – and that change was needed.

**Key outcome: The design of implementing institutions and allocation of different mandates requires systematic review to ensure it is the best means of delivering on statutory aspirations.**

## Monitoring and evaluation

In the absence of a culture of evaluation and accountability, running blind is the only alternative. The underwhelming environmental outcomes of the RMA demonstrate the consequence of this absence. The poor attention paid to monitoring and enforcement, the poor evidentiary basis for many of the past reforms (and indeed those presently proposed), the lack of data on policy effectiveness and the overall limited agency accountability all point to the same problem: the failure to rigorously evaluate outcomes and consequences and to respond accordingly.

A strong example is the present proposals to amend the Act to address concerns primarily rooted in the implementation of the RMA in an urban setting. Applying the ‘solutions’ proposed there are arguably undermining the functionality of the Act in all other contexts. If a culture of evaluation was more deeply embedded and drawn upon to inform reforms, it is possible – although not certain – that improved proposals would emerge that contained solutions that fit actual (and not just perceived) problems.

Ministry for the Environment monitoring has focused heavily on process and very little on outcomes. It is hoped that the advent of the Environmental Reporting Act 2015 and the National Monitoring System may look to improve this. Under the current approach it is seems more likely that a lengthy consent processing timeline would attract auditing attention than abject environmental consequences of languid policy. At a consent level, the failure to adequately monitor and enforce the Act such as to achieve its purpose is well described also.

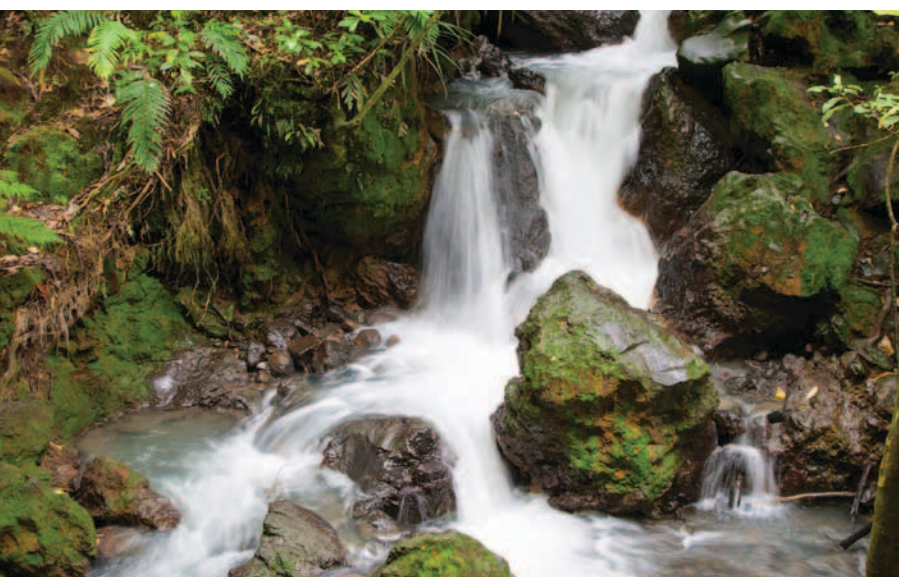
**Key outcome: Rigorous evaluation and monitoring of outcomes has been limited at all levels, eroding the potential for adaptive governance and robust implementation.**

## Broader range of instruments required

Low capacity of agencies and a lack of time for or prioritisation of evaluation have somewhat predictably resulted in a lack of policy innovation. While this is not true for all agencies – many have developed novel and interesting approaches to addressing community challenges (e.g. Lake Taupo Nutrient Model) – overall a narrow array of tools have been deployed to help achieve regulatory mandates. Where economic instruments have been employed it has been through bespoke systems that have been very costly.

