Creating a Framework for Sustainability in California: Lessons Learned from the New Zealand Experience

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Executive Summary

In California there is growing recognition among government, the private sector, and the public interest community that the existing environmental protection "framework" is inadequate to deliver the levels of environmental protection that will be needed in the future. The state currently faces many serious environmental and natural resource challenges, such as water supply and quality, smog, biodiversity, and preservation of open space. These challenges, among others, will only become more severe with the state's increasing environmental pressures.

Growth projections indicate that the state's population will increase by 30 percent in the next two decades. Without effective plans for managing this growth, we will face significant negative impacts to the environment, as well as to our quality of life in areas such as traffic congestion, air quality, and the availability of affordable housing. Sustaining environmental quality, natural resources, and quality of life for all segments of our diverse population are prerequisite components underlying a vibrant economy. This raises the question of whether California is equipped with the policy framework and instruments that are capable of delivering the quality of our environment, society and economy that we desire for the future.

Although our current system of environmental laws and regulations has made significant strides in environmental protection over the past 30 years, it is cumbersome and in many areas it is not well suited to deliver desired environmental outcomes efficiently and effectively. Top state policy-makers have begun searching for new policy tools that hold promise for fulfilling environmental protection needs. New approaches include: "regulatory innovation" programs in which regulatory benefits are offered to regulated entities in exchange for performance outcomes that go "beyond compliance;" environmental management systems models; integrated management of media; collaborative and long-term strategic planning; delegation of strategic planning processes to local government; and market-based incentives for environmental performance and conservation. Much can be learned from the experiences of other states and countries that have experimented with such innovations. This report examines the comprehensive reforms adopted in New Zealand as a basis of informing California stakeholders in their consideration of alternate policy models that serve to improve the state's environmental protection.

Environmental Management in New Zealand

In the late 1980's, driven by a growing free-market ideology, inspired leadership, the widespread desire to shrink central government, and an overly complex and prescriptive regulatory system, New Zealand undertook a massive effort to rationalize its environment legal framework and local government structure. An extensive stakeholder consultation effort led to an unprecedented alignment among business, government, and the public interest community in support of the reforms.

Under the government sector reforms, more than 800 governmental and quasi-governmental agencies were dismantled or reorganized. In their place, three primary central government agencies and 86 local government authorities (comprised of 12 regional councils based on watershed boundaries, and 74 territorial authorities called district or city councils) were established, which were collectively responsible for all aspects of environmental, natural resource, and land use planning and management. In addition, over 55 statutes and 19 sets of regulations were eliminated and replaced by a single legislative enactment – the Resource

Management Act 1991 (RMA or Act) – encompassing environment, natural resources, and land use beneath one umbrella for the purpose of promoting the "sustainable management of natural and physical resources." Sustainable management was defined in a way that addressed social, economic, and cultural considerations, meeting the needs of future generations, safeguarding the life-supporting capacity of natural resources and ecosystems, and avoiding, remedying, or mitigating the adverse environmental effects of human activities.

The RMA, in conjunction with local government reforms, was designed to create an "effects-based" system in which environmental "bottom lines" were established that could not be compromised. The system allowed government and the regulated community greater flexibility in achieving environmental outcomes as long as they operated above those bottom lines. The RMA also established a uniform system of planning and administrative processes, and set forth a strategic planning hierarchy requiring statutory policy and planning documents developed at the central, regional, and district/city government levels.

Environmental management under the RMA was founded upon the "subsidiary principle," where the power of decision-making rests as closely as possible to the affected communities. Central government was to promulgate national policy statements and environmental standards that would serve as the pinnacle of the strategic planning hierarchy. Regional councils would then create regional policy statements and plans identifying the issues facing their region and goals and methods for achieving integrated management consistent with national policies and standards. Lastly, district and city councils were to create local plans consistent with both regional and national policies. This hierarchy essentially required central government to articulate a national vision, goals and bottom lines, while delegating the responsibility for implementing and enforcing these almost entirely to local government.

The processes called for by the RMA involved wide-scale consultation and public participation. Limitations on the ability of individuals and organizations to comment on a proposed policy statement or plan were virtually eliminated. New requirements were imposed on government to analyze the most cost-effective policy tools for achieving a desired outcome and to justify any new regulations if ultimately selected as the tool of choice. All of these processes were intended to increase the transparency of policy- and decision-making and to improve government and private sector accountability.

Ten years into implementation, New Zealand continues to face difficulties in transitioning to the innovative framework envisioned by the RMA. The precise causes of many implementation failures are difficult, if not impossible, to determine with certainty. A number of intended goals and principles of the RMA have either not materialized or have simply not worked well in practice. In addition, controversial procedural provisions, as well as the underlying intent of the Act, continue to serve as fertile ground for debate in New Zealand. The degree to which these challenges stem from transitions in practice versus shortcomings inherent in the legislation remains an open question. Furthermore, baseline environmental quality information was not collected and adequate monitoring programs were not established at the outset, thereby limiting empirical assessments of whether the new system has in fact resulted in improvements. Despite these problems, there appears to be a general consensus in New Zealand that numerous gains have actually been realized as a direct result of the RMA and that potentially many more gains may be realized as practice under the RMA matures.

Lessons for California

New Zealand is considerably different from California in many critical respects, preventing a direct translation of the RMA to California – a population one-tenth the size of California, a parliamentary system of government, and a primary production economy, to name a few. While we do not suggest that the New Zealand model could be transported to California or that California should undertake such far-reaching, comprehensive reforms, New Zealand's experience can provide valuable insight to California in considering and pursuing innovative policy reform initiatives. With the benefit of hindsight, perhaps California can learn as much from New Zealand's mistakes as from its successes.

Despite the fundamental differences between New Zealand and California, many of the conceptual approaches and principles underlying the New Zealand reforms are equally germane to any sustainability initiative upon which California may decide to embark. These concepts include balancing the "Three Es" of sustainability - economy, environment, equity - integrating the management of different environmental media, and allocating the appropriate roles and powers among central, regional, and local government. New Zealand's effort was also underpinned by principles such as participatory democracy, transparency, accountability, flexibility, and efficiency, all of which have relevance for California's potential endeavors. It is through the lens of these conceptual approaches and principles that we analyze the lessons to be learned by California. The findings of our research are summarized below.

Initiating the Reform Process

Finding: *Three years of stakeholder consultation, outreach, and education in New Zealand created a momentum and public expectation that enabled the reforms to withstand political turnover and bureaucratic tendencies to revert to the status quo***.** While individual leadership was a key factor in the initiation of the RMA, it appears that a confluence of interests that recognized the need for change was equally important.

Lesson: *An extensive and ongoing stakeholder and public outreach campaign would be an effective strategic mechanism to ensure that a long-term sustainability initiative survives California's political process***.** Stakeholder expectations create an "insurance policy" that protects long-term policy reform initiatives from changes in elected government.

Rationalization of Legislation and Government

Finding: *New Zealand's rationalization of government and legislation has resulted in greater government accountability in decision-making, as well as an environmental management framework that is more efficient and easily understood by the regulated community and general public***.** A common set of procedures governing permitting, planning, and public participation that applies across the country has created uniformity and consistency that allows for efficiency gains.

Lesson: *While a daunting challenge, California must begin the process of rationalizing both its government structure and regulatory system***.** A modest first step would be to initiate a wide-scale, participatory review to identify opportunities for rationalization that would increase efficiency and effectiveness while providing better, or at a minimum the same level of, environmental protection assurance.

Sustainability and the "3Es"

Findings: *The ambiguity surrounding the RMA's scope and intent with regard to the 3Es of sustainability has had negative practical repercussions for the legislation's implementation***.** This ambiguity created unrealistically high expectations among stakeholders, as they were each sold on the reforms based on an interpretation that most favored their interests. Disillusionment with what the Act actually delivered resulted in protracted legal challenges.

*While the RMA does serve as a vehicle that facilitates better integration in the management of traditional media such as land, air, and water, it has not proven effective at tackling the bigger challenges of sustainability***.** Remaining issues include energy efficiency and resource conservation, individual consumption patterns, product life-cycle impacts and management, transportation, urban planning and growth, climate change, biodiversity, waste reduction and management, and management of the marine environment and resources.

Lessons: *California should engage in extensive multi-stakeholder dialogue to define the scope and contours of a sustainability framework, to draw hard lines that cannot be compromised or "traded-off," and to allocate stakeholder responsibilities***.** As part of the dialogue, stakeholders should undertake to clearly define key terminology that will serve as the basis of any legislative reform or policy initiative. While doing so risks demise of the sustainability debate before it gains a popular foothold, an approach that favors overly vague terms in the name of flexibility runs the risk of leading to disenchanted stakeholders and/or protracted legal battles to solve interpretation disputes.

*Consistent with its defined scope and intent, the sustainability framework or legislation should be sufficiently adaptable to be able to prospectively incorporate new and emerging issues***.** Any statute intended to propel California further on the course of sustainability will need to address the larger thematic issues pertaining to sustainability. Therefore, it must be adaptable to encompass future issues as they arise.

Integrating the Management of Environmental Media

Finding: *The regional approach established by the RMA and local government reforms provides a solid framework for the integrated management of environmental media***.** The formation of regional entities along watershed boundaries with authority for land, air, and water planning and management facilitates decision-making that is less likely to result in cross-media transfers of impact.

Lesson: *In California, efforts should be undertaken to explore potential mechanisms for linking its various regional authorities and bodies, such as the air districts, regional water boards, councils of governments, and land use planning bodies***.** At the state level, integration of environmental decision-making should be one of the central purposes of Cal/EPA and the California Resources Agency, and linkages created between the boards, departments, commissions, and other state agencies could facilitate this process. California should also continue to explore and pursue watershed-based initiatives that take a multi-media approach.

Decentralization of Planning and Decision-Making

Findings: *New Zealand overshot the mark in terms of decentralization and local decision-making, primarily because local authorities lacked capacity and resources, and their implementation efforts were not accompanied by central government oversight, guidance,*

*and assistance***.** The balance of powers between central and local government envisioned by the RMA – local implementation coupled with an overarching policy framework – did not come to fruition as planned.

Central government's failure to carry out its responsibilities under the Act, in addition to its lack of oversight as provided for by the Act, resulted in inefficient and inconsistent implementation by local authorities. In particular, this failure led to poor quality policies and strategic plans, as well as "reinvention of the wheel," whereby councils independently set about creating standards and policy statements. The inconsistency that resulted made compliance costly and difficult for regulated entities with operations in multiple locales.

Local government, for its part, lacked the financial resources, capacity, leadership, and expertise to effectively fulfill their obligations under the RMA. Considering the virtual absence of higher-level support, the expectations of local government were unfairly high. In a sense, the RMA announced, "let's implement sustainability" and then fully punted the task to local government authorities, many of which were ill-prepared for the task.

Lessons: *State government should lead an effort to develop and articulate a statewide vision and corollary goals***.** Based on an extensive, collaborative process involving all stakeholder groups, this would be a valuable first step on the path toward creating a framework for sustainability. Such statewide strategic documents could serve as the basis for sustainability planning at the regional and local levels.

*Stimulate and facilitate regional and local sustainability initiatives by building local government capacity and providing political cover and incentives***.** Efforts should be undertaken, particularly by state government, to bolster local government's ability to pursue sustainability initiatives by providing training, guidance, and financial support, and by removing procedural and institutional barriers. The sharing of information on best practices is also necessary. The state should consider legislation that would enable local and regional authorities to credibly pursue sustainability initiatives, and should provide incentives that would catalyze such initiatives. Local government, for its part, should seek to strengthen staff expertise in sustainability planning.

Participatory Democracy

Findings: *While all stakeholder groups are dissatisfied, for one reason or another, with how the public participation provisions of the RMA played out in practice, they seem to agree that the provisions have increased the opportunity for stakeholder participation in decision-making in comparison to the former legislation, and that more public participation earlier in the process ensures a higher level of buy-in and fewer legal challenges***.** Participatory processes under the RMA have led to greater accountability of government and served as an essential "check" on the system.

New Zealanders collectively failed to fully anticipate that the newly expanded role of public participation in every area of environmental and resource management may entail efficiency losses. Due to these efficiency losses, the public participation provisions in the Act have become the main scapegoat for complaints about the RMA, and a source of disillusionment with the Act throughout the course of implementation.

Lessons: *The earlier that stakeholders and the general public are involved in the policy-making process, the greater their support for the end product***.** Although the California

policy-making process provides many opportunities for "public comment," it fails in terms of obtaining stakeholder buy-in up front, and thus constantly faces challenges and a lack of stakeholder support.

*Caution should be had to avoid overselling any sustainability program or reform on the grounds of efficiency***.** Much discussion about innovative reforms or programs in California has surrounded the goal of efficiency gains, and although improved efficiency is an important and necessary objective of policy innovation, it cannot be pursued at the expense of other principles of sustainability, such as participatory decision-making and accountability.

Flexibility

Finding: *Although an "effects-based" system has many alluring attributes that can address shortcomings of a "command and control," activities-based system, the New Zealand experience has shown that it alone is not the panacea***.** Stakeholder expectations that the effects-based approach would be more cost-effective and flexible have not been met. Moreover, all stakeholders supported the flexibility virtue of the RMA, but perhaps due in part to a degree of naiveté regarding the implications for certainty. A purely effects-based approach does not lend itself well to policy and decision-making in the context of subjects not supported by clear, objective, and scientific data, such as land use. A poor information base and a lack of scientific understanding of natural systems has exacerbated the problem of uncertainty and significantly stifled implementation of the effects-based approach in New Zealand.

Lessons: *While effects-based innovation programs and policies hold promise for achieving higher levels of environmental protection, California should be realistic about the gains and losses that accompany them***.** Effects-based approaches should be explored, although expectations of the flexibility and efficiency benefits of such approaches need to be carefully managed to avoid disillusionment and ensure patience during transitions.

*Flexibility associated with performance- or effects-based programs or policies may come at the expense of certainty***.** The optimal system of environmental management may, in fact, involve the combination of effects-based and activities-based approaches. This combined approach may allow for flexibility, but also provide certainty in areas that do not lend themselves to effects determination. It would also serve to reflect the degree of science and information available with regard to effects, with the activities-based approach serving as the default when information is lacking.

Accountability

Finding: *New Zealand's failure to create a robust information base and monitoring framework at the outset contributed to ineffective implementation and the inability to measure whether the system is achieving intended outcomes***.** The fundamental principle of government accountability sought by the RMA has been largely undermined by the consequences of an inadequate information base.

Lesson: *California must develop the information base necessary to establish a baseline of environmental conditions and track progress toward long-term goals***.** A robust and manageable information base will be essential to monitor whether the state's environmental protection framework is truly improving the sustainability of our environment, society, and

economy. Without information and monitoring to serve as the compass on our journey, we will not know whether the steps we take are truly advancing us toward our destination.

Conclusion

New Zealand's experience under the RMA is not a glowing success story. Numerous unanticipated shortcomings, both in the design of the legislation and in the performance of the stakeholder groups – primarily central and local government – in carrying out their responsibilities under the Act, have hindered implementation and inhibited full realization of the vision and purpose of the RMA. Nevertheless, while New Zealand does not represent a model that California should (even if it could) try to duplicate in its entirety, it does offer many valuable lessons. As a whole, the RMA represents a visionary attempt to create an all-encompassing sustainability framework for the country, with numerous elements that hold promise for achieving that mission.

California has much work to do to keep pace with increasing socio-economic and environmental pressures and its marching orders are clear – find new, efficient and effective means of protecting environment quality, while at the same time contributing to a vibrant economy and acceptable standard of living. As a first step, California must seek to develop a coherent framework for comprehensive environmental and resource planning and management by refining, integrating, and filling in the gaps that exist among current components of the state's environmental protection system. In the pursuit of these goals, California can learn a great deal from the New Zealand experience. As New Zealand witnessed first-hand, it is extremely difficult to effectively implement the many competing principles underlying sustainability at once. It is likely that trade-offs and prioritization of these principles will be required, thus necessitating stakeholder engagement and the management of expectations accordingly.

There is much truth in the adage "if you don't know your destination, any road will get you there." To date, California's approach to environmental protection can be characterized as simultaneous steps in multiple directions, but without a clear destination guiding those actions in an informed and intentional manner. It is time for California to begin planning strategically for the state's future rather than acting in an ad hoc, reactive manner to environmental problems as they arise. The journey will not be without obstacles and setbacks, but the time is now to begin to define the destination and the course to get there.

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Preface

This report evaluates the process by which the New Zealand Resource Management Act (RMA) was established and implemented, and makes specific recommendations for how certain elements of the RMA could be considered in California's pursuit of more effective and efficient environmental policies. It is produced at a time when there is growing recognition by stakeholders in California that without better integration, the current approaches to resource management, land use planning, and environmental regulation will be inadequate to effectively address the environmental and social challenges of the 21st Century. The purpose of this analysis is to spur, focus, and inform the dialogue regarding California's growing interest in a long-term, comprehensive policy framework for sustainable development. Our objective is for California stakeholders to be able to use the findings and lessons in this report to inform their positions and decisions regarding any policy reform plans and proposals, as well as to serve as a basis for consensus building among the three sectors (government, industry, and public interest).

The primary audiences for this study are California policy makers and interested stakeholders who are considering new approaches to sustainability for the state of California. While the study focuses on those elements of the RMA experience that are relevant to California, it will likely be of value to other states that choose to pursue statewide sustainability planning and/or policy reform. The research also has implications for public policy reform at the federal level, extrapolating both from the analysis of the New Zealand RMA experience and the recommendations for California. Finally, the analysis is also directed at (and may provide strategic insight for) New Zealand policymakers who might seek to identify opportunities for improvement of the RMA in light of the report's major findings.

This study does not purport to be a comprehensive assessment of every aspect of New Zealand's RMA. Many important historical factors and elements relating to the Act's implementation are not covered in detail (or at all) in this study. For example, the management of marine and energy resources, forestry and agricultural issues, and the role of the indigenous Maori people in relation to the RMA are all significant aspects of the Act, however, they are only briefly touched upon in this study. Furthermore, some of the topics of analysis that *are* included may not necessarily be the most pressing or significant environmental issues currently being debated within New Zealand.

The scope of this study was primarily limited by time and funding constraints, with the topics selected for inclusion based on the authors' view of their particular relevance for California. It is beyond the scope of this study to conduct a complete comparative analysis of CEQA and the RMA, although there are indeed many elements of the two statutes that are comparable. We hope that a future study, following on the findings and lessons of this report, will more thoroughly examine the existing legislative framework in California and identify specific opportunities for improvement and reform.

We begin this study by providing the historical context and specific drivers that led to the enactment of the RMA. Chapter I also includes an overview of the reform process, a summary of how the Act operates, and a cursory description of its successes and failures as perceived by New Zealand stakeholders. Throughout the remaining chapters of the report, we analyze in detail the degree to which New Zealand has had success in fulfilling or implementing the numerous fundamental principles underlying the Act. These core concepts and principles underpin the legislation and provide the context within which all language, instruments, and processes in the Act can be interpreted and evaluated. They include:

- Incorporating social and economic considerations in environmental policy
- Integrating the management of environmental media

- Decentralizing decision-making
- Including stakeholders in policy- and decision-making
- Providing flexibility for the private sector as well as government accountability

The Act's overarching purpose of "sustainable management" sought, to some extent, to integrate environmental considerations into the socio-economic dimensions of local government's decision-making, as well as to achieve integrated management of environmental media. The extent to which integration in each of these areas has been realized is discussed in Chapters II (Sustainability) and III (Integration). In Chapters IV (Decentralization) and V (Participatory Democracy), we evaluate the benefits and shortcomings associated with pursuing a highly devolved and participatory model of environmental decision-making, respectively. The RMA envisioned a system in which environmental thresholds - or "bottom lines" - would be established, and activities would be allowed as long as they did not violate these thresholds. This "effects-based" approach embodied in the RMA is discussed at length in Chapter VI (Flexibility & Accountability*)*.

Worth noting at the outset is that although the vast majority of participants in our study believe that protection of resources and environmental quality has improved under the RMA, there is little empirical evidence to support their claim. This is largely due to the incomplete and inconsistent monitoring and information systems, as well as the relatively short time since the RMA was enacted (also covered in Chapter VI). Thus, it is impossible to determine in quantifiable terms how effective the Act has been at achieving more sustainable management of natural and physical resources. According to some observers, another 10 to 20 years may be required before improvements in environmental quality resulting from the RMA can be accurately assessed.

Nonetheless, we believe that much *can* be learned from the successes and failures of the Act to date. The analysis in this report will focus on the lessons that California can learn from New Zealand in terms of successes and failures that have actually resulted from the RMA to date, as well as those anticipated in accordance with the theory and structure of the Act but which have yet to be realized due to the failures in implementation. If nothing more, we hope this report will contribute to sophisticating the debate regarding sustainability and policy innovation in California.

Terminology

Due to the many differences between the New Zealand system of government, law, and administration and that of California's (or any state in the U.S.), the following brief glossary is intended to clarify the meaning of terminology used throughout this report. Acronyms for terms used in the report are also included below.

Glossary

Central government (CG):

> National level government of New Zealand, analogous to the federal government in the U.S. For purposes of this study, however, central government could also be considered analogous to California state government, which represents the highest level policy-making authority in terms of developing a sustainability framework.

Local government (LG):

> Regional and municipal government in New Zealand, comprised of regional councils, unitary authorities, and territorial authorities.