National direction that set out the range of methodologies available and provided support to lower level agencies trying to implement them would have been very helpful, but little has ever been provided. Recent research demonstrates that agencies have limited knowledge of such mechanisms and require assistance to put them in place.<sup>113</sup> This lack of progress runs counter to the RMA's aspiration of implementing a free market regime.<sup>114</sup> It should be noted, however, that use of economic instruments has been similarly limited in other environmental management matters, although much opportunity exists<sup>115</sup> and the need for it is increasingly recognised.<sup>116</sup>

**Key outcome: A narrow range of instruments has been employed to generate behaviour change which, in many instances, has not been fit for purpose. Better outcomes are likely possible through employing a broader range of instruments, including economic instruments.**



## Conclusion

This report concludes that the environmental outcomes of the RMA have not met expectations, largely as a result of poor implementation. While aspirations were high, the outcomes have not ultimately reflected the desires set down in 1991. Overall, the implementation of the RMA has been weak. Institutional performance (with respect to environmental outcomes) has been variable and often poor. There has been little consequence for poor performance and thus little drive for improvement by some agencies. The oversight body – the Ministry for the Environment – has been historically quite remiss in adjudicating the implementation of the RMA, and many regional councils have been slow to hold their district and city councils to account. While there are signs of improvement, much more focus is required.

This report demonstrates two key outcomes: (a) the weight of evidence available points to serious implementation issues with the Act, and (b) prior reform has often proceeded with limited evidentiary basis to the demise of the overall coherence of the system. This means that reform endeavours should pay close heed to whether unrealised outcomes are a result of poor design, or poor implementation. Only one of those can be significantly addressed through regulatory change. Where regulatory change is contemplated, it should only be undertaken on a strong evidence basis to ensure that solutions fit problems.

# Appendix 1

## Literature review

The literature review is divided into national scale analysis and regional or local studies and all are arranged in date order under the two headings.

1

### Citation

OECD, 1996 and 2007, OECD environmental performance reviews, OECD Publishing, Paris, available at <http://www.oecd.org/env/country-reviews/environmentalperformancereviewsnewzealand2007.htm>

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### Description

This was the first and second of New Zealand's environmental performance reviews by the OECD. International evaluation of environmental management in New Zealand that was very wide ranging. We focus on the RMA specific observations, but other findings are of course somewhat relevant. The second highlighted declining freshwater quality as being a key issue for New Zealand to grapple with.

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### Key findings

The first review noted the major change that the environmental management system had undergone, recognising that it was still in transition. The review noted that the RMA reforms had addressed previous concerns about the cumbersome nature of regulation in the 1980s. The OECD noted that the RMA was coherent in design, and ambitious in intention – flagging that implementation would be crucial to its success. A lack of national guidance and the outdated approach of many implementing agencies were already evident. Recommendations included more direction at a national level to give subsidiary authorities clear targets and strengthening central government support.

2

#### Citation

Planning Under Cooperative Mandates Research Programme (FRST-PGSF) produced various citations over three stages (*see references for those drawn upon specifically*)

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#### Description

PUCM Phase 1 evaluated the quality of policy statements and plans produced under the RMA and the organisational factors that influenced their preparation (1995-98); Phase 2 evaluated the quality of plan implementation through resource consents (1998-2002); Phase 3 studied environmental outcomes from plans, including outcomes for iwi and hapū (2002-2006) (there was a Phase 4 that evaluated the preparation and implementation of long-term council community plans under the new LGA 2002 also).

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#### Key findings

Phase One of the project found that most regional and district council documents struggled with the ambition inherent in the Act. The blame for this was generally placed on weak government support and guidance, as councils were not capable of meeting the expectations of the legislation. Phase Two analysed how well the plans were being implemented in practice.

Phase Two demonstrated a significant implementation gap, owing to disconnects between the plans and the consents being issued under them. A narrow array of techniques being employed and widespread issues with poor capacity of the agency in question led to generally underwhelming implementation. Phase Two also identified that councils favoured traditional approaches over innovative ones (again attributed to low capacity as well as other factors like weak central guidance and ambiguous policies). The weak government approach was identified as a key cause of limited outcomes, as was low capacity. Where capacity was higher, implementation too was more robust. Phase Three developed and applied a Plan Outcome Evaluation methodology. The research also produced a range of practice guides.

3

#### Citation

Lynch, H, 1997, Evaluating RMA performance : the role of Section 35(2) monitoring, Masters Thesis, Lincoln University

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#### Description

Assessed the potential of section 35(2) to provide the data necessary to evaluate section 5 and whether that information was being collected.

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#### Key findings

Demonstrated that s35(2) was appropriate and prompted the production of sufficient data, but that councils were not collecting the data. The reasons for this information failure include a lack of capacity and a lack of guidance at a national level.

4

#### Citation

Peart R, 2004, A Place to Stand: The Protection of New Zealand's Natural and Cultural Landscapes, Environmental Defence Society

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#### Description

This research explores the loss of natural and cultural landscapes to inappropriate subdivision and development through an analysis of institutions, planning documents and environmental outcomes.

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#### Key findings

The RMA is failing to stem the loss of important landscapes, in favour of short term economic priorities without acknowledging how economically important they are to our international brand, and particularly to our tourism industry. The importance of landscape (despite being a matter of national importance under the Act) was given limited recognition by regional and national government and management approaches were largely ineffectual (from assessment through to consenting). The outcome of these failings was reduced landscape values.

5

#### Citation

Oram R, 2007, 'The Resource Management Act: now and in the future', *In Conference Proceedings - Beyond the RMA: An in depth exploration of the Resource Management Act 1991*, Conference held at Langham Hotel, Auckland: Environmental Defence Society

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#### Description

Secondary research from existing information and primary interview research to provide supplementary insights.

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#### Key findings

Effectiveness of the Act is 'patchy' and best in rural areas with relatively abundant natural resources and for small local consents. The RMA cannot cope with fully allocated resources, over allocated resources or cumulative effects and is not able to manage large scale or long term issues (strategy). Unresolved conflict between private property rights and the public interest remains due to weak national guidance and poor capacity in agencies.

Business attitudes to the RMA are very negative (even though its burden is not empirically quantifiable), but stem more from implementation than the Act itself. Overall support to retain the Act was found to be high. Concern was expressed that the main thrust of all the amendments has been process improvement rather than refining the purpose (i.e. what it's trying to achieve).

6

#### Citation

Peart R, 2007, 'The RMA compared to international best practice', *In Conference Proceedings - Beyond the RMA: An in depth exploration of the Resource Management Act 1991*, Conference held at Langham Hotel, Auckland: Environmental Defence Society

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#### Description

This paper critically reviewed the RMA next to international exemplars.

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#### Key findings

The RMA remains world-leading in respect of integration and public participation, but has slipped behind in respect of sustainability and planning aspects. The paper made a large number of recommendations on what could be altered to enhance outcomes. Some of these recommendations have been or are being actioned (introduction of and ethic of stewardship and improving availability of standardised definitions between council plans), but most have not (improving urban planning approaches, clarifying roles of councils in respect of managing urban sprawl, actively encouraging front-loading of consultation and holding the line on proposals to diminish public participation).

7

#### Citation

Lynch, H, 1997, Evaluating RMA performance : the role of Section 35(2) monitoring, Masters Thesis, Lincoln University

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#### Description

Assessed the potential of section 35(2) to provide the data necessary to evaluate section 5 and whether that information was being collected.

---

#### Key findings

Demonstrated that s35(2) was appropriate and prompted the production of sufficient data, but that councils were not collecting the data. The reasons for this information failure include a lack of capacity and a lack of guidance at a national level.

8

#### Citation

McNeill J, 2008, The public value of regional government: how New Zealand regional councils manage the environment, PhD Thesis, Massey University, available at <http://mro.massey.ac.nz/bitstream/handle/10179/724/02whole.pdf?sequence=1&isAllowed=y>

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#### Description

Combination of secondary and primary research (144 questionnaires and an unspecified number of key informant interviews) examining the value of regional councils.

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#### Key findings

McNeill investigated the role of 'the formal institutional arrangements and configurations of regional councils'. The low public value of the regional councils – even considering variability and some improvement – was due in part to councils exercising only narrow functions despite a broad mandate and an overall lack of national direction. The research concluded that there is a need to clarify the role of regional councils with respect to environmental management and that overall, they'd far from met expectations.

9

#### Citation

Pearl R, 2008, Integrating the management of New Zealand's coasts: challenges and prospects, <http://www.waikato.ac.nz/fass/Conserv-Vision/proceedings/Pearl.pdf>

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#### Description

Two case study areas analysed, with the help of interviews with 60 stakeholders

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#### Key findings

The RMA does not sufficiently manage allocation of public resources where the market does not operate; neither does it manage proactive allocation due to the first come first served approach. Lack of clear measures of success more widely has made progress tracking and accountability unlikely to eventuate. There is a lack of integrated planning within councils due to horizontal and vertical splitting of functions and focus areas. Instances of integration are generally local, while the complexity of integration and lack of a statutory context constrains its introduction at higher/strategic levels.