Regional Council (or Authority) (RC):

> Authorities for 12 regional jurisdictions in New Zealand, drawn upon geo-hydrologic (i.e., watershed) boundaries. RCs have regulatory and enforcement powers, primarily for

environmental and resource management matters. RCs are comprised of politically elected councilors, and non-elected management and staff. Similar in size and nature to counties within the U.S., but with more functions.

Resource Consent:

A permit or approval to proceed with a proposed activity or project.

Territorial Authority (TA):

Authorities for 70 districts and cities in New Zealand, drawn upon socio-economic boundaries. TAs have regulatory and enforcement powers, primarily for land use and planning matters, infrastructure and service delivery, with limited responsibilities for environmental and resource management matters. TAs are comprised of politically elected councilors, and non-elected management and staff. Similar in nature to cities in the U.S.

Unitary Authority (UA):

A combined RC and TA, with powers of both. UAs are comprised of politically elected councilors, and non-elected management and staff. There are presently only four of these in New Zealand.

Acronyms

3Es – Environment, equity, and economy
AEE – Assessment of environmental effects
Cal/EPA – California Environmental Protection Agency
CEQA – California Environmental Quality Act
DoC – Department of Conservation
LGNZ – Local Government New Zealand
MfE – Ministry for the Environment
NEPA – National Environmental Policy Act (U.S.)
NES – National environmental standards
NGO – Non-governmental organization
NPS – National policy statement
PCE – Parliamentary Commissioner for the Environment
RMA – Resource Management Act 1991
RPS – Regional policy statement
SOE – State of the Environment (pertaining to reporting)

I. Overview of Environmental Management in New Zealand and Its Effectiveness

How the Resource Management Act Came About

In considering the Resource Management Act as a model for policy reform, it is helpful to view it within the context that led to its development and acceptance. A unique, if not uncommon or even bizarre, set of economic, social, and environmental circumstances converged in the 1980s, creating a culture of reform in the country. From this set of factors and events, a coalition was forged among all sectors of society to support radical legislative and administrative change.

Historical Background and Context

From the 1850s through the early 1980s, New Zealand observed a steady increase in government intervention and control, largely in the interest of economic expansion and the promotion of settlement.[1] Many utilities, transport networks, financial, and telecommunications services and infrastructure were owned and operated by the state. The U.K.'s entry into the European Community in the late 1960s, as well as the oil crisis of the 1970s, had decreased demand for products from New Zealand, by eliminating U.K. import quotas and increasing the cost of transportation for trans-oceanic imports. In turn, the New Zealand government controlled exchange rates and restricted trade, and increased overseas borrowing to stimulate the economy through large government-led development projects, primarily in the energy sector. These projects were consistent with the objectives of then-Prime Minister Robert Muldoon, who was leading the charge to improve the New Zealand economy through an expanded role for central government. This period, dubbed the "Think Big" era, was exemplified by wide-scale government intervention throughout all facets of New Zealand society and economy.

Some New Zealanders became increasingly frustrated with the floundering economy, what they perceived as a growing yet ineffective government, and the continuing disregard for deteriorating environmental conditions, caused in large part by the activities and policies of their own central government. The environmental impacts associated with human activities had become increasingly obvious since the early- to mid-1900s with declining soil fertility, erosion, and natural hazards such as flooding.[2] And although the mid-1900s saw a raft of environmental legislation directed at responding to these impacts, pollution continued to rise and environmental quality to degrade. Public concern was mounting regarding the negative environmental implications of growth and the irreversible damage to scenic landscapes and ecosystems. A few highly controversial government-led or sanctioned "Think Big" energy projects began creating a demand for government that was less environmentally destructive.

Meanwhile, central government was jealously guarding its powers refusing to delegate authority to local government. It was offering very few opportunities for public participation in decision-making, and was explicitly exempting itself from the requirements of the legislation for fear of interference with its development and public works projects.[3] Not surprisingly, some sectors of New Zealand's society quickly grew enamored with the neo-liberal, free-market, non-interventionist economic ideology, which became known as the "New Right." As stated by one expert:

> A small elite group of politicians, government officials, and businessmen, under the Fourth Labour Government in the mid-1980s, primarily motivated to increase the competitiveness of the economy

[1] Memon 1993, p. 18
[2] Memon 1993, p. 30
[3] Memon 1993, p. 43

> in the global economic order, initiated a series of unprecedented changes leading the once highly protected economy into a position open to deregulated market forces and external competition.[4]

The Fourth Labour Government, succeeding the National Party Government in the 1984 elections, and particularly driven by the Treasury, undertook massive reforms of both local government and the state sector. In order to address the dire financial situation within the public sector and to raise money for government, state owned assets were privatized and corporatized. Central government was downsized, and local government was rationalized from a complex network of over 800 governmental, quasi-governmental, and ad hoc authorities to a two-tiered system of 86 local government authorities – 12 regional councils, and 74 territorial authorities (collectively, "local government"). Vast central government powers and authorities were delegated to local government. For greater detail regarding the roles and responsibilities of central, regional, and territorial government authorities, refer to Appendix B and Chapter IV of this report.

Meanwhile, the country was experiencing a shift in social values and conscience. A new breed of young politicians was entering Parliament, bringing with them a heightened concern for social equity and transparent government decision-making. These new leaders had been educated throughout the civil rights movement, the anti-apartheid movement, and the Vietnam War. Compounding these social movements, the environmental movement both in New Zealand and internationally was gaining ground. Consistent with the international trend, New Zealanders began to appreciate the extent of harm that could occur without development of more effective means for managing global issues such as climate change and ozone depletion, as well as better approaches to national issues such as biodiversity, water, soil, fisheries and forestry management. The Fourth Labour Government first signaled its recognition of the environment as a significant issue on the policy agenda by organizing and convening an "Environment Forum" in 1985, which involved the participation of Maori, environmental organizations, government, politicians, and most other stakeholder groups.

For many in Parliament it logically followed that the restructuring of the functions of various levels of government should be accompanied by a review and rationalization of the various statutes they each were responsible for administering. In fact, because it was always thought that resource management would be devolved to local government, the two reform efforts were launched (and were planned to be completed) at the same time. In 1987, in the midst of the local government and state sector reforms, the Labour Government Deputy Prime Minister, Sir Geoffrey Palmer, became Minister for the Environment. A constitutional legal scholar, Mr. Palmer and a number of other key leaders seized upon the culture and spirit of reform. They conceived a plan to review and overhaul the complicated web of environmental and resource management legislation and to create one overarching statute that would comprehensively address all environmental media and land use issues. The lawmakers' drivers for reform were perhaps most plainly articulated in their Explanatory Note to the Resource Management Bill of 1989 (RM Bill). These included:

- Existing legislation did not prevent significant environmental degradation in terms of air, land, and water quality standards
- The absence of a consistent set of resource management objectives
- Arbitrary differences in management of land, air, and water
- Too many agencies involved in resource management with overlapping responsibilities and insufficient accountability
- Unnecessarily costly and complicated permitting procedures, often involving undue delays
- Ad hoc pollution laws that failed to recognize the physical connections between land, air, and water

[4] Memon 1993, p. 20

- Insufficient flexibility and too much prescription, with a focus on activities instead of end-results
- Maori interests and the Treaty of Waitangi were frequently overlooked
- Uneven monitoring of applicable laws
- Difficulties in enforcement

Perhaps most visionary was consideration of the need for long-term resource management objectives, which has been one of the weaknesses of the "command and control" era of environmental legislation. Filling this gap is at the center of many regulatory reform initiatives, and integration of a coherent set of objectives is key to making measurable improvements in environmental quality.

It is said that such wide-scale reform in New Zealand, comprising local government, state sector, and environmental and natural resource management reforms, was born of such a special set of circumstances that it could not happen again. Indeed, it has been noted that, "[c]ollectively, these reforms have precipitated the most radical changes in living memory to the public sector."[5] Others have speculated that the reforms in environmental and resource management would have eventuated regardless of the state sector and local government reforms, due to the maturing international environmental movement.[6] Regardless, it is clear that the same panoply of conditions that made it possible for wide-scale reform in New Zealand does not exist in California. In addition to the drivers identified above, a complete table of the drivers for reform in New Zealand is provided in Appendix C.

Building Consensus

Due to the popularity of government reform in the mid- to late-1980s, support for environmental and resource policy reform was gained relatively easily. By 1990, local government authorities were devoting most of their attention and energy to adapting to the dramatic changes resulting from the Local Government Act reforms. Prior to that, their preoccupation for survival meant they could not be bothered concerning themselves with the details of yet another massive reform effort, as was presented by the RMA. (In fact, some local authorities even welcomed the notion of increased functions and responsibilities under the proposed system, as long as it went hand-in-hand with increased financial support from central government.) To the extent that local government did focus on the resource management reforms, their efforts were primarily focused on commenting on the draft RM Bill rather than on actually preparing themselves to implement its terms. The business community had grown disenchanted with the complexity of the fragmented legislative framework, the cumbersome inefficiencies associated with having to obtain separate "consents" (i.e., permits) from a multitude of local authorities, and the general costs and delays associated with the consent application process.

To be fair, there were a number of groups that were not supportive of, or at least were unenthusiastic about, the RMA prior to its passage. Perhaps the most vigorous opponent was the mining industry, which strenuously (and ultimately successfully) fought for the exclusion of mineral resources from the Act's scope.[7] Federated Farmers, one of the most powerful political and lobbying entities in the private sector, has also been a long-term opponent of the RMA.[8]

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[5] Memon 1993, p. 23

[6] Williams 1997, p. 55

[7] The Crown Minerals Act 1991 was enacted to govern mineral resource rights and allocation, which were excluded from the RMA as a result of extensive lobbying by the mining industry. However, the environmental effects of mining activities, such as land use and discharges to air or water, are covered by the consent requirements and processes set forth under the RMA.

[8] A smaller, but similarly conservative association and vociferous opponent of the RMA is the New Zealand Business Roundtable. More progressive associations, such as the New Zealand Business Council for Sustainable Development,

However, many within the business sector simply failed to take great interest in the RMA – either in support of, or opposition to, the Act – due to a mistaken perception that it did not represent a significant shift from the prior system.

The environmental community, as represented by non-governmental organizations (NGOs), played a key role in bringing about the reforms in the RMA.[9] As was the case with the private sector, the environmental community had grown similarly disillusioned with the complexity of the legal system and with the government's ineffectiveness at protecting the environment and properly stewarding the country's natural resources. It was also tired of government making stealthy, unilateral decisions with no public involvement and no accountability for the environmental consequences.[10] Therefore, both business and the public interest communities were largely receptive to change.

At the outset of the process, the government established a "Core Group" of four individuals, administered through the Ministry for the Environment (MfE), with the mission of spearheading the effort by conducting broad public consultation to scope the need for and extent of reform. The process began by analyzing the purposes, objectives, and priorities for reform, as well as the degree to which environmental management should be addressed through public processes.[11] The consultation process involved a periodic newsletter providing updates on the reform effort, 32 issue-specific substantive discussion papers, a toll-free call in number for the public to express their views on the content of the reform, three rounds of public comment on discussion documents, and over 25 public workshops around the country.[12] A special Cabinet Committee of ministers, chaired by Sir Geoffrey Palmer, was created to oversee the activities of the Core Group, and to consider its recommendations for the reforms. Those overseeing the local government reforms also reported to this Cabinet Committee to ensure integration of the reforms.

The effort was the most extensive public consultation ever undertaken in connection with policy reform in New Zealand.[13] The process of consultation, drafting, review, and revision of the initial bill consumed approximately three years – a relatively short period of time by any standard for such sweeping legislative reform, especially considering the extensive public involvement and long-lasting support it generated. By the end of the process, the RM Bill had such broad-based support that it survived a change in government when the Labour Government was defeated by the more conservative National Party in 1990.[14] The National Party government appointed Simon Upton as Minister for Environment, and after seeking comment by a group of reviewers, he carried the RM Bill through the final reading stages in Parliament, and ultimately saw it enacted in 1991.[15]

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tend to represent businesses from multiple sectors rather than having a single industry focus, and have generally been less involved in RMA politics.

[9] In fact, some NGO representatives claim credit for initiating the RMA reforms by circulating a discussion paper regarding environmental administration that highlighted the inefficiency and ineffectiveness of the full platform of ad hoc environmental statutes and regulations in existence prior to the RMA (Wallace 1995).

[10] Memon 1993, p. 43

[11] Palmer 1995, p. 5

[12] Palmer 1995, pp. 6-8

[13] Palmer 1995, p. 7

[14] A number of interviewees indicated that the National Party's first choice was to terminate the reform process altogether and revert to the prior regulatory paradigm, but given the momentum of support, chose instead to move ahead with the RM Bill.

[15] Upton was Minister only for a brief time in the final stages of the RM Bill and through enactment of the RMA. However, soon after the RMA was enacted, Rob Storey became Minister for the Environment and served for two years. Upton reassumed his role as the Minister in late 1993.

The Rationalization of Government and Legislation

Prior to the RMA there were over 50 different environmental, resource, and land use statutes, and over 800 different authorities responsible for carrying them out. For a country the size and nature of New Zealand, many argued that this was extremely excessive, and inhibited efficiency, accountability, transparency, and accessibility. This historical phenomenon was confirmed by our interview respondents, who cited the rationalization of government and legislation as two of the most significant drivers for the RMA. These same elements have been similarly described as two of the greatest successes of the RMA. Thus, although the RMA may have come up short in numerous respects, it appears to have achieved the intended goals of rationalizing government and legislation.

Rationalization of Government

In the late 1980s, three central government authorities with primary responsibility for the environment and natural resources management were established. The Environment Act 1986, only twenty pages in length, created the MfE and the office of the Parliamentary Commissioner for the Environment (PCE), as well as several overarching environmental objectives that would serve as the basis for the mission of both of them (and eventually the purpose of the RMA). The Conservation Act 1987 created the Department of Conservation (DoC) and established as its objective the role of advocating and promoting the conservation of New Zealand's natural and historic resources.[16]

Prior to the creation of MfE, PCE, and DoC there were numerous central agencies charged with duties relating to the environment, most of which had a history of environmental modification (e.g., dams, forestry, development) perceived by many as fundamentally at odds with the objective of environmental protection. They included the Ministry of Works and Development, Commission for the Environment, Department of Lands and Survey, Ministry of Energy, and the New Zealand Forest Service, among others. This panoply of agencies was dissolved and their responsibilities integrated into those of the MfE, DoC, and PCE.[17]

MfE became the chief central government authority with responsibility for promulgating national environmental policy, and the PCE was established to serve as an independent watchdog, auditor, evaluator, and ombudsman that reported directly to Parliament. DoC became the chief agency charged with protection of the coast and conservation. Thus, central government underwent a massive "horizontal" rationalization by shrinking the number of different agencies and departments with authority over environmental issues.

The Local Government Act reforms of 1989 established three tiers of government in New Zealand – central, regional, and territorial – significantly rationalizing ("vertically") what had grown to become an incredibly complex and convoluted administrative structure. As discussed above, more than 800 separate governmental and quasi-governmental authorities were reduced to 12 regional councils (RCs) and 74 territorial authorities (TAs), frequently called district or city councils, including four unitary authorities (UAs) that have combined RC and TA duties and powers. During the reform process, the task of delineating the new spatial structure for local government was assigned to the Local Government Commission, which was mandated by Parliament to consider several factors, including: communities of interest; the efficiency and effectiveness of service delivery; conformity of boundaries as closely as possible to those used for the census; and conformity of the regional boundaries where possible to water catchments.[18] Today, the structure of local government in New Zealand typically consists of a dual model, where numerous TAs fall

[16] Williams 1997, p. 50
[17] The roles and responsibilities of these three central government authorities are reflected in Appendix D.
[18] Crichton 1988, as cited in Burton and Cocklin 1996

within the jurisdictional boundaries of a single RC, which is generally delineated upon geo-hydrological boundaries.

This rationalization resulting from the State Sector and Local Government reforms of the 1980s was not only intended to achieve consolidation and simplification of government, it was also intended to separate its regulatory and service delivery functions. It was an attempt to remedy certain conflicts that arose in governmental agencies responsible for performing both a regulatory or policy role and a service delivery or "production" role. For example, the Ministry of Works and Development was responsible for building dams and energy projects, but was also responsible for developing the regulations that would constrain that development by requiring permits, approvals, or potentially by prohibiting them altogether. This conflict of interest was resolved in the rationalization of government, by privatizing many of the service delivery, production, and development functions of government, and establishing MfE, DoC, and PCE to carry out the policy, regulatory, and enforcement functions.

Rationalization of Environmental Legislation

Like that of most other industrialized nations, environmental legislation in New Zealand was historically enacted in reaction to environmental problems as they became apparent. The result of such a decades-long, ad hoc process is typically a set of individual resource-related laws that lacks a cohesive, integrated structure or central management philosophy. This patchwork approach to regulation also tends to leave out coherent, integrated environmental protection or improvement goals or objectives. In this regard New Zealand had been consistent with the norm.

Once completed, the RMA represented an enhanced amalgamation of approximately 50 statutes that were in effect prior to 1991. It repealed 59 pieces of legislation and revoked 19 sets of regulations and orders. An additional 55 statutes and 2 sets of regulations were amended by the RMA. Contrary to the opinions of some critics, the RMA did not simply consolidate all the former statutes and re-name them under one combined title. Rather, it established a common set of processes by which all environmental decision-making would be made, and established a single framework for environmental planning and policy to which central, regional, and territorial authorities would be bound. For example, resource consent application processes, submission timeframes, and standing provisions, all of which had varied significantly under separate media-specific statutes (i.e., Clean Air Act, Water and Soil Conservation Act, etc.), were harmonized.

Although it has taken ten years for government and practitioners to gain a working understanding and appreciation of the new system, the vast majority of stakeholders in New Zealand agree that the rationalization of environmental statutes has had many benefits, the most notable being the efficiency gains associated with having a common set of processes, a single permitting authority, and uniform strategic planning framework. Prior to the RMA, practitioners and resource users had to learn distinct procedures and familiarize themselves with different planning documents for each environmental medium. Other benefits of the rationalized legislative framework include:

- Case law from the Environment Court is more complete and relevant to a larger population of resource users and government, and;
- As amendments or modifications to the legislation are considered, cross-media transfers are more likely to be identified and avoided by virtue of the Act covering land, air, water, and coastal management, thus resulting in more integrated environmental management.

Worth noting is that despite the numerous benefits that have been realized through the rationalization of environmental legislation, the concept was somewhat short lived in New Zealand. Since the passage of the RMA, a number of environmental statutes, such as the Hazardous Substances and New Organisms Act, Biosecurity Act, and Ozone Layer Protection Act,

have been enacted (and are administered outside the RMA), indicating a reversion to fragmentation of policy.[19] There are numerous socio-political factors that have led to this outcome and that we will not discuss here. Nonetheless, it appears that although the RMA was recognized as a beneficial rationalization of the legislation that pre-dated it, New Zealand has not perpetuated the concept by incorporating into the RMA new environmental challenges as they emerge. This issue is discussed in detail in Chapter II.

New Zealand's Environmental Legislative Framework

There are three legislative enactments that today comprise the fundamental (though not exclusive) framework of environmental and resource management law in New Zealand – the Environment Act 1986, Conservation Act 1987, and Resource Management Act 1991. As noted above, the first two Acts led to the establishment of MfE, the PCE, and DoC. However, the Environment Act is also important because it represented the first expression of sustainability values in New Zealand legislation. In fact, many of the conceptual underpinnings that were subsequently embodied in the purpose of the RMA (Section 5) were set forth in the third objective of the Environment Act. That objective was to:

> Ensure that, in the management of natural and physical resources, full and balanced account is taken of –
> (i) The intrinsic values of ecosystems; and
> (ii) All values which are placed by individuals and groups on the quality of the environment; and
> (iii) The principles of the Treaty of Waitangi; and
> (iv) The sustainability of natural and physical resources; and
> (v) The needs of future generations

Overview of the Resource Management Act 1991

Following on the heels of the Environment Act 1986 and Conservation Act 1987, the RMA ultimately became the sum and substance of environmental and resource management law in New Zealand. Over 450 pages in length, the RMA sets forth an "effects-based" procedural framework for strategic planning for land use, subdivision, air quality, water quality and quantity, soil and pest management, forestry, coastal management, and the control of natural hazards. It also establishes administrative and judicial processes for resource consents, enforcement, alternative dispute resolution, litigation, appeals, and specific mechanisms such as water conservation orders, heritage orders, and "designations" which can be applied to reserve land for future public projects such as schools, hospitals, and roads. The strategic, administrative, and judicial processes established by the RMA provide for broad public participation.

In its simplest form, the RMA can be considered a process statute that first lays out the general purpose of sustainable management of resources and then supports that goal by delineating responsibilities among stakeholders and establishing a cohesive set of required processes that steer local strategic planning, as well as local decision-making toward sustainable outcomes on a case-by-case basis. Under the RMA framework, environmental decision-making is predominantly driven by local governments and the community stakeholders that are most affected.

[19] The Fisheries Acts of 1983 and 1996 were never incorporated into the RMA, and continue to stand alone. The Fisheries Acts govern the management of fisheries (e.g., quota systems), although the "effects" of fisheries are addressed through the RMA. There is a court case currently pending that is seeking to resolve disputes regarding the interaction of the Fisheries Acts and the RMA.

Purpose and Principles

Consistent with the objectives of the Environment Act 1986, the purpose of the RMA "is to promote the sustainable management of natural and physical resources."[20] In addition to the express purpose stated in Section 5, the balance of Part II (Sections 6, 7, and 8) specifies a variety of additional matters that must be recognized and provided for by those exercising functions under the Act. Section 6 lists "matters of national importance," which include: the preservation of the natural character of the coastal environment; protection of outstanding natural features and landscapes; areas of significant indigenous vegetation and habitats of indigenous fauna; maintenance and enhancement of public access to coastal marine areas, lakes and rivers; and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, and spiritual beliefs.