10

#### Citation

Memon A, B Painter and E Weber, 2009, Integrated catchment management within the RMA framework in New Zealand, [https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/4453/research\\_report\\_Memon\\_Painter\\_Weber.pdf?sequence=1](https://researcharchive.lincoln.ac.nz/bitstream/handle/10182/4453/research_report_Memon_Painter_Weber.pdf?sequence=1)

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#### Description

Evaluated the use of integrated catchment management in New Zealand, particularly under the RMA

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#### Key findings

Water governance has not used integrated catchment management, and bottom up (locally-led) and top down strategies are required at a national policy level, drawing on strengths of each. It is imperative that the RMA regime gets better at integrated catchment management to achieve sustainability goals.

11

#### Citation

Sinclair, Knight, Mertz, 2010, Regional council practice for setting and meeting RMA-based limits for freshwater flows and quality, Ministry for the Environment, available at <http://www.oag.govt.nz/2011/freshwater/docs/managing-freshwater-quality.pdf>

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#### Description

In 2010, the Ministry for the Environment commissioned a report that identified barriers within regional councils to setting and meeting freshwater quality limits.

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#### Key findings

The barriers identified within regional councils included a lack of:

- Political will to set limits for non-point source pollution
- Stakeholder/community buy-in to the issues associated with non-point source pollution
- Guidelines or robust science to translate ecological, cultural, amenity, and recreational values to limits
- Understanding of how to trade and balance social and economic outcomes
- Time and resources to develop specific limits for catchments.

12

#### Citation

Fenemor A, D Neilan, W Allen and S Russell, 2011, Improving water governance in New Zealand: stakeholder views of catchment management processes and plans, *Policy Quarterly*, 7 (4), 10-19  
<http://igps.victoria.ac.nz/publications/files/136fb7d43b1.pdf>

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#### Description

The research was based on interviews with 56 stakeholders and observations of water management planning by regional and unitary councils.

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#### Key findings

The research concluded that the governance of water has received less attention than the technical and infrastructure development aspects of it, and that this lack of focus is likely to undermine progress in the other areas. Increasing focus on governance regimes will ensure that water management planning is more effective at achieving its aims by better allocating resources and justifying the reasons for decisions being made.

13

#### Citation

Office of the Auditor-General, 2011, Managing freshwater quality: challenges for regional councils, September 2011, available at <http://www.oag.govt.nz/2011/freshwater/docs/managing-freshwater-quality.pdf>

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#### Description

This review of regional council efforts in the freshwater policy space used four regional councils to track the management of freshwater nationally and identify areas of concern. This review also considered how well the councils were performing their s35 monitoring functions.

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#### Key findings

All councils had policies, some very innovative, and they were challenged the most by non-point-source pollution. Two of the four councils were not meeting their s35 requirements for monitoring of plan effectiveness, two were carrying out their duties in respect of freshwater management adequately and a further council partly so. The key challenge they faced was managing the rural sector's desire for economic development to address the public interest in water protection. Significant concern was expressed at the intervention of elected officials in technical enforcement matters.

14

#### Citation

Myers S C, B R Clarkson, P N Reeves and B D Clarkson, 2013, Wetland management in New Zealand: Are current approaches and policies sustaining wetland ecosystems in agricultural landscapes? *Ecological Engineering*, 56 107-120

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#### Description

This paper is a review of the strength of policy for wetland protection in regional and district councils around the country. Many (particularly smaller) wetlands are located on private land and regional and district rules controlling impacts on them are their primary protection.

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#### Key findings

- The most restrictive rules apply in areas having suffered the most loss and with the highest populations
- All regional plans have some kind of regulatory barrier to wetland loss, but only 60% restrict activities in scheduled wetlands
- Monitoring is variable and rules are not often enforced
- National and regional scale data on wetland extent and condition is sparse, but what is available shows significant declines
- A series of regional studies all demonstrated net loss of wetland extent and condition in Southland, Auckland, Taranaki, Waikato, Canterbury and particularly the loss of smaller wetlands.

15

#### Citation

Brown M A, B D Clarkson, B Barton and C Joshi, 2013, 'Ecological compensation: an evaluation of regulatory compliance in New Zealand', *Impact Assessment and Project Appraisal*, 31, 34-44

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#### Description

Empirical analysis of compliance based on field assessments of 81 sites, according to consistent methodology for compliance assessment developed in association with relevant experts. Cases were drawn from a pool of consents in which proactive mitigation or offset measures were required of consent holders.

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#### Key findings

Ecological mitigation requirements were met in 64.8% of cases overall and less than half of those with practical environmental outcomes was carried out (with the balance being procedural actions). There was clear evidence of a lack of monitoring and enforcement.

16

#### Citation

Brown M A, B D Clarkson, R T Stephens and B J Barton, 2014, 'Compensating for ecological harm - the state of play in New Zealand', *New Zealand Journal of Ecology*, 38(1), 139-146

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#### Description

Empirical analysis of mitigation requirements across 112 cases, comparing loss and gain against key principles derived from international research.

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#### Key findings

Policy vacuum leading to inadequate exchanges and a lack of an even playing field. The poor quality of many exchanges demonstrated that the resource management decision making process was commonly trading off significant ecological losses for more minor (and much less certain) ecological gain.

17

#### Citation

Daly D, 2014, Planning for underwater anthropogenic noise in New Zealand's Coastal marine area, Masters Thesis, University of Otago, Dunedin, available at <https://ourarchive.otago.ac.nz/bitstream/handle/10523/5656/DalyDwayneM2015MPlan.pdf?sequence=1&isAllowed=y>

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#### Description

Project reviewed the extent to whether regional councils were adequately managing underwater noise, which is a matter within their jurisdiction.

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#### Key findings

14 out of 17 plans did not refer to underwater noise at all, and the only instance in which rules existed which put limits in place was in the Auckland region. Lack of awareness, expertise and resources were primarily cited as the reason for the lack of action in this area.

18

#### Citation

Becher S A, 2015, Cumulative effects and New Zealand's Resource Management Act: an institutional analysis, (Thesis, Master of Planning). University of Otago <https://ourarchive.otago.ac.nz/handle/10523/5732>

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#### Description

This research entailed a document analysis of a range of planning instruments to evaluate the potential of New Zealand's resource management institutional arrangements for anticipatory CE management (CEM). A complementary case-study of management of CEs from on-site effluent treatment (OSET) in Clyde (Central Otago, NZ) assessed whether current implementation of the RMA realises that potential.

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#### Key findings

The RMA usual approach of predict and controlling adverse effects on a case by case basis is insufficient for managing cumulative effects, and requires a framing that is more adaptive. The research identified two key barriers to the improved management of cumulative effects: grandfathering of impact rights and a lack of an ability to fund initiatives that take a wider view than any individual consent could. These key issues were found to be exacerbated by partial implementation of the Act (i.e. not all aspects provided for are implemented in practice), lack of strategic guidance and a lack of willingness to accept the cost of initiatives that could effectively manage cumulative impacts.

19

#### Citation

Wright, J M, 2015, The politics of sustainability in New Zealand: a critical evaluation of environmental policy, practice and prospects through a case study of the dairy industry, PhD Thesis, University of Waikato

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#### Description

Theoretical discourse analysis applied nationwide to the dairy industry and then at a local scale – in both instances focusing on the RMA

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#### Key findings

Demonstrated that power struggles nationally undermine the sustainable development potential of the Act, although good outcomes are possible at a local scale through grassroots initiatives where community participation is widespread, noting: *The study concludes that an overwhelming emphasis by the government and the dairy industry on economic productivism has trumped any concern about environmental sustainability enshrined in the Resource Management Act, although interventions driven by a sustainable development discourse remain possible on a local scale.*

### Citation

Parliamentary Commissioner for the Environment, 2015, The state of air quality in New Zealand: commentary by the Parliamentary Commissioner for the Environment on the 2014 Air Domain Report, available at <http://www.pce.parliament.nz/media/1256/the-state-of-air-quality-in-new-zealand-web5.pdf>

### Description

This report is a commentary on government assessment of air quality under the Environmental Reporting Bill. While it is not strictly an RMA evaluation, air quality is nested within the RMA regime and the report – based on secondary information and an analysis of the environmental reporting document – does make some statements of interest about the RMA.