Section 7 specifies additional "other matters" which must be particularly regarded, including: kaitiakitanga (the Maori principle of guardianship or stewardship based on the nature of the resource itself); efficient use and development of natural and physical resources; maintenance and enhancement of amenity values, intrinsic values of ecosystems,[21] recognition and protection of the heritage values of sites, buildings, places, or areas; maintenance and enhancement of the quality of the environment; any finite characteristics of natural and physical resources; and the protection of the habitat of trout and salmon. Section 8 requires that the principles of the Treaty of Waitangi must be taken into account.

A New Hierarchy for Strategic Environmental Planning

The planning framework established by the RMA consists of a tiered hierarchy of documents, which corresponds to the tiered structure of government established by the Local Government Amendment Act of 1989. The framework is depicted in Figure 1.

Figure 1: RMA Strategic Planning Hierarchy

Central Government ---	National Policy Statements National Environmental Standards National Regulations
Regional Councils ---	Regional Policy Statements Regional Plans
Territorial Authorities ---	District Plans

National Policy Statements and Environmental Standards

The Minister for the Environment may, within his or her discretion, recommend that National Policy Statements (NPSs) be adopted. The purpose of NPSs is "to state policies on matters of national importance that are relevant to achieving purposes of the Act."[22] The RMA seeks to make the NPS process as transparent as possible, by specifying that MfE must provide public notice of the intent to prepare one, as well as consider public submissions on proposed NPSs.[23] The RMA does not actually mandate the production of any NPSs, with the exception of a New Zealand

[20] RMA, Section 5. For the full text of Section 5, see Chapter II page 23 of this report.
[21] "Intrinsic values," in relation to ecosystems, means "those aspects of ecosystems and their constituent parts which have value in their own right, including – (a) their biological and genetic diversity; and (b) the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience."
[22] RMA Section 45
[23] RMA Sections 46 to 50

Coastal Policy Statement, which to date is the only NPS that has been produced under the RMA. Recently, an effort has begun to develop a National Policy Statement on Biodiversity.

The RMA also provides central government with the authority to promulgate National Environmental Standards (NESs) and Regulations.[24] Such standards and regulations may be developed primarily for the purpose of prescribing technical standards. Areas specifically listed in the RMA as potential subjects of technical standards include noise, contaminants, water quality, level, and flow, air quality, and soil quality. Standards or regulations may also be promulgated for the purpose of prescribing the methods of implementing technical standards. As with NPSs, the Act provides for adequate public notice and opportunity to comment on proposed standards or regulations. To date the only national regulations that have been promulgated by central government are those for marine pollution. Central government has produced numerous "guidelines" for matters such as air and water quality, although these are not binding on local governments.

Regional Policy Statements and Plans

The RMA requires that each regional council prepare a Regional Policy Statement (RPS). The purpose of the RPS is "to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region."[25] The Act instructs that RPSs may not be inconsistent with any NPS, and also requires that RPSs specifically state, among other things, the:

- Significant resource management issues of the region
- Objectives sought to be achieved by the RPS
- Policies in regard to those significant issues and objectives
- Methods used or to be used to implement the policies
- Principal reasons for adopting the objectives, policies, and methods selected
- Environmental results anticipated from implementation of the policies and methods
- Processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or regions
- Procedures used to review the matters above and to monitor the effectiveness of the RPS as a means of achieving its objectives and policies

A regional council may elect to prepare one or more Regional Plan(s) for the purpose of assisting it in carrying out its functions. Similar to the requirements for an RPS, any Regional Plan must state the objectives of the plan, policies and methods for achieving the objectives, reasons for the plan, anticipated environmental results, and processes for handling cross-boundary issues, as well as specifying the information that needs to be submitted with resource consent applications. Regional Plans may include rules that have the force of regulations, and which prohibit, regulate, or allow certain activities. In setting such rules, the regional council must have regard to the actual or potential effects on the environment of activities, and therefore may provide for permitted, controlled, discretionary, non-complying, and prohibited activities. Because of the national significance of the coast, a Regional Coastal Plan for each region is mandatory under the RMA.

District Plans

Each TA must produce at least one District Plan, with the purpose of assisting it in carrying out its functions in order to achieve the purpose of the RMA.[26] The requirements of District Plans are almost identical to those for Regional Plans, though the scope is limited to the territorial

[24] RMA Sections 43, 44, and 360
[25] RMA Section 59
[26] RMA Sections 72 and 73

authorities' roles, responsibilities, and jurisdictional boundaries. District Plans must not be inconsistent with any NPS, nor RPS or Regional Plan(s) for the region within which that district is located.

An overview of the responsibilities of each tier of government under the RMA is provided in Appendix B. Further analysis of how central and local government performed in the execution of their respective responsibilities is provided in Chapter IV.

Other Key Features of the RMA

Resource Consents and the Assessment of Environmental Effects

Similar to procedures under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the RMA established a permitting system based on an evaluation of environmental impacts. Unless a project proponent determines that the effects[27] of a given project would comply with all standards set forth in the applicable regional and district plans, the proponent will likely be required to obtain one or more of the following types of resource consents: land use; subdivision; water; discharge; or coastal. Accompanying the proponent's application for a resource consent must be an Assessment of Environmental Effects (AEE) of the proposed project.[28] Once a resource consent application is filed, the council must determine whether the application should be subjected to public notice, review, and comment.[29] Once an application has been publicly notified, there are no "standing" limitations on who may submit comments on the application – unlike prior legislation under which only parties who were "directly affected" by a project had a right to oppose or submit comments on it.

The Environment Court

New Zealand has an entire court system designated solely for environmental, resource management, and planning cases. Its six judges have extensive qualifications in the field. The Environment Court is equivalent in status to the district court system in the U.S. Standing to challenge proposed policies, plans, and resource consents was substantially broadened by the RMA, which has led to a significant backlog of up to 3,000 cases. Appeals from the Environment Court are directly to the country's highest court, the equivalent of the U.S. Supreme Court.

Summary of the Effectiveness of the New System

In concept at least, the RMA is indeed a remarkable piece of legislation. It sets forth the overarching principle of "sustainable management" to guide New Zealand in making resource and land use decisions, and establishes the processes through which this principle is to be realized. In addition to the principle of sustainable management expressly stated in the Act's purpose, there are numerous other underlying principles upon which the legislation was built. It is founded upon a vision of transparent and accountable government, with open processes for the public and resource users. It includes efficiency across all levels of decision-making, as evidenced in part by the attempt to rationalize government and legislation discussed above.[30] In summary, the fundamental principles underlying the Act that we have chosen to analyze in detail in the following chapters, are:

- Incorporating social and economic considerations in environmental policy

[27] See Chapter II page 23 for the RMA's definition of the term "effects."
[28] The AEE is similar in theory to the Environmental Impact Statement (EIS) under NEPA and the Environmental Impact Report (EIR) under CEQA.
[29] Chapter V includes a detailed analysis of public participation and the notification process.
[30] Efficiency is an important underlying principle of the RMA, and is one that is woven throughout our analyses. Because of its applicability to so many issues, we address it throughout the report rather than in any one chapter.

- Integrated management of environmental media
- Decentralization of decision-making
- Participatory democracy
- Flexibility for the private sector in achieving environmental performance and government accountability in policy-making.

Part of the genius of the RMA lies in its interlinking (and extensive) procedural framework. The cohesive set of structures and required processes is designed to deliver the above principles, steering toward sustainable outcomes through local decision-making on a case-by-case basis. However, the potential of the RMA to realize its intention and vision has not yet been fulfilled due to numerous failings and obstacles in implementation (and perhaps a few subtle aspects of the Act itself).

Worth noting at the outset is that although the vast majority of participants in our study believe that protection of resources and environmental quality has improved under the RMA, there remains little empirical evidence to support their claim. This is largely due to the nascent stage of comprehensive and consistent monitoring programs and information systems for environmental and resource quality data.[31] Thus, it is impossible to determine in quantifiable terms how effective the Act has been at achieving more sustainable management of natural and physical resources. According to some observers, another ten to twenty years may be required before improvements in environmental quality resulting from the RMA can be accurately assessed.

It is also worth noting that the causes of implementation failures are difficult, if not impossible, to determine with certainty. A number of intended goals and principles of the RMA have either not worked well in key areas to date, or remain missing from the RMA framework altogether. The country has been wrapped in debate regarding some of these aspects, though the degree to which the debated problems stem from transitions in practice versus shortcomings inherent in the legislation itself remains an open question.

Nonetheless, it is the authors' belief that much *can* be learned from the successes and failures of the Act to date. The remaining chapters of this report will focus on the lessons that California can learn from New Zealand in terms of successes and failures that have actually resulted from the RMA to date, as well as those anticipated in accordance with the theory and structure of the Act but which have yet to be realized due to the failures in implementation. However, prior to our detailed analyses, an overview of these successes and failures, as perceived by New Zealand stakeholders, is provided below.

General Successes & Failures

Two of the most commonly heralded successes of the RMA are the articulation of an overarching purpose of sustainable management of resources, as well as the rationalization of government and legislation. In addition, many of the key procedural aspects of the statute have been addressed well over the ten-year history of the RMA's implementation. For example, the roles, responsibilities, and relationships among the various levels of government, resources users, and the general public are fairly well defined, subject to a few minor clarifications that are being sought in current legislative amendment proposals. The procedures for providing input into the planning process and applying for resource consents are relatively clear and effective, albeit according to some, still too time consuming.

As for perceived failures with the RMA, they can often be traced back to unrealistic expectations of stakeholders, which were created at the outset through irreconcilable promises to each. The

[31] This issue is discussed in greater detail in Chapter VI.

private sector was lured in by an effects-based regulatory approach that was to be more flexible and less prescriptive. In theory, this would lead to a faster and cheaper permitting process. However, other deliberate policy objectives of the Act included the introduction of environmental impact reviews and the attempt to internalize environmental costs – objectives that conflict directly with private sector efficiency. The environmental community and the general public, on the other hand, were promised more involvement in planning and environmental decision-making. This was intended to lead to increased transparency in government decision-making, but also allegedly carried with it the side effect of slowing down the planning and consent processes, with obvious economic impact on the private sector, and the potential for increasing environmental risk.

Since enactment, the private sector has consistently voiced dissatisfaction with costly and time-consuming permitting processes, a lack of certainty, consistency, and clarity in the application of environmental standards and rules by local government, and abuse of the system by trade competitors. However, industry has also recognized some tangible benefits, such as an increase in access to alternative dispute resolution, improved flexibility, and greater openness and receptiveness in government policy setting and rule-making. Most other stakeholder groups would agree there is at least partial validity to the private sector's complaints.

Increased opportunities for public participation were also cited as a benefit of the RMA. NGOs were perhaps the sharpest critics of both central and local government in failing to properly implement the Act: the former for failing to provide sufficient funding and guidance, the latter for lacking the political will and technical capacity. Tables 1 and 2 detail the perceived successes and failures of the RMA for all stakeholder groups, including different levels of government and academia.

Current Debates and Developments

There are numerous developments currently underway in New Zealand that seek to address various perceived weaknesses in the Act and its implementation, including several of those discussed above as failures. We raise these here to give you a glimpse of where the RMA may be headed in New Zealand in the years to come. In this sense, our Overview chapter begins by looking back into history and ends by looking forward to the future. In addition to the developments described below, Table 3 provides a summary of our interview respondents' impressions of where the RMA will be heading over the next decade.

RMA Amendment Bill

Subsequent to the RMA's enactment in 1991, there have been five amendments, some major, but mostly minor and technical in nature. Since 1998, the most recent Resource Management Amendment Bill has been in development. If adopted, the Amendment Bill could result in several significant changes to the RMA. First, the Bill seeks to limit the public notification provisions. This change has been advocated, primarily by government and the private sector, to address the long-standing complaint that the public participation and open standing provisions of the RMA are too broad and result in costly delays. The environmental community, however, opposes this amendment on the grounds that it would substantially restrict their ability to receive notification of controversial proposals.

Another modification contained in the Amendment Bill would enable local government to refer decision-making on resource consent applications to qualified private commissioners. This measure is intended to further address concerns of inefficiency associated with the current procedures in the Act, although it is contested by the environmental community who believe it would lessen government accountability for resource consent decisions. The Amendment Bill will

come before the House of Representatives again early in 2002, and depending on the content of the Select Committee's report, the final amendments may be adopted by the end of 2002.

Table 1: What Have Been the Successes of the RMA?

General Themes and Individual Responses	NGO	CG	LG	Priv	Ac/CRI	Total
Number of Interviewees Asked this Question	5	8	13	10	5	41
Consistent, Comprehensive, and Efficient Processes						
Rationalization of lesiglative framework by consolidation into one statute	1	3	4	5	2	15
More integrated management of different media (at least in theory), including previously unregulated areas	1	4	3	1	-	9
Common set of planning processes across the country	2	1	3	1	2	9
More efficient in terms of "one-stop-shopping" for resource consents	1	-	2	2	1	6
Rationalization of government agencies and departments	1	-	-	2	1	4
Provides for greater flexibility and innovation in achieving envtl outcomes	-	-	2	1	1	4
Greater focus on Alternative Dispute Resolution/ facilitated negotiation and mediation to resolve disputes instead of litigation	-	1	1	-	1	3
Raised Environmental Consciousness						
Ethos of "sustainable management" was given a legislative basis	5	4	4	1	-	14
New "effects-based approach" required parties to think about the effects of their activities	2	5	4	2	1	14
Raised public awareness of environmental issues and the interconnectedness of ecosystems	-	2	3	6	-	11
Inclusive, Accountable, and Transparent Decision-making						
Processes provide increased public participation opportunities	4	1	6	1	2	14
Increased public scrutiny, awareness and transparency resulted in greater accountability for decisions	-	1	3	1	1	6
Empowerment of communities and Maori, elevation of Maori issues	1	1	1	-	1	4
Requires government to consider more cost-effective alternatives to regulation	-	-	3	1	-	4
Required government to analyze the environmental effects of policies and plans	-	1	-	-	1	2
Improved Environmental Performance/Outcomes						
Has resulted in improvement in environmental performance	-	2	2	1	-	5
New liability scheme has improved corporate behavior	-	2	1	2	-	5
Noteworthy random responses						
Internalization of environmental costs; "polluter-pays" principle	-	2	-	-	-	2
Long term efficiency gains due to public participation (i.e., better decisions made up front)	-	-	1	-	-	1
Provides for community based planning	-	-	1	-	-	1
Locked in the catchment (watershed) based governance structure	-	-	-	1	-	1
Reduced costs resulting from new consent process (ability to non-notify)	-	-	1	-	-	1
Resistance to any prolonged campaign of opposition; longevity resulted from extensive public consultation at the outset	-	1	-	-	-	1
RMA has served as effective marketing tool	-	-	-	1	-	1

Key:

Ac/CRI = Academia & Crown Research Institutes

CG = Central government

NGO = Non-governmental organization

Priv = Private sector

LG = Regional Councils (includes unitary authorities and territorial authorities)

Table 2: What Have Been the Failures of the RMA?

General Themes and Particular Responses	NGO	CG	TA	RC	Priv	Ac/CRI	Total
Number of Interviewees Asked this Question	5	7	6	7	11	4	40
Too Little Central Government Direction/Support							
Lack of policy direction and technical guidance from central government	3	2	3	4	2	1	15
Failure of CG to build capacity in LG (e.g., education, skills workshops, etc.)	1	-	-	1	-	1	3
Failure to provide adequate funding for implementation - "unfunded mandate"	-	1	-	1	1	-	3
Failure to create infrastructure for the sharing of best practices	-	2	-	1	-	-	3
Local Government Lacked the Expertise/Capacity to Implement							
Slow/poor implementation at local government level	1	3	-	2	3	-	9
Councils lacked capacity, skills, education; continued to rely on former planning mindset	1	2	-	1	1	1	6
"Threw the baby out with the bathwater" - abandoned some good tools/knowledge developed under the Town & Country Planning Act regime	-	1	1	1	1	-	4
Processes Too Costly, Cumbersome, and Slow to Implement							
Public participation increased costs and delays	1	3	3	3	2	-	12
Plans/policy statements are too complex, and do not establish clear vision or performance objectives	-	3	1	-	3	-	7
Act Itself Too Vague or Conceptually Flawed							
Too all-embracing/ general/ vague; tends to be "all things to all people"	1	-	2	-	5	1	9
People haven't used common-sense approach to interpretation and implementation	-	-	1	2	-	-	3
Doesn't truly provide framework for integrated management (hazardous substances, minerals, fisheries, etc. excluded)	-	-	-	2	1	-	3
Decision-making still largely subject to political influence	1	-	-	-	-	1	2
Failed to address and resolve the issue of private property rights	-	-	-	-	2	-	2
Public Participation Flawed/Limited							
Lack of legal aid (financial assistance) hindered public participation	4	-	1	-	-	-	5
Non-notification of permit applications has been a hindrance to public participation	3	1	-	1	-	-	5
Abused by trade competitors	1	1	1	1	1	-	5
Abused by small neighborhood groups/individuals	-	-	-	1	1	-	2
Plan-making process is flawed; does not engage the community to establish a "vision"	-	2	-	-	-	-	2
Public participation occurs too late in the process	-	1	-	-	1	-	2
Submissions from smaller community groups are not given much weight	1	-	-	-	-	-	1
RMA does not actually change people's attitudes and behaviors at the grassroots level	-	-	1	-	-	-	1
Transition to Effects-Based Approach Problematic							
Hasn't worked well in urban/land use context (e.g., amenity values)	-	1	1	-	1	-	3
Efficiency gains were not realized, due to requirement of comprehensive assessment of environmental effects	-	3	-	-	-	-	3
Haven't truly grasped the effects based approach, or dealt with cumulative effects	-	-	1	1	-	-	2
Spinning off the CRIs resulted in less scientific information available, making implementation of the effects-based approach more difficult	1	1	-	-	-	-	2
Transition to the RMA regime not well managed							
Stakeholders suffered from "consultation fatigue" after Act's passage	-	-	-	-	1	1	2
People's expectations were too high/much; they thought that consultation meant their views would be reflected in final decisions	-	-	-	1	1	-	2
Should have phased the RPS/District Plan deadlines, to enable regions/districts to work together in their development	-	-	1	-	-	-	1

Key:

Ac/CRI = Academia & Crown Research Institutes

CG = Central government

LG = Local government

NGO = Non-governmental organization

Priv = Private sector

RC = Regional councils (includes unitary authorities)

TA = Territorial authority

Table 3: What Changes Will or Should Happen in the Next 10 Years?

General Themes and Individual Responses	NGO	CG	TA	RC	Priv	Ac/CRI	Total
Number of Individuals Asked this Question	4	7	7	6	8	2	34
More sophistication/better performance by local government							
The next generation of plans and policy statements will be higher quality, reflecting better cooperation, sharing of best practices among LG, and improved communication of info to the public	-	4	4	2	2	1	13
LG will become more adept at using all the "tools in the toolbox;" non-statutory instruments will proliferate	-	1	-	1	-	1	3
More attention will be given to monitoring	1	5	-	-	1	-	7
Central government performance will improve							
CG will produce more guidance for LG (NPSs, standards, etc.)	2	-	-	1	3	-	6
CG will play a greater role in the sharing of best practices, and education & outreach	-	4	-	-	-	-	4
CG will provide legal aid to improve public participation	2	-	-	-	1	-	3
A CG regulatory and/or enforcement agency should be formed	1	1	-	-	-	-	2
Mixed views on future changes to the legislation							
Only minor, technical changes will be made in next amendment of the Act	2	2	1	1	3	-	9
The Act should not be amended significantly. Effort should instead be applied to implementation.	-	1	2	-	2	-	5
There will likely be another major, comprehensive review	1	1	1	-	-	-	3
Another change in government could result in more conservative amendments	-	-	-	1	2	-	3
Amendments will integrate other legislation (e.g., fisheries, hazardous substances, genetically modified organisms, biodiversity, etc.)	1	-	-	-	1	-	2
More structural/functional changes needed in local government							
Still too many terratorial authorities, need to rationalize further	1	4	1	2	-	-	8
Conceptual shift in local government							
There will be a shift back toward a more hands-on prescriptive, planning approach	-	2	-	1	-	-	3
Clarifying definitions and purpose will serve to give more weight to social and economic factors in environmental decisions and planning	-	-	-	1	2	-	3
Case law will continue to grow to provide more clarity							
Courts will address property rights issues	-	-	-	-	1	1	2
Courts will continue chipping away at procedural issues, not addressing substantive issues	-	-	-	1	1	-	2
Notable Random Responses							
Local government reforms will effect the RMA (e.g., clarify Treaty of Waitangi matters, add another layer of "community strategic plans")	-	-	1	2	1	-	4
Supporting legislation is needed to address other aspects of sustainability (e.g., energy efficiency, transportation, waste reduction)	-	-	-	-	1	-	1
Understanding of the effects-based approach will improve	-	-	-	1	-	-	1
There will be greater integration of consents and hearings	-	1	-	-	-	-	1
Limited notification will be positive development	-	-	-	-	1	-	1
There will continue to be a lack of political will for implementation until there is a crisis, or scarcity is reached	-	-	-	-	1	-	1
Regional plans will become more quantitative than qualitative due to an increase in monitoring information	-	-	-	-	1	-	1
CG will address its shortage of funding & resources through Local Government Act reforms and further devolution to LG	-	-	1	-	-	-	1
UAs should be re-focused on RC functions instead of TA functions	-	1	-	-	-	-	1
RCs should be re-focused on balancing "3Es" instead of just ecological/biophysical matters	-	1	-	-	-	-	1

Key:
Ac/CRI = Academia & Crown Research Institutes
CG = Central government
LG = Local government
NGO = Non-governmental organization
Priv = Private sector
RC = Regional councils (includes unitary authorities)
TA = Territorial authority
UA = Unitary authority

Local Government Reforms

The Local Government Act is similarly undergoing another substantial amendment process. The proposed amendments, still being worked out by the Department of Internal Affairs, will likely create an additional layer of strategic planning for which local government will be responsible. The LGA amendments would require local authorities to prepare a "Community Plan" – a long-term (10 year) strategic plan for the community of interest, which could be a city, district, combination of both, or an entire region. Some believe that the Community Plan could serve to provide the "big picture" or overarching vision and goals of the community, while the regional policy statements, and regional and district plans tend to focus more on rules and regulations regarding environmental media, resources, and land use.