### Key findings

The institutional alignment of the RMA and air quality may be constraining effective investment in air quality initiatives: *'It may be that public money spent by regional councils subsidising 'clean heat' appliances would be better spent on smoking cessation programmes. But the boundaries between what regional councils are responsible for and what public health agencies are responsible for mean that the question cannot even be considered.'*

## Selected regionalised studies

This selection is far from exhaustive, but sets out some of the examples of regional evaluation studies available. Many councils have done several within their exercise of s35 monitoring.

### Citation

Taranaki Regional Council, 2009, Effectiveness and efficiency of the Regional Coastal Plan for Taranaki, Background report, available at <http://www.trc.govt.nz/assets/Publications/policies-plans-strategies/regional-plans-and-guides/regional-coastal-plan/eercp09.pdf>

### Description

An internal review of the Regional Coastal Plan 12 years after it was made operative in 1997 under s35(aA) of the RMA. Review considered how effective council's approach had been to regulating coastal activities, based on available data.

### Key findings

Outcomes monitoring of plan provisions focused on output monitoring, as data available on this aspect was much more comprehensive. Expected environmental outcomes (no longer required to be set out within a plan) were tracked to guide effectiveness measurement. Review noted the limited monitoring undertaken in respect of certain measures including maintenance of biodiversity etc. The limited data appeared to constrain the ability for the review to contain a clear conclusion regarding environmental outcomes.

#### Citation

Whangarei District Council, 2010, Is our District Plan working after 5 years in operation? A report on the efficiency and effectiveness of objectives, policies and other methods in the Operative Whangarei District Plan, <http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/Documents/District-Plan-Efficiency-and-Effectiveness-report.pdf>

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#### Description

Section 35 analysis of the plan undertaken by the council.

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#### Key findings

The review found mixed results. There was good evidence of effectiveness resulting from the use of flexible subdivision approaches (such as clustering and transferable development rights), the insight and guidance offered by national instruments (NZCPS) and alternative approaches applied in urban areas for localised developments (Town Basin). Examples of low effectiveness related primarily to ensuring the protection of environmental values. For example permissive vegetation clearance rules resulted in significant habitat loss, exacerbated by the difficulties of monitoring the impacts of permitted activities on vegetation extent.

#### Citation

Wellington City Council, 2013, Shaping up 2013 District Plan monitoring and research report, <http://wellington.govt.nz/~media/about-wellington/research-and-evaluation/built-environment/2013-shaping-district-plan-monitoring.pdf>

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#### Description

Section 35 report for the District Plan which included an analysis of a subset of consents and stakeholder interviews.

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#### Key findings

Key concerns were compliance costs (engaging professionals and meeting strict rules instead of focusing on 'good results') and confusing navigation of the plan due to multiple versions at any one time (exacerbated by inconsistent interpretation by planners and decision-makers and high level of information required in AEEs). It suggests that more focus should be placed on creativity and developing alternative solutions, reducing the need for costly expert input and reducing notification frequency/costs.

#### Citation

Canterbury Regional Council, undated, Plan implementation review of The Land and Vegetation Management Regional Plans Part I and Part II, Report No. U07/92  
<http://ecan.govt.nz/publications/Plans/Landandvegefinal.pdf>

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#### Description

Analysis of the effectiveness of Land and Vegetation Management Regional Plans Part I and Part I

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#### Key findings

In addition to smaller scale outcomes, the review noted that *'the scale, extent and intensity of monitoring carried out in relation to these plans over the last 10 years has not been sufficient to establish the effectiveness of policies and methods in achieving the anticipated environmental outcomes'*.

# Appendix 2

## Interview questions

1. Please self-rate your knowledge of the RMA, it's subordinate instruments and agencies on a scale of 0-10
2. How would you rate the present quality of the different areas of the environment in NZ on a scale of 0-10 (with zero being very poor and 10 being very high quality)  
Private Land, Public Land,  
Freshwater, Marine  
*Explain*
3. Overall, has the quality of the environment declined or improved under the RMA?  
Declined significantly/declined somewhat/  
stayed the same/ somewhat improved/  
significantly improved  
*Explain*
4. How influential do you think the RMA is on the protection of the environment?  
Not influential at all/somewhat influential/  
very influential
5. What is your view of what the environmental goals of the RMA are? What does success mean to you?
6. Have these goals been achieved?
  - a. Yes/Partly/No
  - b. Why/why not?