Ministry for the Environment and Local Government Initiatives

The MfE has undertaken several new initiatives designed to address weaknesses in implementation of the Act. First, a new legal aid program funded and administered by MfE has commenced to provide limited financial assistance to community organizations and environmental groups for cases brought under the RMA in the public interest. The funds are directed primarily at groups seeking to obtain legal advice and technical expertise during court challenges. Second, MfE, in collaboration with Local Government New Zealand (LGNZ) has created an Internet-based best practices database, entitled "Quality Plans," to assist local governments in carrying out their responsibilities under the RMA. (http://www.qualityplanning.org.nz)

This development is seen as a long-overdue effort to help build capacity in local government. LGNZ has also independently developed several other web-based resources, including an RMA enforcement manual, a strategic planners' guide, and a guide to administrative charging for resource consent processing. Third, over the past few years, MFE has spearheaded a national indicators program, as part of an attempt to address the information and monitoring shortfall in New Zealand.[32]

Findings and Conclusions

Three years of stakeholder consultation, outreach, and education in New Zealand created a momentum and public expectation that enabled the reforms to withstand political turnover and bureaucratic tendencies to revert to the status quo. While individual leadership was a key factor in the initiation of the RMA, it appears that a confluence of interests that recognized the need for change was equally important.

New Zealand's rationalization of government and legislation has resulted in greater government accountability in decision-making, as well as an environmental management framework that is more efficient and easily understood by the regulated community and general public. A common set of procedures governing permitting, planning, and public participation that applies across the country has created uniformity and consistency, leading to efficiency gains. In particular, rationalization of local government led to more efficient permitting procedures, as fewer authorities and permits are involved in a given development project. A uniform structure and function for government across the country has improved the public's grasp of its role and relevance.

[32] Chapter VI discusses the MfE's indicator program, as well as New Zealand's environmental monitoring deficiencies in greater detail.

Lessons for California

An extensive and ongoing stakeholder and public outreach campaign would be an effective strategic mechanism to ensure that a long-term sustainability initiative survives California's political process. Stakeholder expectations essentially create an "insurance policy" that protects long-term policy reform initiatives from changes in elected government. Without that expectation, political whims may well undermine the likelihood of a long-term strategy's success.

While a daunting challenge, California must begin the process of rationalizing both its government structure and regulatory system. A modest first step would be to initiate a wide-scale, participatory review to identify opportunities for rationalization that would increase efficiency and effectiveness, while providing better, or at a minimum the same, level of environmental protection assurance.

II. "Sustainability" and the RMA

New Zealand may have been the first country in the world to enshrine the concept of sustainability into national law when the RMA was enacted in 1991. In at least one regard the RMA can be seen as a major accomplishment: it provided a precedent-setting comprehensive legal framework for establishing environmental management objectives and standards that are based on "biophysical realities," as well as on social and economic factors and the consideration of future generations. In the time leading up to the RMA's passage, the concept of "sustainable development" dominated policy discussions around the globe. However, examples of the concept actually being operationalized were almost nonexistent then, and remain scant even today. With the passage of the Act, New Zealand attempted to move sustainability from an abstract notion to an integrated suite of policies and processes that shape how communities are planned, natural resources are managed, heritage and cultural values are institutionalized, and citizen concerns are incorporated into government decision-making.[33]

New Zealand has not reached a state of "sustainability," or perhaps even fully grasped the fundamental concept at either the community or societal levels. However, some have characterized sustainability as a journey, not an endpoint, and in this regard New Zealand's experiment under the RMA can be lauded as a significant first step in the right direction. If nothing else, New Zealand boldly and bravely leapt into uncharted waters. And while the collective commitment to working toward sustainability may have existed in the early 1990s, the practical experience on how to do this was understandably lacking.

In this chapter, we describe the legal and political context in which New Zealand's framework for sustainable management was developed. We also analyze the nature and scope of sustainability, and assess the implications of New Zealand's definition of sustainability for the way in which the RMA has been implemented over the last decade. We conclude with lessons that California can learn should it attempt to pursue a framework for sustainability that suits its own needs.

Context for the Paradigm Shift to Sustainable Management

When compared to other industrialized countries, it is interesting to note that as of the early 1980s, New Zealand had a relatively underdeveloped "command and control" environmental regulatory system. The country's environmental management approach was poorly defined, its government agencies lacked environmental policy coordination, effective citizen participation in policy formulation was virtually absent, and pollution control standards were almost non-existent.[34]

It can be argued, therefore, that with the RMA New Zealand jumped from being somewhat of a laggard regarding its environmental regulatory structure (as compared to other nations in the industrialized world) to the head of the class, and thus the adjustment to the new paradigm has been understandably slow and painful. Within this context, it is not surprising that the full dose of sustainability enshrined in the RMA has been such a shock to New Zealand's collective psyche over the last ten years of the Act's implementation.

Also worth noting is New Zealand's divergence from broader discussions of sustainable development that were occurring at the international level in the late 1980s and early 1990s. At the time (and still today), the most commonly accepted definition of "sustainable development" was created by the Brundtland Commission in its 1987 report *Our Common Future.* In that report, sustainable development is defined as "development that meets the needs of the present without

[33] Furuseth and Cocklin 1995, p. 246
[34] OECD 1981, p. 27; Furuseth and Cocklin 1995, p. 248

compromising the ability of future generations to meet their own needs."[35] This definition is consistent with the approach adopted in Agenda 21, which was crafted during the UNCED 1992 Earth Summit at Rio de Janeiro. Agenda 21 also suggests that sustainable development requires an integrated approach to meeting social equity, environmental, and economic needs, commonly referred to today as the "Three Es" (3Es) of sustainability. In developing and enacting the RMA, however, New Zealand elected to take a narrower approach toward sustainability, one that has focused more, if not exclusively according to some, on environmental management rather than the social and economic components of the sustainability equation.

In New Zealand, the term "sustainable management" was chosen over "sustainable development" due to an aversion to the latter term from a surprising range of constituents. For example, the Treasury was averse to the term sustainable development because it feared it would lead to social engineering in land use planning and undue interference with the country's economic development, a threat that ran counter to the Treasury's extensive efforts at the time to roll back government functions. Environmental NGOs, on the other hand, were worried that the "balancing" of the 3Es implied by the term sustainable development would result in the environment being traded-off in favor of the economy. They also feared that the term would be misunderstood by the lay New Zealand community, which was unfamiliar with the international literature and policy discourse on the subject.[36] Regardless of the reasons, New Zealand's departure from the 3Es thinking predominant in discussions of the time, and represented in Agenda 21, has important implications for understanding the pursuit of sustainability in New Zealand today.

Interpreting Sustainable Management

Section 5 of the RMA sets forth the Act's visionary overarching purpose – the "sustainable management of natural and physical resources." All the stakeholder groups we interviewed during our tenure in New Zealand found significant value in having national legislation that articulates an overarching principle of sustainable management of resources. Some saw this value in terms of having a statutory basis for arguments that environmental protection should prevail over countervailing considerations in any dispute during implementation and interpretation of the Act. These commentators, it is perhaps fair to say, saw the RMA's purpose statement as a "sword" that could be wielded when government or private party action was perceived to be in conflict with its expression. There was also broad agreement among our interviewees that a benefit of the RMA's overarching purpose has been the instillation of a heightened environmental ethos in New Zealand culture, particularly in New Zealand's planning and environmental policy communities.

Ironically, however, upon closer scrutiny it appears that after ten years of RMA implementation there is not, nor has there ever been, consensus among New Zealand stakeholders as to what sustainable management actually means in practice. Indeed, since the RMA's enactment, there has been ongoing debate regarding the law's fundamental purpose. Understanding the issues underlying the debate surrounding Section 5 is key to understanding why the country has struggled both to agree upon the scope and meaning of sustainability, and consequently, to implement the Act effectively and efficiently. The following is our recount of New Zealand's debate regarding Section 5 – the meaning of sustainable management.

Part II Section 5 of the RMA can be considered the heart of the Act. Subpart (1) of the Section sets out the statute's purpose, which is "to promote the sustainable management of natural and physical resources."

[35] WCED 1987, p. 8
[36] Wallace 1995, p. 10

Section 5(2) goes on to define sustainable management as:

> [M]anaging the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while-
> a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
> b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
> c) Avoiding, remedying, or mitigating any adverse effects[37] of activities on the environment.

For purposes of interpreting the final clause of Section 5(2), it is important to also know that the Act defines the term "environment" as including:

> a) Ecosystems and their constituent parts, including people and communities; and
> b) All natural and physical resources;[38] and
> c) Amenity values; and
> d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters

Considered the most significant, Section 5 is also the RMA's most controversial provision, and has been since prior to its enactment. The terminology used in Section 5 would appear to encompass the biophysical aspects of the environment, as well as social, cultural, and economic dimensions. However, despite the express inclusion of social and economic factors in the purpose of the Act and the definition of environment, New Zealand has been caught in a protracted, and according to some a largely academic, debate regarding the scope of what the Act meant to capture with this language. Political historians might begin by attributing this controversy to the fact that two ideologically opposed governments developed portions the RMA. The Labour Government developed much of the legislation, but at the 11th hour the legislation was taken over by the newly elected National (conservative) Government who put a new spin on the intent of the Act.

The debate over the interpretation of sustainable management and the scope of the corresponding definition of environment has largely centered upon the relation of the anthropocentric "managing for human well-being" concept in the first part of sub-clause 5(2) to the subsequent environment-oriented sub-clauses (a) through (c). The two concepts are conjoined by the word "while" and New Zealand linguists and scholars have gone as far as to analyze the operation of that term extensively.[39] Some argue that the sub-clauses following the "while" must be given primacy over and act as constraints upon the human (social and economic) component, and others argue that the environmental sub-clauses are secondary.

As a whole, Section 5 appears to reflect the intention to at least recognize, if not address, the 3Es of sustainability. However, disparate views of what Section 5(2) actually entails persist. Generally, there are two schools of thought regarding the intent of Section 5 and the definition of

[37] Section 3 defines "effect" as including: a) Any positive or adverse effect; and b) Any temporary or permanent effect; and c) Any past, present, or future effect; and d) Any cumulative effect which arises over time or in combination with any other effects – regardless of the scale, intensity, duration, or frequency of the effect, and also includes – e) Any potential effect of high probability; and f) Any potential effect of low probability which has a high potential impact.

[38] Section 2 defines "natural and physical resources" as land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to NZ or introduced), and all other structures. "Structure" means any building, equipment, device, or other facility made by people and which is fixed to land.

[39] See in general Fisher 1991

environment: (1) to establish a biophysical "bottom line" that squarely addresses the environmental aspect of sustainability, and which considers social and economic factors but stops short of serving as a basis for social or economic planning and management; and (2) to integrate and balance the social, economic, and environmental aspects of sustainability.

Managing Environmental Externalities Versus Integrating the Three Es

The first and most narrow interpretation, and the one championed by the then center-right National Party Government's MfE throughout most of the 1990s, limits sustainable management entirely to biophysical and ecological matters and does not require (or endorse) consideration of social, economic or cultural factors.[40] This view was espoused at the time of the Act's passage by then Minister for the Environment, Honorable Simon Upton of the National Party Government. In his testimony to Parliament, he noted that the intent of the Act was to give primacy to environmental "bottom lines" above social and economic factors, and to avoid social and economic engineering that distorts the market. Section 5, he stated, "is not a question of trading off [environmental] responsibilities against the pursuit of well-being. The Bill provides us with a framework to establish objectives by a physical bottom line that must not be compromised."[41] Inherent in this interpretation is the notion that only biophysical and ecological imperatives are included in sub-paragraphs (a), (b), and (c),[42] and therefore, that the Act's primary intention is to focus solely on environmental effects – the management of externalities.

This non-interventionist interpretation, supported by free marketers, political conservatives, and the business community alike, was embedded in a broader ideology that attempted to move away from the social engineering, which was becoming a largely unpopular aspect of the prior land-use and town planning regimes. As one authority observed:

> In line with the overall process of economic restructuring that was taking place…the wider socio-economic objectives of the former legislation were viewed as unnecessary and undesirable interventions in the functioning of the market allocation mechanism, and were removed.[43]

Despite Simon Upton's and free market ideologues' long-standing insistence on the strict environmental bottom line interpretation of Section 5, it seems to have lost broad-based public and judicial support over time. In fact, since its passage, the courts have tended to interpret the Act to allow, if not mandate, consideration of matters that are well outside the "environmental realm" in its strictest and traditional sense.[44]

A more commonly held interpretation of Section 5 involves the notion of integrating or balancing environmental, social, economic, and cultural matters in local decision-making. Favored by New Zealand's planning community and many NGOs, proponents of this interpretation call attention to the Act's definitions of sustainable management and environment, which they suggest clearly include social and economic considerations.[45] Even within the view that the 3Es should be

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[40] Pardy 1997, p. 70

[41] Simon Upton, Third Reading of the Resource Management Bill, July 4, 1991. According to the Minister, his third reading endeavored "to make a carefully considered assessment of the intention of Parliament," with a view that such an assessment might assist Courts in the task of statutory interpretation (As cited in Milligan 1992, p. 351).

[42] Grundy 1995, p. 41

[43] Grundy 1994, p. 20

[44] Milligan 1992, p. 353; Dormer 1994, p. 23; see also *NZ Rail Limited v. Marlborough District Council* (1993) 2 NZRMA 449 at 470, and *Foxley Engineering Limited v. Wellington City Council* (March 16, 1994) Planning Tribunal, W 12/94, p. 40.

[45] Some have perceived this as a role-reversal between the National and Labour Governments, due to the fact that it appeared that National was advocating that the environment be given primacy above all else, and Labour was advocating a balancing approach. However, a more accurate interpretation of National's intent is that it was attempting to establish a bare minimum of environmental protection, while allowing the market to operate freely and unfettered

integrated, there is a range of views regarding the appropriate weight that should be given to each. One such view is described in a well-respected environmental law treatise in New Zealand:

> Social and economic considerations are relevant within the definition of "sustainable management" but are limited in their scope and are subject to ecological considerations.[46]

Others, however, fully reject the notion that environmental bottom lines preclude social and economic considerations, based on the fact that the statutory definition of environment encompasses social, economic, aesthetic, and cultural conditions.

To date there has been no single court decision that resolves the Section 5 debate. Instead the courts have tended to focus on interpreting procedural provisions, not reviewing and ruling upon the higher-level intent of, or definitions in, the Act. This has surprised even the Act's architects who anticipated that a judicial interpretation of Section 5 would follow closely on the heels of the RMA's enactment.[47] In the future, should the appropriate case arise, however, it could be the New Zealand courts that have the most influence in determining the intent of the RMA, and concomitantly what sustainable management in New Zealand actually means. Not surprisingly, some observers have criticized the notion that the fundamental objective of the RMA might be determined in such an insular and undemocratic setting. Others have gone as far as to suggest that the Act can be construed as Parliament abdicating its responsibilities as the elected lawmaking body, by leaving such broad interpretation of the purpose of the Act to the courts to decide on a case-by-case basis.

In 1993, the RMA was amended in an attempt to clarify the intent of the Act, if in a somewhat roundabout manner. The amendments gave preeminence to an activity's effects on the environment by calling them out as a primary consideration in the review of resource consent applications, and did not specifically call out consideration of "social, economic, and cultural well being" and health and safety. This amendment was seen by some authorities as resolving the debate between the National and Labour Governments' respective positions on the intent of the Act by more clearly adopting the National Government's approach.[48] However, despite the aim of the 1993 amendments, the intent and interpretation of Section 5 continue to this day to be fertile ground for debate and disagreement in New Zealand.

Ambiguity of Section 5 and Its Implications for the Implementation of the Act

False Expectations and Eventual Disillusionment of Stakeholders

The RMA has been accused of promising everything to everyone, and Section 5 may represent the quintessence of this claim. The ambiguity of Section 5 allowed proponents of various, often conflicting, viewpoints to hold the comforting belief that their cause was in the ascendancy, and as a result, the RMA came into being surrounded by high expectations on the part of multiple competing, and even irreconcilable, interests.[49] In this sense, the lack of clarity with regard to the intent of the Act has resulted in disillusionment by a range of stakeholders whose expectations were not met.

The ambiguity in Section 5 also slowed implementation, as regional policy statements and regional and district plans were frequently challenged due to their failure to meet the expectations of

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beyond those minimum requirements. Labour, on the other hand, was seeking not only to elevate environmental protection, but also to incorporate environmental considerations into social and economic decision-making. The former has been characterized as a "race to the bottom" while the latter has been characterized as a "race to the top."

[46] Tony Randerson, as cited in Williams 1997, p. 67

[47] Palmer 1995, p. 14

[48] Phillipson 1994, p. 67

[49] Milligan 1992, p. 351

different stakeholder groups. Some challengers were of the belief that the draft policies or plans went too far in controlling social or economic factors, while others challenged them for not going far enough. Without an authoritative determination of the true intent of the Act, these conflicts and challenges plagued the first decade of implementation.

On the positive side, the ambiguity surrounding the RMA's full scope and purpose was instrumental in gaining the political support necessary for passage and continuing viability of the legislation. Had disparate interests not been able to interpret the Act to their liking, the RMA might not have ever achieved the buy-in necessary to enact such radical and comprehensive reform.

Economic Uncertainty

It could well be the case, though it has never been empirically quantified, that the ambiguity in Section 5 has stifled economic development in New Zealand. The Section has been criticized by industry as being unsatisfactorily vague, leading to an undesirable lack of certainty for businesses, who have no way of knowing how local governments or courts will interpret the fundamental purpose of the Act on a case-by-case basis.[50] This uncertainty is perceived as a risk as investors do not have a high degree of assurance that a resource consent application for a project will be approved, or what conditions may be imposed on it as a result of how a given council or court may decide to balance the 3Es in Section 5. Defenders of the RMA would point out that the RMA was intentionally designed in broad terms to provide flexibility for local government in their interpretation and implementation of the Act, and that certainty was to be secured through the policy statements and plans developed by local government. Thus, any lack of certainty may not have been solely the result of ambiguities in Section 5, but rather of inadequate planning documents produced by local government, and inadequate guidance from central government to local government regarding how to deliver certainty through these planning documents.[51]

Broad Decision-Making Power Given to the Courts

The broad principles and scope of sustainability under the RMA have arguably been left to the judicial system to define. While it is true that a fundamental role of the courts is to interpret law, there is a point at which interpretation actually borders on legislation. In the context of the RMA, some say that Section 5 is so ambiguous and vague, that it did not sufficiently narrow the "gray area" within which courts are called upon to adjudicate. These critics argue that were the courts to deliver an opinion that added further definition and clarity to the term sustainable management or the term environment, they would be dangerously close to engaging in a values-based legislative function, rather than strictly interpreting and applying the RMA.

Given the gravity and complexity of ruling upon such important societal matters, coupled with the fact that such decisions typically require values-based judgments, rather than mere interpretation of law, it is questionable whether the courts are the appropriate fora to make them, or whether such decisions should be made by a democratically elected government and then simply interpreted and applied by the courts. This may also explain why judicial decisions have focused on the procedural elements of the Act as noted above. It is in this regard that Parliament has been accused of abdicating its responsibility of sufficiently articulating the intent of the legislation in order that it could be interpreted and implemented adequately and consistently by local government and the courts without circumventing democracy.

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[50] Dormer 1994, p. 9

[51] One of the specific tools local government given in order to provide greater certainty, was the ability to define classifications of "activities" that would inform applicants of what effects were likely to be permitted, prohibited, restricted, or within the discretion of the council (RMA Sections 68 and 76).

In the end, although the RMA may be lauded for taking the bold step of articulating an overarching purpose of sustainable management, it fell short of realizing the value of this by failing to adequately define, or make provision for understanding and interpreting, the concept. Had the legislation stated a more clear intent regarding the relation of the 3Es, local government would have likely avoided the protracted challenges they faced in promulgating their plans and policy statements. The judicial system would also never have been put in the burdensome (and costly) position of having to make values-based decisions on a case-by-case basis on what sustainable management means for a given community.

Assessing the RMA's Scope and Structure with Regard to Sustainability

Even if one were to accept that the 3Es were conceptually embodied in the purpose of the RMA, a problem facing New Zealand is that the Act itself represents only a minor component of what government entities and the legal system would need to do in order to *truly* integrate the social, economic and environmental dimensions of their activities and policies. The tax code, long-term fiscal planning, social services, and other local government functions are all left out of the Act. Other laws would have to be amended if the 3Es concept were to be fully embraced.

Integration of the 3Es across governmental authorities without a primary environmental mission, would also be necessary to avoid policy decisions that result in unsustainable trade-offs among the 3Es. New Zealand agencies particularly prone to such risks include the Department of Internal Affairs (responsible for local government), Ministry of Agriculture and Forestry, Ministry of Economic Development, Ministry of Fisheries, Ministry of Research, Science and Technology, and the Ministry of Transport. With disparate government agencies making policy decisions in other areas that impact the environment, natural resources, and land use, and without better integration of environmental considerations into such policy-making across the board of governmental agencies, it is doubtful that the RMA alone is capable of achieving sustainable management.

Recognizing this gap, in 1987 the MfE became subject to a requirement to review all policy proposals submitted to Cabinet, and to report to Cabinet on those with significant environmental implications. This requirement was a clear attempt to integrate consideration of the 3Es, particularly the environment, into all fields of policy development. Although a step forward in this regard, the reporting requirement was largely ineffective at achieving the intended goal due to the fact that it failed to create an appropriate mechanism for triggering MfE's review of policy proposals.[52] Rather than placing the burden on all other central government agencies to seek review by MfE of those proposals that may have environmental implications, the burden was placed on MfE alone to identify those proposals. This reporting requirement was eventually removed, and to date an alternative mechanism for integrating consideration of the 3Es across all sectors of government and policy-making has not materialized.

The question of whether, and the extent to which, the RMA was intended to address the commonly accepted 3Es of sustainability is one angle of the debate. Another angle, however, is the question of whether the RMA, even under Simon Upton's interpretation, fully encompasses the range of subjects within just the environmental dimension of the sustainability triad. For instance, environmental issues such as the marine environment,[53] hazardous substances, biodiversity, energy efficiency, transportation, and solid waste minimization are not covered under the Act. These

[52] Buhrs 1992, p. 33

[53] Technically, the RMA does address marine environment issues within 12 nautical miles of the coast, but most regional councils choose only to deal with those marine issues immediately surrounding the coast. Other important marine issues are addressed in the Fisheries Acts of 1983 and 1996.

sustainability-related issues, among others, are being addressed as they arise in New Zealand via new and separate legislation.[54]

This limitation may to some extent be inherent in the Act, due to its orientation toward resources, rather than taking a broader thematic approach. As discussed earlier, the RMA represents an amalgamation of the numerous resource-based and land use planning statutes that were in effect at the time of the Act's passage. Apparently, the architects of the Act were constrained by the scope of pre-existing legislation, and did not view the RMA as an opportunity to prospectively address environmental issues that had not yet been the subject of legislation, such as genetically modified organisms, invasive pests, and ozone depleting substances.[55]

Due to its media-based origination, the RMA has proven ill-suited to address some of the larger sustainability challenges facing the country today. As Richard Andrews rightly observes, the structure chosen for environmental governance and management will define or determine the results. For instance, policy formulation and agency organization by media such as water, air toxics, and solid waste; or by problem sources such as manufacturing, agriculture, and households; or by sustainability challenges such as climate change, energy efficiency, transportation, and waste minimization; or by administrative functions such as standard-setting, enforcement, and research will result in different social and environmental outcomes.[56]

For example, land use planning is conducted at the territorial authority level, making it difficult to address urban growth from a regional or national perspective. The RMA, as written and currently implemented, is also not conducive to tackling issues such as individual consumption patterns, energy and resource use efficiency, or waste minimization.[57] And while there is nothing in the RMA that explicitly precludes local governments from thinking in terms of sustainability themes, the Act and the processes it sets forth were not designed to facilitate this, and a significant percentage of local government believes that such broader sustainability issues fall outside of their regulatory mandate. It is questionable whether local authorities that tried to include in their plans objectives relating to broader sustainability issues would be challenged on the basis of overreaching their statutory authority.

As such the Act, in practice, has been best suited to make integrated resource-use decisions regarding traditional classes of environmental media. A question that is worthy of more in-depth study is what characteristics of the RMA limit it to traditional environmental media, and how would the legislation need to have been different in order to more readily accommodate newly emerging environmental issues.

Findings and Conclusions

The ambiguity surrounding the RMA's scope and intent has had negative practical repercussions for the legislation's implementation. The ambiguity of Section 5, resulting in part from differing intentions expressed by the Labour and National Governments, created unrealistically high expectations among all stakeholder groups, as they were each sold on the reforms based on the interpretation of key terminology that most favored their interests. Disillusionment with what the Act delivered on these expectations resulted in protracted legal

[54] The environmental community lobbied for, and expected, these broader issues of sustainability, such as energy efficiency and climate change, to be addressed through the RMA by the promulgation of national policy statements. Unfortunately, these NPSs were not forthcoming from central government.

[55] Some say it was simply too difficult to create an Act that was all-encompassing, and that emerging environmental issues would be addressed through the resource consent process on a case-by-case basis.

[56] Andrews 1999, p. 6

[57] Although the efficient use of natural and physical resources is listed as a consideration in Section 7 of the RMA, the provision has largely been disregarded in practice.

challenges to the first round of proposed policy statements and plans, thus impeding implementation.

While the RMA does serve as a vehicle that facilitates better integration in the management of traditional media such as land, air, and water, it has not proven effective at tackling the bigger challenges of sustainability. These include themes such as energy efficiency and resource conservation, individual consumption patterns, product life-cycle impacts and management, transportation, urban planning and growth, climate change, biodiversity, waste reduction and management, and management of the marine environment and resources. This shortcoming may have resulted, at least in part, from the fact that the drafters of the Act focused primarily on the suite of environmental laws on the books at the time the Act was composed.

Lessons for California

New Zealand's attempt to adopt the notion of sustainability as the foundation of its environmental, resources, and land use policy, and the ensuing struggle to interpret and implement the purpose of the RMA, sheds valuable light on the practicalities of seeking to operationalize sustainability. Understanding the issues underlying New Zealand's debate regarding the philosophy and intent behind Section 5 is an absolutely fundamental precursor to any approach toward sustainability that California may consider.

California should engage in extensive multi-stakeholder dialogue to define the scope and contours of a sustainability framework, to draw hard lines that cannot be compromised or traded off, and to allocate stakeholder responsibilities. As part of that dialogue, stakeholders should undertake to clearly define key terminology that will serve as the basis of any legislation, legislative reforms, or other policy initiatives designed to create a sustainability framework for the state. There are two tactical approaches to addressing key terminology in sustainability-oriented policies, each of which has different costs and benefits: 1) inclusive debate at the outset, in order to reach concise definitional language on key terminology and a clear understanding of the intent behind the reforms as a whole to avoid protracted legal challenges, versus 2) adopting broad concepts that provide more flexibility and have general appeal, potentially resulting in wider buy-in and limiting the chances of getting bogged down in the details of defining terminology.

While the first approach risks demise of the sustainability debate before it gains a popular foothold, the latter runs the risk of disenchanted stakeholders and/or a protracted and costly period of legal battles. New Zealand – a country of less than four million people – adopted the latter approach, and given the difficulties that it faced in effectively implementing the legislation, California would surely suffer a similar fate. Therefore, California should seek to clearly define the core terms and intent of any sustainability reforms it pursues while taking care to stop short of eliminating flexibility altogether and being too prescriptive. It is undoubtedly a delicate balance, but learning from New Zealand's mistakes may help California strike the balance better from the outset.

New Zealand's debate regarding the intent of the RMA based on the language in Section 5 raises an important question about the fundamental premise upon which any policy instrument or legislation pertaining to sustainability must be based. Should California choose to pursue overarching legislation that provides a vision of sustainability for the state, a decision should first be made as to whether the purpose of any legislation would be geared toward establishing an environmental bottom line above which the socio-economic system must operate, or to create a decision-making framework that enables the integration of the 3Es on a localized and ad hoc basis. If the latter, architects of the legislation must then carefully decide and clearly delineate exactly what the purpose and intent are with regard to the primacy or relative weight of each of the 3Es. One can consider this as the terms of reference or "design criteria," to use systems parlance, of the proposed legislation.

In order to avoid the reinvention of the wheel at the regional and local level, stakeholders should determine and allocate roles and responsibilities. This would include identifying aspects of the sustainability framework – ones that have a broader sphere of influence (e.g., climate change, biodiversity, energy efficiency, water conservation, etc.) – that would be best served by state level policy and guidance. California state government, fulfilling its convening function, should play a major role in coordinating and funding such fora. Implementing such a dialogue will require more deft facilitation approaches, with an eye always focused on the design criteria alluded to in the previous paragraph.

Consistent with its defined scope and intent, the sustainability framework or legislation should be sufficiently adaptable so as to be able to prospectively incorporate new and emerging issues. The RMA took a step forward toward sustainability by enabling integrated management of natural resources. This is notable in light of the fact that this step was taken ten years ago when schools of thought regarding sustainability were in a formative stage. But today, any statute genuinely intended to propel California further on the course of sustainability will not be able to do so without addressing the larger thematic issues pertaining to sustainability. Designing a statute that is capable of prospectively incorporating new issues and pressures as they arise is certainly a challenging task, but should be considered and debated in California.

III. Integration: Multi-Media Management

"Integrated management" is often perceived as an innovative goal in regulatory reform, though it has been characterized by some in New Zealand as an "illusory grail."[58] As stated by one of the architects of the RMA, "true integration is an elusive ideal that can be very difficult to attain…converting the gut appeal of integrated resource management to operational status is a complex and enormous task."[59] Integrated management is also one of many terms in the environmental field that is at risk of eventually being discarded as mere jargon due to a lack of common understanding of the term's meaning. As one expert has suggested, perhaps it is easier to define the term by what it is *not* rather than what it *is:* "integrated resource management is not about fragmented decision-making, so that only one resource element or use is considered at a time."[60]

The term "integrated management" is not defined in the RMA, although it is used in numerous key provisions of the Act. It was also seen as a policy objective of the Act itself. In the Explanatory Note to the Resource Management Bill put forth to Parliament in 1989, the authors of the Bill stated:

> This Bill integrates existing laws by bringing together the management of land, including land subdivision, water and soil, minerals and energy resources, the coast, air, and pollution control, including noise control.[61]

In most cases, integrated management refers primarily to the simultaneous, and balanced, consideration for the impact on and needs to steward different environmental media in policy and decision-making. But in fact, integration can refer to many different aspects of policy and management, including the following concepts:

- Governmental agencies and administrative processes (both vertical and horizontal)
- Legislation, regulations, and non-statutory instruments
- Social, economic, and environmental policies
- Geographic regions
- Temporal dimensions (i.e., intergenerational issues)
- Cultural and spiritual values and resource management policies

Over the past decade, New Zealand has had varying degrees of success at improving integration within each of these facets. In this chapter, however, we focus our analysis on New Zealand's experience with the integrated management of media.

In considering what is intended by integrated management, it is helpful to be aware of problems that have given rise to it being an objective – mainly cross-media transfers. In New Zealand and elsewhere throughout the world, increasing environmental degradation and numerous large-scale pollution incidents and crises over the past 50 years have led to the promulgation of reactive, ad hoc environmental legislation. This body of environmental law has typically developed to address single media issues in isolation, without recognizing their inter-relatedness. As noted by a legal expert in New Zealand, "This approach is flawed because the principal types of pollution, air, water, and land, are closely linked and a prescription for the reduction of one frequently leads to the increase of another."[62] A recent example from the U.S. of the link between media typically

[58] Vossler 1994, p. 21
[59] Bush-King 1997, p. 13
[60] Bush-King 1997, p. 13
[61] Williams 1997, p. 60
[62] Williams 1997, p. 61

treated in isolation from each other is the use of MTBE as an oxygenate additive to gasoline. MTBE was developed to reduce air pollution, however, after several years of using it in reformulated gasoline it was discovered that MTBE leaking from underground storage tanks was having significant water quality impacts.

Leading up to the RMA, New Zealand was beginning to recognize that its fragmented legislation and governmental policy was proving ineffective and inefficient in adequately protecting the environment and natural resources. This experience, in addition to the increased international focus on the virtues of integration, led "integrated management" to become a fundamental goal of the RMA.

The RMA and Local Government Reforms: A Framework for Integrated Management of Land, Air, and Water

By the actual text of the RMA, in conjunction with the creation of a system of regional governance throughout New Zealand, significant strides have been made to establish a framework for the integrated management of media. Prior to the resource management and local government reforms, a multitude of governmental and quasi-governmental authorities with responsibility for land use, air pollution, water quality, forestry management, coastal management, and other environmental arenas had independent processes for permitting and enforcement. For any given development project, upwards of 50 resource consents might be required from a host of different authorities. There were inter-organizational networks in place to discuss and plan for media-specific issues, but almost no networks or mechanisms to address cross-media issues. It was commonplace for one authority to make decisions that would have significant implications for another, without a forum for considering or resolving such conflicts. It was nearly impossible to prevent or mitigate cross-media transfers of impact.

The rationalization of local government in 1989 set the stage for integration. The new two-tiered local government structure, with 12 newly created regional councils formed along the boundaries of watersheds, lent itself to integrated management far more than the previous structure. The alignment of regional governance jurisdictions with the geo-hydrological boundaries (known in New Zealand as water catchments) has been a much-heralded aspect of New Zealand's resource management approach, as it is conducive to holistic and integrated policy-making. New Zealand's innovation with water management can be dated back to the Soil Conservation and Rivers Control Act of 1941, which in recognition of the need to take an integrated and comprehensive approach to flood and erosion management created catchment boards to carry out the task.

Water resource planning at the watershed level came into force in the 1960s with "catchment control plans" to address soil conservation and flood control. In the 1970s the plans were expanded to include basin-wide water resource inventories and allocation schemes, and by the 1980s water quality issues were also addressed in such plans.[63] The enactment of the RMA formalized this practice under a more integrated legal framework. The Local Government Act 1989 dissolved the preexisting catchment boards, transferring and merging their roles and responsibilities for watershed planning and management to the newly formed regional councils, which under the RMA were given authority for a broad range of other media, including air quality, soil management, some aspects of coastal management, management of geothermal resources, noise pollution, management of hazardous substances, and the mitigation or prevention of natural hazards.

[63] OECD 1996, p. 64

Integration in Policy and Planning

In addition to establishing the geographic boundaries for integration (i.e., regional governance along watersheds) accompanied by the appropriate jurisdictional responsibilities (i.e., multi-media) to facilitate integrated management, the RMA set forth explicit goals and tools to promote integration by local government. For example, regional councils were tasked with the goal of integrated management, as spelled out in the first function assigned to them in the Act:

> The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region.[64]

Each regional council was required to produce a Regional Policy Statement (RPS), the intention of which was "to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve *integrated management* of the natural and physical resources of the whole region."[65] (emphasis added)

Territorial authorities were given some responsibility for implementing the new integrated management framework, though the majority of this burden fell on regional councils. This was largely due to the difference in the authority of territorial and regional councils, with the former focusing primarily on land use decisions.[66] In stating the functions of territorial authorities relating to integrated management, the Act specified:

> The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.[67]

While admirable in theory, our research has shown that the practical implementation of integrated management in policy and planning proved a tremendous challenge for local governments, particularly regional councils. In large part, this was due to a lack of guidance from central government regarding how to do it, with regional councils largely left to their own devices in trying to honor the spirit of the RMA in their RPSs. When the regional councils published their first draft RPSs, they were widely criticized for failing to achieve integrated management.[68] The MfE itself published a brief article in 1993 noting that in the development of RPSs the "inter-relationships between the parts of environmental management are often partitioned artificially in the [RPS], to assist comprehension."[69]

In offering guidance to the regional councils, MfE recommended that they use either cross-referencing or matrices to establish the links between different policies, objectives, and methods contained in the RPS and/or related planning documents. Although somewhat of a blunt instrument, cross-referencing forced regional councils to think about the interconnections of different media. Today, most regional councils, and even some territorial authorities, have implemented systematic cross-referencing throughout their RPSs and plans.

Additional Statutory Mechanisms Designed for Integration

In addition to the requirements for integrated policy statements and plans, the RMA supplied other tools for the integration toolbox. The following are other provisions, some mandatory and some voluntary, of the RMA:

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[64] RMA Section 30 (1)(a)
[65] RMA Section 59
[66] Elliot 1992, p. 17
[67] RMA Section 31(a)
[68] Hutchings 1994, p. 62
[69] Barton 1993, p. 18

- An applicant for a resource consent must provide a statement of all other resource consents required and sought for a given project (Section 88(4)(d))
- Regional and territorial authorities may conduct joint hearings for resource consent applications that have issues pertaining to both councils (Sections 102 and 103)
- Regional and territorial authorities must exchange copies of resource consent applications that are relevant to each other (Section 90)
- Regional and/or territorial authorities may combine regional and/or district plans rather than creating separate plans (Section 80)
- Local authorities may transfer powers or functions to another local authority (Section 33)
- Plans should state the processes for addressing issues that cross local authority boundaries, and between territorial and regional authorities (Sections 67(h) and 75(h))

The MfE conducts an annual survey of local authorities that, among other things, gauges the extent to which several of these administrative processes are being used. According to the MfE surveys, only approximately 10 percent of all resource consent hearings were conducted jointly, and as of 1999 no local authorities invoked the transfer of functions provision.[70] Thus, although these mechanisms were included for the purpose of enabling local government to better integrate their management of media, very few authorities use them regularly. This has been, in part, attributed to technical deficiencies in the Act.

For example, the Act provides for the transfer of functions from one authority to another, yet the transferring authority remains accountable for the execution of the function by the transferee. This potential liability has resulted in local governments' abstaining from invoking the transfer of functions provisions. It may also be due, in part, to a cultural resistance to change within local government, as well as a lack of guidance from central government on how to implement the mechanisms. In our view, however, the use of these mechanisms by themselves would not have resulted in sufficiently integrated management, and that innovation outside the four corners of the RMA is needed to fully realize its goal of integration.

Non-Statutory Approaches

While the express mechanisms set forth by statute have had limited success in facilitating integration, there are numerous non-statutory means that have had demonstrable success. One example is the formation of the Resource Managers Group (RMG), a coalition of senior resource managers from each of the regional councils and unitary authorities. The RMG meets on a quarterly basis to review broad issues of environmental concern, and to identify areas in which expertise needed in one region may be supplied by expertise from another region. The RMG also develops strategies to address inter-regional issues, and advises MfE on these. The high level discussions of the RMG have identified issues or decisions with a potential to result in cross-media transfers, and have served as a forum for finding solutions to avoid such impacts. It has proven a tremendous network with a great deal of leadership, innovation, and influence. Through the RMG, environmental and resource management in New Zealand is progressing toward more holistic and integrated management.

A second example of a non-statutory vehicle designed to achieve more integrated management of media is the Auckland Regional Growth Forum. The Forum consists of the Auckland Regional Council and all territorial authorities within the Auckland region. The Forum has identified the critical environmental, resource, and land use issues facing the region for the next 50 years, and developed a strategy for managing the issues over that time horizon. The Forum has proven a successful model of integrated management of media, due largely to the cooperation between the

[70] MfE 1997a; MfE 1998; MfE 1999; MfE 2000; MfE 2001

two levels of local government, as well as across territorial authority boundaries. This cooperation has led to coordination of transportation and land use policies with air and water quality policies to best prevent cross-media transfers of environmental impact. Some have attributed its success to inspired leadership, a shared vision, a consensus based, highly participatory process, and rapidly intensifying environmental pressures due to unfettered growth. Other examples of integrated management have involved the creation of multi-disciplinary teams within a council to review resource consent applications with an aim to prevent cross-media transfers.

In terms of evaluating success, despite these success stories, it is difficult to know the degree to which integrated management of media is really occurring throughout New Zealand as a result of the RMA and local government reforms. In response to an interview question on this point, we observed very mixed perceptions, with approximately half saying that sufficient integration is occurring. According to some, the above-mentioned successes are exceptions rather than the rule. It is more often the case, they suggest, that integrated management, to the extent it relies upon coordination and cooperation between local authorities, has not been fully realized. Regional councils and the territorial authorities within a region often have power struggles, or "turf wars," and fail to develop a working relationship that effectively closes the resource - land use loop of fully integrated management.[71] When queried, almost 30 percent of our interview respondents indicated that regional and territorial authorities do not work together well, and continue to bicker and in-fight rather than cooperate to achieve integrated management.

Findings and Conclusions

The regional approach established by the RMA and local government reforms provides a solid framework for the integrated management of environmental media. Based on our research and observations, there is ample evidence to suggest that local government in New Zealand, largely due to the system of regional governance and corresponding allocation of responsibilities under the RMA, is slowly transitioning to a more integrated approach to environmental management, at least when compared to the system predating the RMA. The formation of regional entities along watershed boundaries with authority for land, air, and water planning and management facilitates decision-making that is less likely to result in cross-media transfers of impact. Policy statements and plans are beginning to reflect a more genuine attempt to identify linkages across media. Statutory integrative mechanisms have been somewhat neglected, but there has been a growing number of cases in which non-statutory means have been used to achieve better integration. Local government is learning through a process of trial and error, and is far from perfecting integration. However, given the difficulty of this challenge and the lack of guidance from central government, the regional councils should be lauded for their efforts.