### Parts of the Regime

7. The RMA is implemented in a devolved way, but there is a role for central government. On a scale of 0 to 10, how effectively has central government exercised their responsibilities to the environment under the RMA?  
*Explain*
8. The RMA (day to day) is primarily implemented by regional and district councils. How effectively (0-10) in your view, have regional councils exercised their responsibilities to the environment under the RMA?  
*Explain*
9. The RMA is primarily implemented by regional and district councils. How effectively (0-10) in your view, have district councils exercised their responsibilities to the environment under the RMA?  
*Explain*
10. The RMA interacts with a range of legislation, sometimes addressing similar issues or different dimensions of issues covered by other instruments. How effectively does the RMA function with or alongside other legislation etc?  
*Explanation and examples*
11. How important, in your view, is public participation to the environmental outcomes of the RMA. (0-10)  
*Explain*
12. In your view, are there changes needed to improve environmental outcomes from the RMA? Yes/No
  - a. What are they?
13. Have you considered what 'life after the RMA' might be like and what kind of framework might eventually take its place? If so, what are your thoughts?
  - a. How urgent do you think succession is?
14. Anything else you'd like to add?

# Appendix 3

## Stage 3 scope and approach

The scope of Stage Three of this overall project entails a scenario development exercise that – drawing on the key issues identified in this Stage Two – will compare future possible scenarios against the status quo, and evaluate them based on the meaningful improvements they would likely make across the key issues. Scenarios would span a full range of possibilities from relatively minor reform to very comprehensive changes, potentially with modular components that can be shared between scenarios.

Based on the key issues identified, the assessment framework should comprise consideration of the following matters: legislation content, institutional arrangements, tool availability, power relationships, monitoring and evaluation. Coupled with substantial improvement across these key issues, it would be important to ensure that future designs retain the strengths of the RMA approach (primarily procedural strengths, despite minor difficulties). Importantly, future reform of the resource management system for New Zealand should proceed only where the anticipated improvements are significant and based on robust evidence.

### Legislation content

While the RMA has centralised a lot of decision-making processes, it could be more integrated. There are still key exclusions that should be better joined up to enhance overall environmental outcomes. There is also a need to more clearly enshrine strategic case law such as the King Salmon decision in some form.

### Institutional arrangements

The institutional arrangements of the RMA are presently struggling to deliver on the aspirations of the Act. They require review and potentially some reorganisation. Agency capture may be too difficult to manage within the current structure, and may require a reconsideration of where mandates should lie.

### Tool availability

A narrow range of instruments has been employed to generate behaviour change under the RMA which, in many instances, have not been fit for purpose. Better outcomes are likely possible through employing a broader range of instruments, including economic instruments. These tools include strategic planning mechanisms, strategies to better manage cumulative effects and the promulgation of effective regional and national instruments. The reasons for the slow uptake of these tools should be examined and, where gaps exist, new tools promulgated to enable agencies to carry out their roles.

### Power relationships

Agency capture of (particularly local) government by vested interests has reduced the power of the RMA to appropriately manage effects on the environment.<sup>117</sup> Future scenarios should anticipate the power imbalance between vested interests and the public interest, and the role of agencies in managing those clashes. Addressing agency capture will require heightened transparency and accountability and potentially the promulgation of flexible supporting instruments which will align the divergent interests of stakeholders.<sup>118</sup> It will also require retention of quality opportunities for public participation and bolstered recognition of the role of public interest advocates.

### Monitoring and evaluation

A lack of effective strategy and oversight of decision-making has reduced the potential to protect environmental values, including the capacity to manage cumulative effects. Rigorous evaluation and monitoring of outcomes has often been limited – either at a plan level or at a consent level, eroding the potential for adaptive governance and robust implementation. We need to very much improve the veracity of monitoring and evaluation and to enable this, clear goals are needed at a strategic level.

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