Lessons for California

Efforts should be undertaken to explore potential mechanisms for linking California's various regional authorities and bodies, such as the air districts, regional water boards, councils of governments, and land use planning bodies. Improved methods and practices for integration are desperately needed in California. Its complex network of state, regional, and local government agencies with responsibilities for environmental protection, natural resource management, and land use planning is strikingly similar to New Zealand's situation leading into the late 1980s. Besides being nearly un-navigable by the average member of the regulated community, the system in California has become incapable of preventing cross-media transfers of impact due to a lack of coordination among the many different branches of government. Most

[71] Proper communication channels and information sharing networks have also been lacking, and cooperation in the policy and plan development process between regional and territorial authorities is rare. The absence of these critical best practices hindered full realization of the RMA's vision of integrated management.

stakeholders would agree that the environment is not being protected as well as it could be if there were better integration among the governmental and administrative agencies in charge.

While it is not likely that California will undertake a major overhaul of its environmental governance system anytime soon, it is conceivable that it could create better integration within the existing framework. At the state level, integration of environmental decision-making should be one of the central purposes of Cal/EPA, and linkages created between the boards, departments and offices (BDOs) could facilitate this process. Cal/EPA has struggled with integration, but it is time to take the challenge head-on and find solutions. A positive first step has been the recent formation of a Sustainability Steering Committee comprised of executives and senior management of Cal/EPA's six BDOs, though this by itself is not sufficient. Replication and expansion of this model at the regional level (e.g., watersheds) should be evaluated.

The pervasive need for integration can also be addressed by statutory integration mechanisms, including iron-fisted procedures applicable to permit application review, and by reforming CEQA to provide for more comprehensive environmental impact assessments of proposed projects. California should also continue to explore and pursue watershed-based initiatives that encompass other media as well. The state should secure greater funding of watershed-based integration programs. A starting point for this would be to support and expand the 1995 Watershed Management Initiative to integrate other media and BDOs. In addition, state government can play a valuable role in facilitating integrated management by promoting and providing incentives, training, and technical guidance for regionally and locally based sustainability initiatives and programs. More discussion on this subject is in Chapter IV.

Creating a framework for and implementing integrated environmental management is not easy. As summarized by a senior representative of Tasman District Council and architect of the Resource Management Bill 1989, "There is a danger when trying to operationalize the idea of integrated resource management, that we talk ourselves into expectations that are unrealistic."[72] But with patience, leadership, and moderate expectations, incrementally moving toward integrated management can lead to a higher level of environmental protection and quality than can be achieved in a system that seeks to manage each medium with an ad hoc, segregated approach.

[72] Bush-King 1997, p. 14

IV. Decentralization: Decision-making at the Level Most Effected

The resource management and local government reforms were conceived of together and were designed to operate hand-in-hand to carry out the broad objective of decentralization. The need for greater transparency and accountability of government were critical drivers behind the push for decentralization, as was the growing international acceptance of the "subsidiary principle" – that environmental decision-making should rest with the level of government most likely to bear the consequences of those decisions. Shifting decision-making powers to local government, as endorsed by Agenda 21 and the Brundtland Commission, is seen as an essential step in progressing toward sustainable development, and New Zealand embraced this concept wholeheartedly:

> The Act is based on several assumptions, including… those governing bodies closest to resources are the most appropriate to govern the use of resources; therefore, responsibility for implementing the RMA is decentralized to local and regional authorities.[73]

However, there are different schools of thought on the extent to which central government was to relinquish its powers under the new system. "Devolution" has been defined as the transfer of decision-making authority and responsibility from central to lower levels of government, which may or may not share the mission of the central agency. "Delegation," on the other hand, is the distribution of functions from central to local agencies, which are expected to follow the mission and philosophy of the central agency.[74] Certain stakeholders in New Zealand, such as the Treasury, were of the view that a full-scale devolution of the vast majority of central government's powers (with regard to the environment, natural resources, and land use) to local government was the solution. Others, namely the environmental community, were of the view that central government needed to retain a core role in policy and standard setting in subject areas that applied across the country, while delegating considerable regulatory and planning functions to local government.

It was the delegation approach that was ultimately adopted by the RMA, at least in theory. In practice, however, devolution has occurred. As stated by Philip Woollaston, one of the architects of the RMA, "the RMA is an instrument of *delegation* rather than a means of *devolution*… if the responsibility has been 'devolved' to local (and regional) government, that has been done by default, by the failure of central government to carry out its responsibility to deal with matters which are nationally significant by way of National Policy Statements."[75] Therefore, when considering New Zealand as a model of institutional arrangements that can better enable sustainability, one must differentiate between what the RMA intended (i.e., delegation), and what has actually transpired (i.e., devolution).

Much of the RMA is dedicated to describing the roles and responsibilities of various levels of government in achieving the purpose of sustainable management. To realize the sustainability benefits that would flow from a properly decentralized model as the RMA envisioned, both central and local government would have had to fulfill their responsibilities. Below we describe the statutory and stakeholder expectations of various levels of government and assess their respective performance after ten years of implementation.

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[73] Somerville 1999, p. 13
[74] Wycoff-Baird, as cited in Frieder 1997, p. 10
[75] Woollaston 1998, p. 3

Central Government Performance

Across the board, respondents were overwhelmingly in agreement that more guidance from central government was sorely needed at the outset of RMA implementation. In this regard, central government has been accused of providing a general legal framework based on principles (Section 5 of the RMA), but not the corollary prescription and substance needed to implement it.

Under the RMA, the central government is provided broad authority to produce environmental policy and performance standards. In fact, the Act was written with the intention (and expectation) that there would be overarching guidance on numerous substantive matters of national importance, including issues such as energy, climate change, transportation, and native forests, in addition to practical matters such as the interaction of the RMA and the rights and responsibilities under the Treaty of Waitangi, private property rights, and public participation.[76] More specifically, National Policy Statements (NPSs), and to a lesser extent National Environmental Standards (NESs), were intended to be the apex of the strategic policy framework envisioned by the RMA.

However, as reiterated throughout this report, perhaps the most fateful and unfortunate aspect of the RMA has been central government's abysmal failure to carry out its end of the bargain. Central government, even now ten years into implementation, has failed to produce any NESs, or a single NPS other than the statutorily mandated National Coastal Policy Statement. It has promulgated only one set of national regulations, which pertained to marine pollution. Critics of the RMA have suggested that the unwillingness of central government to provide policy guidance and national standardization has not only left too much discretion to regional and territorial authorities, but has resulted in enormous inefficiencies whereby each local government was forced to "reinvent the wheel" on matters relating to RMA implementation. Recently, a panel assembled by the Ministry for Economic Development reviewed private sector complaints that interpretation of the RMA's provisions and the consequent planning documents produced varied too much among councils. The Panel observed:

> Business called for more national policy statements to be developed. It is believed that this will improve cross boundary consistency in processing approaches for priority resource management issues, for example, within the timber processing, dairy, and quarry industries. National environmental standards for air emissions and the provision of infrastructure were also suggested.[77]

To be fair, the Ministry for the Environment is not to bear all blame for this failure. Perhaps most culpable were Ministers in the National Party Government, who held control of Parliament through almost the entirety of the 1990s. The Treasury in particular has resolutely opposed the development of NPSs throughout the first decade of implementation. Quite bluntly, there was no political will (and therefore, no commitment of financial resources) for the MfE to carry out its duties under the RMA. Thus, the Ministry was only able to do as much as its funding allowed.[78] The recent study of the Ministerial Panel on Business Compliance Costs concluded:

> The Panel considers that the issues that continue to arise regarding the interpretation of the Act occurred because the introduction of the Act a decade ago was under-funded. The effects of this are still being felt by local government, central government and the wider community. It is a lesson sorely learnt and one that must be avoided when future legislation is introduced.[79]

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[76] Wallace 1995, p. 12

[77] Ministerial Panel 2001, section 5.2.4. The full report of the Ministerial Panel can be found at: http://www.businesscompliance.govt.nz/reports/index.html

[78] It is for this reason that when "central government" is criticized for its role in the failings of the RMA, this should not just be considered a criticism of MfE but rather the whole of central government, and the National Party in particular.

[79] Ministerial Panel 2001, section 5.2.1

In addition to a lack of funding, there are numerous other reasons why MfE did not produce NPSs or NESs including:

- Ministers of Environment, Simon Upton and Rob Storey, (under the National Party government) promoted a non-interventionist, highly-decentralized, and laissez-faire approach, and opposed NPSs.
- Based on experience with the National Coastal Policy Statement, concern that the rigorous process for establishing additional NPSs would be costly and time consuming.
- Perception within the Ministry that NPSs would become so watered-down through consultation processes that the end product would be of little meaningful value.

Numerous senior level MfE representatives with whom we spoke, including some who had been involved in developing the Resource Management Bill, agreed that NPSs and more guidance from central government would have staved off many of the implementation struggles that have plagued the country since enactment of the RMA. Recent initiatives indicate that the Ministry is seeking to redeem itself to some extent. For example, MfE has recognized that the absence of an environmental quality monitoring framework throughout the country has been a major hindrance to local government implementation of the Act. This, in addition to pressure from the OECD, has driven the development of a comprehensive indicators framework designed to assist regional authorities in identifying data needs and harmonizing their monitoring and reporting programs.[80]

The Ministry is also working to develop the country's first NES produced under the RMA on organochlorines (i.e., dioxins and polychlorinated biphenyls). An NES for fine particulate matter (PM_{10}), an air contaminant, is also being considered. With regard to NPSs, in May 2001 a draft NPS on Biodiversity was released for discussion purposes. The Proposed NPS on Biodiversity is the first NPS to be developed under Section 45 of the RMA, and if ultimately adopted will be the second NPS promulgated under the Act. There is mounting pressure on the Ministry to develop additional NPSs on other issues of national importance, such as greenhouse gas emissions, radio frequency emissions associated with cellular telecommunications, genetically modified organisms, and drinking and bathing water quality standards.

In response to longstanding calls for better information dissemination, the Ministry, in collaboration with Local Government New Zealand (LGNZ), have created a policy and planning best practices database that as of June 2001 became available to the public at large.[81] This database, called the "Quality Plans" project, is intended to serve as an information resource for local government. The Ministry has also funded several additional web-based resources for local government, including a strategic planning guide, templates for resource consent processing, and an RMA enforcement manual, all of which can be accessed through the Ministry and LGNZ websites.

Finally, the failure of central government to delineate minimum performance expectations, as well as the absence of central government sanctions or enforcement mechanisms in the structure of the RMA, has contributed to poor performance at the local government level. Thus, many interviewed said some form of auditing or enforcement function at the central government level to ensure minimum performance levels are met would be beneficial. This would not necessarily have to be a regulatory "stick" – even a list of best/worse performers published by central government could create competitive pressures among local authorities that might propel them forward to higher levels of performance.

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[80] For more information on MfE's "Environmental Performance Indicators Program," including established and proposed indicators, see http://www.mfe.govt.nz/monitoring/index.htm

[81] See http://www.qualityplanning.org.nz/index.php

Local Government Performance

As noted above, under New Zealand's highly "devolved" model of environmental management, it is local government bodies that are primarily responsible for implementation of the RMA. A significant majority of the interview respondents who indicated satisfaction with the current balance of powers between central and local government were actually from local government.[82] It is through local authorities' regional and district plans, and the policies, methods, and regulations within those plans, that the Act's policy objectives are meant to be operationalized.

However, by most accounts, local governments have generally failed in fulfilling their statutory planning responsibilities under the Act. After ten years, there are still numerous jurisdictions operating under plans that are not yet fully operative from a legal standpoint, often due to the fact that they are tied up in court or administrative hearings to resolve disputes and submissions.[83] For example, while 14 out of 16 regional policy statements are now deemed fully operative (including those required of unitary authorities), regional, unitary, and district plans are not nearly as complete. There are 62 plans that are fully operative and 75 that are either in court, administrative hearings, or have only been notified as of May 2001.[84]

Moreover, the quality of many of these planning documents leaves much to be desired. For example, some territorial authorities appear to have simply made minor revisions in terminology and format to their former "district schemes" from the Town & Country Planning Act era and given them a new name. Another practical difficulty has been a lack of capacity and technical expertise by local decision-makers. To date, there has been a disjunction between the decision-makers (elected officials) and the technical experts (council management and staff), and thus the first generation of plans were not as scientifically based as they could (or should) have been. It is only fair to note that a handful of regional and territorial councils, on the other hand, have demonstrated truly innovative approaches to these new strategic planning documents under the RMA.[85]

"Reinventing the Wheel"

Faced with a dearth of guidance from central government, strict deadline pressures for the development of their policy statements and plans, and no history of coordinated regional governance for environmental and resource management, local government was certainly not presented an easy task. Further exacerbating their situation were the impacts of the local government reforms, which two years prior to the RMA reduced to less than 90 more than 800 separate governmental and quasi-governmental entities. This upheaval hampered communication and coordination among local governments, severely disrupting the inter-organizational networks that had evolved over many years to suit the pre-RMA administrative structure. When the dust settled in the wake of the reforms, council managers and staff no longer knew their counterparts with similar responsibilities in other councils. The burden of learning an entirely new mode of policy development and planning left councils with little time or means to develop new networks for sharing information and strategies for adapting to the rules of the new game.

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[82] On the other hand, those who indicated that the distribution of decision-making powers was drawn correctly on paper but not in practice were, for the most part, academics and NGOs.

[83] New policy statements and plans produced under the RMA are deemed "effective" as of the date they are publicly notified. However, they are not deemed "fully operative" until all legal challenges are resolved.

[84] MfE 2001, p. 37

[85] Several of the more progressive and effective plans and policy statements have been produced by the Auckland Regional Council (http://www.arc.govt.nz/), Christchurch City Council (http://www.ccc.govt.nz/), Otorohanga District Council (http://www.otodc.govt.nz/), Taranaki Regional Council (http://www.trc.govt.nz/), Waitakere City Council (http://www.waitakere.govt.nz/), and Wellington Regional Council (http://www.wrc.govt.nz/).

As a consequence, each council went about independently navigating and interpreting the new requirements under the RMA, which resulted in duplication of effort and high transactions costs at both levels of local government. As each council created its own policies, standards, and regulations, the wheel was being simultaneously reinvented across the country. Inconsistencies among the policies, standards, and regulations adopted by different councils presented significant difficulties for regulated entities operating in multiple regions, and allegedly has discouraged foreign investment in New Zealand. Over time, and largely after the first round of statutory deadlines in the RMA had passed, new networks began to form. However, much of this inefficiency and inconsistency could have been avoided had central government promulgated national policies and standards.[86]

Variability Among Local Authorities

While central government could have done much more to assist local government in its transition under the RMA, there are other factors that contributed to the relative levels of success each regional and territorial authority had in executing its duties. Some of these factors were arguably within local governments' control, although others may be tied to shortcomings in the design of the Act itself. A summary of these factors, revealed by responses to our interview, includes:

- Political will of the council
- Leadership and vision at senior levels within the council management
- Rate base for the region or district
- Competence and skills of council staff
- A culture or history of good planning
- Parochialism
- Awareness or education of elected councilors in environmental subjects
- Pressures from primary producers (e.g., mining, forestry)

Using a term familiar in U.S. policy debates, the RMA could be characterized as the mother of all "unfunded mandates." And given the wide disparity in the rating base particularly among territorial authorities (as opposed to regional councils) throughout New Zealand, it is not surprising that our interview respondents often cited financial resources as the most significant causal factor in the quality of policies or plans produced by councils. Although almost all regional and territorial authorities assert they were under-resourced to implement the Act, those with a poor rating base suffered the most in this regard.

In addition, some of the poorer, less sophisticated local authorities struggled disproportionately with interpretation of the Act's requirements and what was expected of them under the new system. Typically located in rural areas of New Zealand, these authorities had been trained as "town planners" under the prior regime, and were suddenly expected to become visionaries exemplifying and understanding the complexities of sustainability, effects-based thinking, and integrated management across media. The playing field remains uneven on this score, a problem that can likely only be resolved by greater financial and technical support from central government for those regions and districts facing this hardship.

[86] Central government's failure to produce NPSs and NESs could be attributed, to some extent, to a shortcoming in the design of the RMA itself. The Act failed to include statutory deadlines for central government to produce these documents, and failed to specify a statutory sequence for the production of the strategic planning documents required of local government. If the Act had required central government to produce NPSs and NESs *first*, and then required regional policy statements, regional plans, and district plans *to follow* the central government deadlines, and if central government actually carried out its obligations in this regard, many of the implementation difficulties and inefficiencies could have been avoided.

The second most frequently cited factor for variability in the quality of local government performance was individual leadership and vision within a council. With regard to this factor, respondents did not refer to elected councilors as much as they did to council management. Of course, how to breed and seed leadership in all levels of government is not a question faced only by New Zealand, but a challenge faced throughout the world. Thus, while much of the RMA was obligatory, it can also be seen as "enabling legislation" that provided an opportunity and a legislative basis (i.e., political cover) for the true leaders in local government to innovate sustainable management in genuinely creative and robust ways that best suited their communities of interest.

The (perhaps naïve) belief and intention when the Act was developed was that local governments would work more closely together, but this has not played out. Instead fiefdoms have arisen, mostly because there are few mechanisms or incentives within the Act, or outside of it, for them to work together. For example, in fulfilling their many roles and functions, territorial authorities (TAs) eagerly work to attract investment and create job opportunities for their constituents, while typically paying little attention to the larger regional implications of their growth strategies and plans. As a result, land use development is still done largely in a piecemeal fashion, with very little coordination among councils.

There have also been some difficulties regarding jurisdictional quarrels between TAs and regional councils (RCs).[87] In particular, urban growth planning and management in metropolitan areas has been undermined by an unclear delineation of powers between TAs and their respective RC. This tension between the regional and territorial levels of local government, can be explained, in part, by the fact that the local government reforms of the late-1980s created a system in which these two levels of government were somewhat equivalent in status and power. Two years later RCs were elevated to a position of greater power through the hierarchy of planning documents that was introduced by the RMA's requirement that TAs' plans were not to be inconsistent with the regional policy statement (RPS).

Practically speaking, while RCs might have been elevated in status according to the letter of the law, experience has shown that they lacked the true political clout and power base to dictate requirements to TAs within their region. A case in point is the prolonged legal fracas that took place between the Auckland Regional Council (ARC) and the TAs of the greater Auckland area, where the ARC dictated strict growth limits in its draft RPS. Although the ARC won the court challenges brought by its TAs, and could have forced conformance with its growth strategy, it instead opted to take a less confrontational approach through the creation of the voluntary and collaborative Auckland Growth Forum. The end result of the perceived lack of legal authority (and also true political power) in the Auckland example, as well as other cases around New Zealand, has been protracted legal challenges and bickering among local governments, all of which have undermined efficient implementation of the RMA.

Finally, at the ground level, TAs' desire not to be perceived as overly regulatory creates a tension for them in balancing their various responsibilities, with obvious implications for environmental protection.[88] Some have suggested that the conflicting interests of TAs hinder their ability to protect environmental resources in the face of short-term societal and economic demands. These

[87] This political struggle dates back to the formation of RCs, which were originally intended by the Act's architects to have social and economic in addition to environmental policy-making responsibilities. But political resistance, largely from TAs, to the new powers given to regional councils under the RMA resulted in the RCs soon after being stripped of some of these powers. This was done as a political compromise, in order to stave off the attack on their very existence.

[88] This desire stems from the competing need to attract investment in the area, which could be jeopardized if the authority were seen as more prescriptive than other jurisdictions.

detractors contend that although the RMA is rooted in the ethic of sustainable environmental management, in certain areas of New Zealand most of the resource management decisions continue to be driven be short-term economic benefit rather than long-term environmental considerations. This, exacerbated by the absence of central government enforcement powers, has contributed to the lackluster performance by local government.

Findings and Conclusions

New Zealand overshot the mark in terms of decentralization and local decision-making, primarily because local authorities lacked capacity and resources, and their implementation efforts were not accompanied by central government oversight, guidance, and assistance. Although a balance of powers designed to deliver sound environmental decision-making in line with the subsidiary principle was envisioned by the RMA, the potential benefits of that model did not come to fruition.

Central government's failure to carry out its responsibilities under the Act, in addition to the lack of central government oversight provided for by the Act, resulted in inefficient, inadequate, and inconsistent implementation by local authorities. In particular, this failure led to poor quality policies and strategic plans, as well as "reinvention of the wheel" at the local government level whereby councils independently set about creating standards and policy statements. The inadequacy and inconsistency of planning documents produced by local government made compliance costly and difficult for regulated entities.

The larger issues of sustainability have been left to regions to tackle on their own without any legislative basis or guidance. This results in more reinvention of the wheel around the country, without central government guidance or a sense of national vision or direction to assist in the process. New Zealand lacks an operative feedback loop that links decisions at the local level to macro-level sustainability goals, such as regional and national environmental performance targets, increased resource use efficiency, technological advancements, and demand-side management.

Local government, for its part, lacked the financial resources, capacity, and expertise to effectively fulfill their obligations under the RMA. The variation in the caliber of implementation among local authorities has been, in part, due to the financial resources of the council, the degree of leadership and vision demonstrated within the council, and the tendency for parochialism and "turf wars" to slow progress. Considering the virtual absence of central government guidance and support, the expectations of local government were unfairly high. In a sense, the RMA announced "let's implement sustainability" and then fully punted the task to local government authorities. Implementing the complex concept of sustainability consistently eludes governments around the world, and it would be a tall order to expect local government in New Zealand to get it right without a significant investment of time and resources.

Lessons for California

We believe that decentralization in line with the subsidiary principle, as represented by the theoretical approach of the RMA, is indeed the model most capable of ensuring sustainability-oriented decision-making. The true test is in effectively putting the model into practice. Here we identify several critical actions that can assist in this task.

Develop and articulate a statewide vision and corollary goals, policies, performance standards, and guidance. New Zealand's experience suggests that while the actual development and implementation of sustainability-oriented initiatives should take place at regional and local levels, an overarching framework and guidance at the state level is essential in order to provide context for their efforts.

Cal/EPA, the California Resources Agency, and the Governor's Office of Planning and Research, therefore, should initiate a collaborative process to develop a long-term "vision" for California. Due to scale constraints, this need not be a quantitative document, but could be a qualitative articulation of guiding principles that can serve to inform and allow alignment of regional sustainability planning initiatives. A vision, however, without accompanying goals, policies, and guidance, would be akin to the skeletal framework of the RMA without NPSs, NESs, and guidance from central government. Thus the state should ensure that the vision is developed in conjunction with measurable short- and long-term goals with defined timeframes for achievement, policies on matters of statewide importance, performance standards, and guidance for local government. Interestingly, these recommendations are essentially already required by a state law enacted in 1970 that has not been implemented to date.[89] This statute should serve as a starting point for immediate action. CEQA and the CEQA Guidelines should also be revisited in terms of developing an effective overarching policy and guiding principles.

The "California Legacy Project" (CCRISP) recently initiated by the California Resources Agency is a notable step in the right direction, as it seeks to establish long-term conservation priorities for the state. Another effort worthy of note is the "Strategic Vision" produced by Cal/EPA in 2000. However, while the vision articulated is useful, objectives that are more detailed and *quantifiable*, and assigned defined timeframes for achievement, need to be developed to provide valuable direction to regional and local agencies and organizations.[90] Moreover, a strategic vision that is intended to serve as the foundation of an overarching sustainability framework for the state must, at a minimum, be a joint effort between Cal/EPA and the California Resources Agency (and ideally, other relevant government agencies and stakeholders), as critical issues such as habitat and species protection, open space preservation, and the allocation of natural resources have been left out of the current "Strategic Vision."

The state agencies should meaningfully engage all stakeholder groups, as without broad input, the value of any such state vision would be significantly marginalized. With extensive public buy-in and support, however, such a document might take on a life of its own and serve as a credible basis for framing community objectives and indicators, as well as for making land use, environmental, and resource management decisions at the regional and local levels. It is perhaps due to the lack of stakeholder involvement that the Cal/EPA "Strategic Vision" remains relatively unknown and unused.

Using the vision statement, goals, policies, performance standards, and guidance articulated by the state as a "compass," regional and local agency collaborations would be in a position to develop specific, quantifiable, and coordinated, implementation plans for each jurisdiction. The private sector and non-governmental organizations could also use the state framework to inform their own planning, prioritization, and decision-making.

Stimulate and facilitate regional and local sustainability initiatives. California does not necessarily need to overhaul its state and local governmental structure to create a regional system of governance as did New Zealand. However, with the recognition that sustainability initiatives can be most effectively implemented at a regional level, and absent an established government structure for such regional approaches, California will have to identify effective means of facilitating such ad hoc regional efforts. As a first step toward enabling and promoting regional

[89] California Government Code §§65030-65036.6 and §§65041-65049.

[90] Similarly, the strategic plans developed by the boards, departments, and offices within Cal/EPA, while noble first steps, lack a level of measurable specificity in their goals and objectives, lack defined timeframes for achieving the goals, and lack sufficient long-term (i.e., ten to fifty years) goals to serve as a meaningful platform for progressing toward sustainability and tracking improvements.

efforts, California state government would be well served to undertake a critical assessment of the legal, financial, and institutional barriers that inhibit local government, and regional bodies and associations, from developing and implementing such collaborative efforts.

Several regional sustainability-oriented planning initiatives have arisen at the municipal and regional levels throughout California, particularly focusing on "Smart Growth." For example, the Bay Area Alliance for Sustainable Development (BAASD) recently completed a three-year visioning process involving all stakeholder groups, and culminating in a "Draft Compact for a Sustainable Bay Area," which articulates ten commitments to action, and specific recommendations for implementing each principle. As such, the Compact is essentially an "action plan" (similar to a Regional Policy Statement) for all stakeholders to begin to chart a more sustainable course for the Bay Area.

Other initiatives include efforts undertaken by the San Diego Association of Governments (SANDAG), the development of Natural Communities Conservation Plans, the Sustainable Silicon Valley project spearheaded by Cal/EPA, and the Silicon Valley indicators project completed by the Silicon Valley Environmental Partnership.[91] Such regional initiatives are worth further study as models that could potentially be standardized, formalized, and emulated throughout the state. State government could also play a very valuable and welcome role in serving as a conduit among these varied initiatives, disseminating information and best practices in such regional initiatives through a web-based database. As discussed in Chapter III, California should increase funding for watershed based projects (such as the 1995 Watershed Management Initiative) to stimulate better water quality management at the regional level, particularly given the growing problem of non-point source pollution.

Build local government capacity. If local authorities are to be relied upon to implement sustainable development policies in California, they must be provided sufficient financial and technical support and expertise so that they can accomplish the task in an effective manner. A key service that California state government can deliver in this regard is the collection and dissemination of information on environmental conditions. More specifically, Cal/EPA and the California Resources Agency should publish, preferably via the Internet, data that provide local authorities with meaningful information regarding the quality of the environment and the quantity and quality of natural resources in the state.[92]

In addition, these agencies, or perhaps even another suitable organization or association, can collaborate with local government and other stakeholders (both within and outside the state) to assemble and publish a database of best practices for local government, the private sector, and the environmental community. Appendix E sets forth possible subject categories of such a best practices database.

In support of its articulation of a statewide vision and goals, state government should develop guidance for regional or local sustainability initiatives. The guidance should identify the key elements that should be incorporated in such initiatives. Elements that the state agencies should consider for this purpose include:

- Identification of regional/local priorities in terms of relevant environmental, resource, and land use issues

[91] The Compact is presently being circulated to local governments for public input and eventual buy-in. The Compact has already achieved widespread support, and the challenge now is in getting the stakeholders involved to actually implement the principles and recommendations set forth in the Compact.

[92] See Chapter VI for a more detailed analysis of this topic.

- Definition of measurable regional/local environmental, resource and land use objectives based on the identified priorities
- Participatory processes designed to engage all key stakeholder groups, particularly government, the private sector, and non-governmental organizations
- Systems for measuring and tracking progress toward the established objectives
- Identification of specific measures that can be undertaken by members within each stakeholder group in the regional or local jurisdiction to implement the initiative or fulfill the goals of the initiative
- Systematic communication of the results and progress of the initiative to the public

These key components can form the framework for linking together sustainability initiatives throughout the state. An initial output from the visioning process should be a Strategic Action Plan setting forth defined milestones and deadlines for the development of each component of this framework, and the resources that will be committed to each.

Provide political cover and incentives for local government. Many local and regional initiatives in New Zealand that otherwise might not have overcome legal challenge or general disregard by constituents had a degree of credibility that enabled their success due to the legislative basis provided by the RMA. Therefore, it should be evaluated whether "enabling legislation" in California that provides a statutory basis for regional sustainability initiatives would increase their effectiveness and rate of uptake. In identifying potential legislative reforms, a "gap analysis" should be conducted to determine legislation that currently exists on the books, which carries the potential to fulfill certain elements of a sustainability framework, but which are not currently being implemented effectively.

The State should also critically consider other legislative changes and policy reforms that could serve to promote and remove barriers to sustainability initiatives and planning. In particular, Cal/EPA and the Resources Agency should work with the state legislature to make recommendations of legislative amendments to provide a statutory basis for the overarching state environmental and resources (or sustainability) policy, vision, and goals. One potential avenue for these reforms would be to amend CEQA to include provision for these functions. Moreover, the overarching purpose of CEQA could be strengthened to more clearly articulate a statewide policy geared toward sustainability, and provisions in CEQA that could fulfill elements of a sustainability framework for California, but which have not been effectively utilized, should be revitalized and enhanced.[93]

Lastly, various means of providing financial assistance to local government authorities or organizations that participate in the development and implementation of such sustainability planning initiatives should be considered. Such assistance could be provided in the form of tax incentives, incentive-based contracting, or direct payments.

[93] Although not analyzed in this study, examples of other areas in which existing legislation may be worth further examination include land use planning and the functions and duties of the Governor's Office of Planning and Research (Government Code §§65025 et seq.).

V. Participatory Democracy: Bringing Stakeholders Together in Environmental Decision-making

Leading up to the enactment of the RMA, New Zealand's populace had become intolerant of government's tendency to make environmental decisions behind closed doors without any transparency or accountability to external stakeholders. The environmental community, private sector, and public at large were unusually aligned in that each group supported the RMA as providing the opportunity to have more input into environmental and land use decisions, and that this more democratic approach would ultimately result in better decision-making by government.

Similarly recognizing the benefits of participatory democracy, regulatory innovation programs today in the U.S. and elsewhere internationally are seeking to determine and maintain the optimum level of stakeholder involvement in environmental decision-making. Whether the RMA has realized the full potential of public participation, and the extent to which it has been at the expense of other important objectives, is the subject of this chapter.

Public Participation in Policy Development: A Net Gain

The RMA created an important opportunity for participatory democracy in the policy development process. For any proposed policy statement or plan, central and local government authorities are required to provide public notice and an opportunity to file submissions (i.e., comments). Virtually anyone may file submissions on (usually in support of or opposition to) the proposal without having to show that they would be directly impacted or effected in any way, or even that one lives or conducts business in or near the area. In addition, certain affirmative obligations are imposed on central government to consult with indigenous peoples and the Crown prior to preparation of a policy statement.

Respondents unanimously agreed that the opportunities for participation in the development of policies and plans constituted a vast improvement from the prior system. Moreover, it appears that as practice evolves under the RMA, local government is finding new and better means of securing inclusive decision-making in policy development. Many councils have found that simply providing one opportunity to comment on a proposed plan or policy statement at a late stage is not enough. In such instances where the document is publicly released late in the plan-development process, councils have encountered so many submissions that the process becomes unmanageable, and often suffers significant delays due to challenges filed with the Environment Court. Savvy councils have begun to publish "draft" plans prior to the official public notification of a "proposed" plan, in order to proactively solicit more public input at the outset of the strategic planning process. This best practice serves to identify and resolve controversies that could lead to protracted challenges in the formal submissions or appeals processes. One statutory mechanism that could have served to avoid this learning curve is found in Section 32 of the RMA, discussed below.

Assessing Alternatives in Environmental Policy Formulation: A Missed Opportunity

Although the notification and submissions processes amounted to a significant gain in terms of public participation in policy-making, the RMA stopped short of delivering fully participatory strategic planning. Section 32 of the RMA requires government to evaluate the necessity of any new proposed policy, rule, or method, to assess the merits of alternative measures for achieving the same objectives, and to thoroughly consider the benefits and costs of the available alternatives. If Section 5 is considered the "heart" of the RMA, Section 32 can be characterized as its "mind," because it requires government to deliberate on the pros and cons of which road they want to go

down and to publicly justify why one is preferable over others.[94] In other words, with the destination in mind, Section 32 sets forth the process by which government decides how best to get there. However, the framers of the provision neglected to include a requirement to engage the public in this analytical evaluation of alternatives, hugely undermining the value it delivered. Thus, although Section 32 has the potential to drive inclusive, strategic environmental assessment, the failure to provide for public participation in this process has resulted in a missed opportunity.

Specifically, "before adopting any objective, policy, rule, or other method," Section 32 obligates central[95] and local government authorities to:

a) Have regard to –
   i) The extent (if any) to which such to which any [such action] is necessary in achieving the purpose of this Act; and
   ii) Other means in addition to or in place of [such action that]…may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and
   iii) The reasons for and against adopting [such action] and the principal alternative means available, or of taking no action where this Act does not require otherwise; and
b) Carry out an evaluation…of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs, and;
c) Be satisfied that any [such action] (or combination thereof) –
   i) Is necessary in achieving the purpose of this Act, and;
   ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means.[96]

By most accounts, few local authorities have paid attention to Section 32, and even fewer have been successful in its implementation. Theories abound for why the failure has occurred. According to some, the explanation is as simple as a lack of local government expertise on the topic, and the absence of appropriate tools, models, or guidance to do it. As was the case with other implementation shortcomings, scarce resources of most local government authorities were directed toward development of statutorily required policy statements and plans.

Failure to implement Section 32 may also be explained by its historical context. Section 32 was added to the Act at the behest of the Treasury shortly prior to its passage, largely due to the efforts of free market ideologues who were intent upon building in local government accountability. The idea was to force a critical thinking of the economic costs of new regulation and to discourage expensive, yet ineffective, policy decisions. The attempt to control local decision-making on economic grounds perhaps did not sit well with local government bodies.

Whatever the reason for local government's general disregard for Section 32, their failure to adhere to its provisions has had significant ramifications. Section 32 could (and should) have provided a key "gear-meshing" function, by linking the public participation provisions of plan preparation with the analytical evaluation of alternatives. Designed properly, Section 32 analyses would have driven participatory strategic environmental assessment by requiring the engagement of stakeholders and community-based discussions of future scenarios and desired outcomes, coupled with a rigorous analysis of the trade-offs associated with each.[97] Based on that public outreach,

[94] Peter Horsley, Massey University, Palmerston North, personal communication, April 2000.
[95] This provision only pertains to the Ministry for the Environment and the Department of Conservation.
[96] RMA Section 32
[97] Strategic environmental assessment has been described as "the formalized, systematic and comprehensive process of evaluating the environmental effects of a policy, plan or programme and its alternatives, including the preparation of a written report on the findings of the evaluation, and using the findings in public accountable decision-making" (Therivel 1997, p. 21 as cited in Memon and Perkins 2000, p.88).

Section 32 could then have provided the foundation and justification for the objectives laid out in policy statements and statutory plans, and consequently the rules and regulations that are formulated to achieve them. Unfortunately, the opportunity for extensive community dialogue and buy-in to long-term planning has not materialized to date. Instead, Section 32 analyses have typically been closed-door, paperwork exercises by government authorities to create a paper trail on which to justify their decisions if ever called upon to do so.

Several subtle but critical consequences flowed from the missed opportunity presented by Section 32. According to those interviewed, the first round of regional and district plans had very little community buy-in and did not reflect a shared vision for the future. Not surprisingly, the majority of proposed district plans have been fraught with legal challenges, largely because local planning authorities undertook little or no stakeholder consultation and then released prescriptive statutory plans based on their isolated view of the community's sustainable future. In cases where plans were developed from the "ground up," with extensive stakeholder participation, their final approval and implementation has gone relatively smoothly.

Some legal challenges to proposed plans cannot necessarily be attributed to a failure on the part of government to engage the public. Experience in New Zealand has shown that in some instances there is very little interest by the general public in participating in plan development, at least until the NIMBY effect takes place.[98] In those cases where government authorities have failed to engage the public, observers have attributed the "clandestine planning" phenomena to a slow transition by old-school planners to the more transparent and inclusive RMA regime. Under the prior Town and Country Planning Act regime, unilateral decision-making among local authorities was the norm. Nonetheless, had the RMA required that Section 32 analyses be carried out by local governments with extensive public involvement, some of the costly and time consuming court delays might have been avoided.

According to Royden Somerville, Q.C.,[99] a senior New Zealand resource management lawyer and commentator, legal cases where councils developed district plans without engaging communities for their input have posed difficulties for the courts. This is because district plans are meant to be reflective of the general public's will, but arguably such plans drawn in isolation fail to deliver this confidence. Thus, courts are essentially asked to speculate as to the community vision in order to interpret and apply rules contained in the plans, or the RMA more generally. It is questionable whether this is an appropriate role of the courts, and whether in fact it unjustly circumvents the democratic process. Some local governments in New Zealand have responded to this problem in recent years by creating new institutional arrangements, such as neutral working parties that help facilitate community dialogue and consensus building on a long-term vision.

Public Participation in Permitting Decisions: A Mixed Blessing

The virtual elimination of the requirement that one must make a showing of "standing" in order to participate in resource consent decisions was one of the most significant changes enacted by the RMA. In comparison, some environmental statutes prior to the RMA such as the Clean Air Act 1972 made no provision for public participation at all, and others that did had stringent standing restrictions. However, local authorities are not required to provide public notice and opportunity to comment on all applications.

Perhaps the most contentious of the public participation procedures in the RMA is the notification and submission process for resource consent applications. Section 94 of the RMA requires that a

[98] For example, not-in-my-back-yard (NIMBY) syndrome occurs when a proposed plan provision is perceived as directly impacting a person's property value. Only then would that person become interested in participating in the plan-making process.

[99] Queen's counsel

resource consent application be publicly notified by a local authority unless it finds that the proposed activity would have only a minor adverse environmental effect, and that all parties who may be adversely affected by granting of the application have provided their written consent to the proposal. The controversy surrounding the notification debate is due, in part, to the fact that administration of Section 94 involves a considerable degree of discretion by the local authority.

Because of the extensive submission process that almost always follows public notification, local government has experienced intense pressure from the environmental community and public to notify more frequently, while at the same time, the private sector has applied significant pressure *not* to notify. Moreover, there is internal pressure within local government to avoid notification due to its relatively high costs and the limited agency resources.[100] The actual (and significant) costs required by local government to adhere to public participation provisions were not adequately anticipated, creating an internal negative incentive to minimize the opportunities for public input.

The current notification rate under the RMA is five percent, which the environmental community complains is far too low.[101] There is support for this argument based on explicit language in the RMA indicating that notification was to be the default, and a decision not to notify would have to meet the strict requirements of a statutory exception. The low notification rate suggests the reverse is true, with notification only occurring when a council absolutely cannot justify non-notification. Some practitioners attribute the low notification rate to the fact that applicants are undertaking more extensive consultation with the public prior to filing a resource consent application. Purportedly, this results in the elimination of controversy and obviates the need for notification, while still allowing for input into the process by those likely to be affected by the proposed project.[102]

Regardless, there is still a sentiment in the environmental community that the notification process remains flawed, and that there is still reason to fear that some resource consent decisions are not adequately reflecting the public's interests. Although the RMA provided for more public participation in resource consent decision-making processes than had existed under prior law, it is questionable whether there has in fact been greater participation due to the low notification rate. In this sense the expansion in public participation has been a mixed blessing: more people can participate when an application is notified, but fewer applications are being notified. Thus, despite the fact that Section 94 has improved government accountability for non-notification decisions when compared to law pre-dating the RMA, there remains much room for improvement in terms of public participation in the resource consent process.

Public Participation as the Critical "Check" in the System

Often overlooked by the groups that complain of public participation provisions is that, in the New Zealand context, public participation does not only serve to democratize environmental decision-making; it also serves a critical "check and balance" function on local government. This is because unlike the U.S. system, central government under New Zealand's RMA framework has limited oversight authority over local government, and no overarching enforcement authority to ensure that local government complies with the Act and carries out its duties effectively. The one enforcement power that MfE was given in the RMA is the ability to "call-in" resource consent applications when they involve significant matters of national importance. To date, the call-in power has only

[100] The local authorities' decision regarding whether to publicly notify a resource consent application is similar in nature to lead agency decisions under CEQA to issue a negative declaration.

[101] Only 1 percent of all resource consent applications are challenged in Court, 65 percent of which ultimately resolve in settlement prior to Court adjudication of the dispute.

[102] Cynics counter that resource consent applicants pressure affected parties into providing their consent to a project, and hire consultants to develop impact assessments that provide councils with a justifiable basis for determining that any adverse effects would be "minor."

been exercised once. Other than the call-in power, MfE has been given no other special enforcement mechanisms or powers over local government. For example, MfE has no ability to evaluate local government plans and policy statements and approve or reject them, but rather is limited to simply filing submissions once they are notified as any other member of the public.[103]

What this has meant in practical terms is that public participation under the RMA carries considerable weight. The system essentially relies on submissions and appeals by members of the public and environmental groups to ensure that local authorities comply with the Act. Given the gravity of this function, it is possible that participation levels have been higher than they would have been otherwise. Had local government been faced with the threat of central government enforcement and the public participation provisions served solely for the purpose of ensuring democratic decision-making, perhaps far fewer submissions and appeals would have been filed. This, in turn, might have led to the realization of promised efficiency gains that were never delivered.

This phenomenon illustrates the intricacies of how interwoven the concepts of efficiency and participation are with other concepts such as ensuring adequate performance and the balancing of powers between central and local government. Even with the extensive consultation and public outreach during the development of the RMA, all stakeholders involved were unable to anticipate the subtle implications that each change in the system would have for other parts of the system. An analogy can be made to an ecosystem, where the introduction of just one miniscule organism can radically impact the health of the ecosystem as a whole.

Democracy and Efficiency At Odds

As discussed above, the RMA established numerous mechanisms that provided opportunities for increased stakeholder participation in environmental decision-making. Throughout the first ten years of implementation, these new processes, though allowing for a more democratic system of environmental planning and decision-making, have been accused by some as increasing costs and delays. For example, publicly notified resource consent applications can purportedly get so bogged down in the submission process that developers have been known to withdraw applications altogether or abandon a proposed project if it will be subjected to public notification.[104]

To some extent, however, whether the expanded public participation provisions are truly a cause of delay under the RMA is a question of debate in New Zealand. Although many of our interview respondents indicated their belief that the participation provisions resulted in increased costs and delays, some believe that such allegations are nothing more than "RMA myths," and that actually delays and costs under the RMA are no greater than those that were constantly complained of under the prior legislation, such as the Mining Act and the Town & Country Planning Act.

Given the low notification rate, some argue that it is unlikely that expanded public participation in the resource consent processes is the source of any significant delays. Evidence from the MfEs annual surveys of local authorities supports this, as it indicates that most resource consents are processed within the statutory time frames allowed.[105] However, delays may have indeed resulted from expanded public participation in the plan and policy statement approval process. Opinion

[103] One exception to this rule is the Minister of Conservation's power to approve Regional Coastal Plans mandated by the Act, which was given to central government due to the national importance of the coast.

[104] Even the most frivolous submissions, which may occur on occasion, have to be reviewed by council, consuming valuable and limited council resources. At the appeal stage, if a submission is determined to be "frivolous or vexatious" the Court may award costs against the submitter.

[105] Representatives from the private sector have indicated that this fact is misleading, given that councils can "reset the clock," as opposed to simply "stopping the clock," in terms of resource consent processing time frames by making a request for further information from the applicant.

regarding the source of these delays is mixed, with industry alleging that individuals with "NIMBY" claims hold the process hostage, and the environmental community asserting that industry and primary producers are to blame for this. NGOs also contend that the protracted process of ultimately reaching a final, operational policy statement or plan has been primarily due to the extremely poor quality of the plans promulgated by local government. Yet others would argue that the costs and delays associated with providing for public participation under the RMA are simply "transactions costs" of adapting to a radically new system.

In any case, all stakeholders agree that there has been a net gain in terms of public participation due to the areas that were previously unregulated which, under the RMA, became subject to participatory processes for the first time.

Findings and Conclusions

While all stakeholder groups are dissatisfied with how the public participation provisions of the RMA have played out in practice for one reason or another, they seem to agree that the provisions have increased the opportunity for stakeholder participation in decision-making in comparison to the former legislation, and that more public participation earlier in the process ensures a higher level of buy-in and fewer legal challenges. Dissatisfaction among the regulated community has resulted because the RMA promised stakeholders efficiency gains in areas such as "one-stop-shopping" for resource consents and the streamlining of administrative processes, which have been allegedly offset in part by the efficiency losses resulting from increased public participation. Dissatisfaction within the environmental community has resulted due to the low notification rates for resource consent applications, particularly given that public participation serves as an essential "check" on local government.

While New Zealand, under the RMA, achieved a net gain in terms of the general principle of participatory democracy, there remains room for improvement, due to the missed opportunity of Section 32 and low notification rates for resource consent applications. Although the Act provided participatory processes for influencing the ultimate outcomes desired by a community (through submissions on policy statements and plans as well as on resource consent applications), it failed to require engagement of the public in the strategic assessment of the various alternative methods for achieving those outcomes. Thus, many benefits were derived from the RMA's extensive public participation provisions, but there were important potential benefits that never came to fruition. Ensuring broad stakeholder input on the question of where the state (or regional or local community, if applied on a smaller scale) desires to go is equally important as their input to the question of *how* best to get there.

New Zealanders collectively failed to fully anticipate that the newly expanded role of public participation in every area of environmental and resource management may entail efficiency losses. The failure to anticipate the implications of expanding public participation led to disillusionment with the Act during the course of implementation. These unanticipated pitfalls may have been due in part to the complexity of interrelationships among competing principles and objectives of the Act, and the fact that they were all undertaken simultaneously without any opportunity to observe the repercussions of incremental change to the system. Fortunately, there is evidence that indicates that as collective experience matures under the RMA, efficiency gains are now on the rise.

Lessons for California

The earlier that stakeholders and the general public are involved in the policy-making process, the greater their support for the end product. In the New Zealand context, this has held true in the development of plans and policy statements, as well as the resource consent

application process, and the authorities (and resources consent applicants themselves) are beginning to realize it. Although the California policy-making process provides many opportunities for "public comment," it fails in terms of obtaining stakeholder buy-in up front, thus constantly facing challenges and a lack of political and public will behind initiatives adopted unilaterally (or with minimal statutorily required public review and comment). If California policy-makers choose to undertake the sustainability reforms suggested in this report, buy-in *early* in the process will be essential to its ultimate success, longevity, and effectiveness.

Caution should be had to avoid overselling any sustainability program or reform on the grounds of efficiency. Much discussion about innovative reforms or programs in California has surrounded the goal of efficiency gains. While improved efficiency is an important and necessary objective of policy innovation, it cannot be pursued at the expense of other principles of sustainability, such as participatory decision-making and accountability. It is a simple truism that the more people you involve in environmental decision-making, the longer it will likely take to arrive at decisions.

VI. Flexibility and Accountability: Focusing on the Desired Outcomes

Flexibility and accountability are two underlying and intertwining principles that can be traced throughout the RMA. Leading up to the passage of the Act, two key policy objectives were to: 1) revive the languishing economy by providing businesses and resource users the maximum flexibility necessary to pursue their commercial endeavors in an efficient manner (and with minimal interference from the government); and 2) ensure that government, with whatever powers it retained, be disciplined, transparent, and accountable for achieving desired environmental outcomes. The latter objective was also a central tenet of the concurrent local government reforms. As noted earlier, both reform efforts reflected a desire to eliminate the historically heavy-handed, intrusive role of government, as well as to address accusations that policy decisions and regulations were often unfounded and arbitrary.

Throughout the U.S. over the last decade, there has been growing interest in "regulatory innovation" that focuses on performance and offers greater flexibility while achieving the same or better environmental outcomes. Federal programs such as the Environmental Leadership Program and Project XL, and state programs such as the Oregon "Green Tier" permitting program and Wisconsin's Cooperative Environmental Agreements are examples of such initiatives. The results from these programs are mixed. In some cases, higher levels of environmental protection have been achieved, while simultaneously streamlining permitting approvals for equipment replacement or retrofits. This has resulted in a "win-win-win" for the public, the regulated entity, and government.

In other cases, however, programs have resulted in costly and time-consuming negotiations, have provided no greater flexibility for the regulated entity, and have resulted in no net gain in terms of environmental protection. Critics, particularly NGOs, have alleged that some "innovation" programs are simply a politically appealing moniker for what is nothing more than industry seeking regulatory relief without being bound to performance improvements.

Despite the stumblings of innovation programs in the U.S. to date, there remains merit in pursuing new models for providing greater flexibility, efficiency, and effectiveness in terms of environmental protection. This is primarily because the existing "command and control" system alone will not be able to ensure an adequate level of environmental protection into the future, given increasing economic constraints and projections for rapid population growth, and the consequential increases in environmental and resource pressures. Even Cal/EPA explicitly recognized that "[t]he traditional 'command and control' approaches of the past have reached a point of diminishing returns."[106]

New approaches and tools must be explored and, if worthy, adopted to augment the existing regulatory framework. In this vein, below we discuss two main features of the RMA that were designed to increase flexibility and accountability – an outcomes-based (known in New Zealand as "effects-based") approach to environmental management, and the corollary information base and monitoring systems needed to carry out such an approach effectively.

[106] Cal/EPA 2000, p. 3

Effects-Based Approach to Environmental Management

A major conceptual shift serving to promote the principle of flexibility in New Zealand was an attempt to regulate the environmental "effects" of activities, rather than the activities themselves.[107] This new approach reflected an overarching desire to move away from the prescriptive command and control approach of the prior regime, toward one that focused on environmental performance and outcomes. While there is no one section of the RMA that spells out the effects-based model, it is a fundamental concept that is embedded throughout the legislation.

There are multiple potential benefits of the effects-based approach. For government authorities, it means specifying desirable and undesirable effects and seeking to manage them by setting objectives, policies and rules, as well as through justifying decisions on whether to grant resource consents. The focus on actual environmental effects is designed to lead to more disciplined and thoughtful decision-making. For the regulated community, the approach requires that environmental effects be explicitly evaluated when seeking a permit. The evaluation must demonstrate that certain effects will be avoided, remedied, or mitigated, and the means of doing so are not prescribed by government, which in turn provides for greater flexibility and innovation in achieving desired environmental outcomes.

Most people interviewed seemed to agree that the concept of controlling performance outcomes, rather than processes and activities, is a valid approach that over the long-term has a better chance of reaching desired environmental quality goals. Nonetheless, a fair percentage of interviewees suggested that the effects-based concept is as much myth and propaganda as it is reality, and that the effects-based mantra promoted by central government has been little more than a sophisticated and enduring public relations campaign.

Proponents of this view argue that the terminology of "effects-" versus "activities-based" planning has been somewhat a game of semantics, because only an arbitrary distinction can be made between environmental effects and the activities that cause them.[108] They also point to the language of RMA itself, which sets forth a resource consent process that is based on whether "activities" fall into one of five categories: permitted, discretionary, controlled, restricted, or prohibited. Although these activity categories are theoretically justified on the basis of their effects, they create the impression that the Act is activity-based. Others have noted that the debate is moot, based on the reality that many district and regional councils have continued regulating on an activity basis the same way they did under the former regime.[109] Table 4 illustrates the range of opinions regarding the effects-based approach.

For those local governments that did embrace the concept of effects-based planning and regulation, the last decade of translating it into practice has been tumultuous at best. Below we discuss the various aspects of New Zealand's experience with implementing the effects-based approach to environmental management.

[107] Section 3 of the RMA defines "effect" to include any effects that are positive, adverse, temporary, permanent, past, present, or future, as well as cumulative and potential effects. This broad definition, particularly the inclusion of cumulative and potential effects, demonstrates the Act's intent to go beyond merely controlling pollution "end-of-pipe." Although the RMA did not explicitly adopt the precautionary principle, this definition of "effect" essentially embodies the concept.

[108] Extreme cynics describe effects-based thinking as purely an expression of free market individualism and unfettered rights to resources use and exploitation.

[109] According to some interviewees, some territorial authorities simply carried over activities lists from old district schemes developed under the Town & Country Planning Act when developing their statutorily required district plans.

Table 4: How Would You Evaluate the Effects-Based Approach Under the RMA?

General Themes and Individual Responses	NGO	CG	TA	RC	Priv	Ac/CRI	Total
Number of Individuals Asked this Question	5	7	6	7	9	7	41
***Purely* E-B approach is not happening, nor is it desirable**							
E-B is just semantics, really still very much based on activities instead of effects	2	1	2	2	4	2	13
Some people prefer activities based than effects, due to the desire for certainty	2	1	1	3	4	-	11
Approach ultimately needs to be a combination of effects- and activities-based	4	1	1	3	2	-	11
For TAs planning, E-B may require community dialogue to agree on values determining desired outcomes in areas such as amenity values, urban growth, intrinsic values, etc.	-	-	3	1	-	1	5
TA's planning (land use) should be activities-based, RCs planning (pollution) should be E-B	-	2	-	1	-	-	3
Planning should be E-B, but tools to control effects should be activities-based	-	-	-	2	-	-	2
Presumption of permissiveness (unless listed as prohibited or controlled) is flawed - makes it much less user-friendly to follow every thread of every effect to determine if it is not allowed, rather than simply stating what IS allowed. (RMA Section 9)	-	1	-	-	-	1	2
The more information you have, the better E-B planning you can do. With less information, need to be more process-focused.	1	-	-	-	-	1	2
More Flexibility, less certainty, and limited efficiency gains							
E-B approach enables more innovation and flexibility	-	1	1	2	1	-	5
E-B approach was a response to overly-prescriptive command and control system, aimed at greater efficiency and flexibility	1	-	-	-	-	-	1
E-B approach should provide **more** certainty, but can only do so when data are available from which to create E-B plans	-	1	-	-	-	-	1
Maximum efficiency would involve, in some cases, regulating activities	1	-	-	-	-	-	1
Transition has been slow and difficult							
The E-B approach is the right one to take, it just hasn't worked yet in practice	2	4	3	-	2	-	11
Need more guidance from CG, particularly in writing good E-B plans. Expectations of LG were too high.	1	1	3	-	2	3	10
E-B plans are not user-friendly, very difficult to use in practice	2	2	-	2	3	-	9
Councils have not been assessing cumulative effects	1	-	2	1	2	2	8
Slow coming into practice due to old planning mindsets and resistance to change	-	1	-	-	1	1	3
Lack of environmental information has hampered implementation							
Hasn't worked in practice largely due to lack of baseline information & data	3	2	1	2	2	1	11
Plenty of information exists, just not in a form that is readily accessible	-	-	-	2	1	1	4
E-B approach is essential for environmental protection, but without baseline data, it requires leaps of faith and decisions based on values instead of information	-	1	3	-	-	-	4
Shortsightedness regarding E-B planning led CG to spin off the CRIs, leading to a net loss in access to scientific information & data	-	1	-	-	-	1	2
Should define desired outcomes & develop narrow set of indicators for rather than proceeding with full-scale E-B approach without knowing what is important to monitor	-	-	-	-	-	1	1
Can only work if prepared to invest resources in the monitoring, collection, and use of data	1	-	-	-	-	-	1
Noteworthy random responses							
Need to establish the thresholds below which environment won't be permitted to degrade	-	-	1	2	-	-	3
Requirement to consider "cumulative effects" is not happening in practice. Effects considered are limited to a particular site, not surrounding sites, future development, etc.	-	-	1	-	1	-	2
Still too much focus on "remedy, mitigate" rather than on "avoiding" effects	-	-	1	1	-	-	2
The burden is on the regulator to show adverse effects if an activity is allowed, and most councils don't have the information or resources to do this.	1	-	-	-	1	-	2
RMA's E-B approach is the regulatory embodiment of ISO 14001	-	1	-	-	-	-	1
E-B approach provides more transparency because you can understand the reason behind the prescription, unlike the prior regulatory regime (T&CPA)	-	-	-	-	-	1	1
E-B approach could work if stakeholders were engaged at the outset from the bottom-up	-	-	-	-	1	-	1
Must not overlook transactional costs of gathering information, developing monitoring programs/databases, and analyzing the data required for an effective E-B system	1	-	-	-	-	-	1

Key: **Ac/CRI** = Academia and Crown Research Institutes
CG = Central government
E-B = Effects-based
NGO = Non-governmental organization
Priv = Private sector
RC = Regional council (includes unitary authorities)
TA = Territorial authority

Land Use versus Environmental Pollution

Experience has proven that the effects-based approach has been easier to apply in certain contexts, such as the permitting process for air and water discharges, than in others such as land use planning. This is because an effects-based approach assumes that an analysis will be conducted regarding desirable and undesirable environmental effects. Arguably, this analysis is more easily performed when the effects involved can be objectively defined and supported by science. This analysis is more difficult to conduct with regard to non-biophysical issues, such as urban amenity and cultural values, which are founded on more subjective bases. Such value-based considerations, however, are major factors in steering land-use decisions, as well as important components relating to quality of life and sustainability more generally.[110]

For instance, a proposal to site a liquor store or pornography shop adjacent to an elementary school is likely to be contested on the basis of social values rather than ecological effects per se. In other words, a community may not want their children exposed to the store or its clientele, even though the actual "environmental impacts" may be negligible. Due to the challenges posed by such examples, land use planning in New Zealand over the last ten years often went well beyond consideration of direct impacts on the environment (e.g., air, water, soil, biodiversity, etc.). As noted by a Tasman District Council representative:

> Specification in district plans since the RMA, of permitted or regulated activities, in relation to zones or locations, where the activities are described in purposive terms such as industrial, commercial, or residential, is de facto allocation of land as a space resource between groups with such socioeconomic end-use interests. This is the case, regardless of any attempt to defend such specification with effects management reasoning.[111]

In cases such as urban amenity, where the notion of permissible effects eludes scientific determination, the only plausible alternative approach to determining them is through active engagement of the community and reaching a reasonable degree of consensus on the social and cultural outcomes desired. In practice, however, this community level discourse did not come to fruition in New Zealand, and as a result the application of the effects-based model for land-use planning and decisions has been riddled with both controversy and uncertainty.

As noted earlier, territorial authorities have primary responsibility for land use decisions, while regional councils are primarily charged with management of resources such as air and water. This distribution of responsibilities under the RMA explains, in large part, why the transition to effects-based planning has been more difficult for TAs than RCs. However, there are other factors underlying TAs' relative level of difficulty in implementing the effects-based approach. TA staff were typically trained as "city planners" under the prior regime, where activities were the basis of regulation. The RMA presented a radical shift in the mindset of planners, requiring them to "think out of the box" and justify their decisions on the basis of effects. Resistance to change, of course, is not a problem unique to New Zealand local government, but it did have a significant impact on the speed and extent to which they were able to understand and effectively implement the effects-based approach.

[110] Prior to the RMA, land use planning in New Zealand was based on the British "town and country" approach, where locally developed land-use plans prescribe zoning schemes that direct the special pattern of urban and rural land uses. Under this model, activities and developments were strictly regulated based primarily on societal value judgments regarding accepted norms, aesthetics, and preferences.

[111] Markham 1997, p. 10

Flexibility versus Certainty for Business

The allure of an effects-based approach, particularly for industry, is that it purportedly represents a more efficient alternative to the prescriptive command and control approach. Leading up to its enactment, the RMA was sold to many private sector interests on this basis. Inherently appealing for the private sector was the potential of the effects-based model to provide added flexibility in terms of *how* to achieve quantitative performance expectations. Industry in California is similarly becoming enamored with the effects-based approach as a potential means of alleviating the prescriptive and time consuming dictates regarding the methods required to reach desired outcomes. In the view of industry, it has the technical skills and the expertise to innovate more cost-effective means of achieving the same (or better) ends.

However, while the RMA may have delivered greater flexibility, along with this came an unexpected reduction in certainty. If there is one virtue of a prescriptive command and control system, it is certainty. Parties know precisely what is expected of them and what they can and cannot do. This certainty in itself can result in efficiency gains.

In order for an effects-based approach to deliver certainty, particularly in the context of pollution control, there must be clear performance standards. In this regard, the failure of central government to produce National Policy Statements and National Environmental Standards became a barrier. With the exception of one set of regulations for discharges from marine vessels, central government has promulgated only "voluntary guidance" regarding air and water quality that have in turn been relied upon by regional councils to develop regionally-specific standards. The private sector's dissatisfaction with the degree of uncertainty under the RMA was articulated by the Ministerial Panel on Business Compliance Costs:

> We understand that the RMA was not intended to be either a prescriptive or regulating document, but rather one that provided a framework to manage environmental effects, and where the needs of a community were put into balance. It promotes flexibility not rigidity. The reality is that the lack of framework is causing problems and, as a result, business people are asking for standardization and certainty.[112]

Due to central government's failure to provide this "framework," the onus for setting quantitative performance requirements (which in theory, deliver certainty) fell on local governments. As discussed below in more detail, this task was made even more difficult by the fact that the environmental information and scientific expertise upon which to set such standards were either limited or nonexistent. Investors' aversion to risk has been tested by the uncertainty regarding what performance standards will be applied in a particular region given the lack of uniform national standards, as well as by the variability across regions for those businesses with multiple operations in different jurisdictions.

In the context of land use, the application of the effects-based approach has had specific negative repercussions in terms of certainty. This is because businesses, landowners, and the community have little certainty about what land uses can or cannot occur on an adjacent property.[113] Restricting development solely on the basis of "effects" has the potential to result in incompatible land uses together in a particular area. In turn, this can diminish property value and also potentially stifle business investment in an area. Consider, for example, a business decision to site a new hotel at a given location. In a purely effects-based model, the local government authority cannot provide assurance to the hotel company that an industrial manufacturing plant would not be built on an adjacent property if such a manufacturing plant would not have environmental "effects" that

[112] Ministerial Panel 2001, section 5.2.4
[113] Hughes 2000, p. 6

violate a rule in the district plan. As compared to an activities-based zoning approach, the effects-based approach can create a high degree of investment uncertainty in such siting decisions.

A widely shared complaint by industry has been that the Assessment of Environmental Effects (AEE) procedures have offset many of the purported efficiency gains associated with the effects-based system. While most would admit that there may be some truth to this assertion, there are indications that efficiency is on the rise. Councils, as well as consultants typically hired to prepare a resource consent application for private sector projects, are becoming more accustomed to the new requirements and how to operate in an effects-based system. Several interview respondents observed that now it is really only the very poorly prepared and uninformed resource consent applicants that suffer the delays so frequently complained of in the past. With regard to complaints of inefficiency, the aforementioned Ministerial Panel indicated that part of the responsibility for efficiency in the new effects-based system is for business to "prepare useful [AEEs] and to provide comprehensive and accurate applications appropriate to the scale of their proposals."[114]

Information Needs and Comparative Costs

Whether it is more efficient to regulate effects rather than activities should be an empirical question, but it has become an ideological one in New Zealand. While the thought of light-handed regulation has been appealing to New Zealand businesses, the truth is that different regulatory instruments and models have different transactional costs and areas of efficiency. If done correctly, an effects-based approach requires a robust information base, as well as greater scientific understanding of natural systems and the concomitant thresholds that delineate unacceptable environmental impacts. Such information systems are essential for setting environmental performance standards, as well as for justifying conditions placed on permits, but are typically expensive to assemble and maintain. However, without such an information base, effects-based environmental management is an "act of faith" wherein decisions are arbitrarily based on subjective opinion and are not scientifically founded.

Consider that the costs associated with an activities-based approach are typically incurred in the installation or retrofitting of pollution control technologies (i.e., best available technology) mandated by the regulator. Shifting to an effects-based approach provides efficiencies gains by eliminating the overly prescriptive elements of the old system and allowing industry the flexibility and innovation to reach the same outcomes without being told how to reach them. However, the costs are not eliminated altogether because an effects-based approach essentially transfers or frontloads them to the information collection and effects assessment side of the equation. Planners and regulators must collect information and monitor conditions in order to understand effects and set thresholds, and industry needs information as a baseline against which to assess the effects of its proposed activities. The costs associated with this information collection and management are eventually passed on to resource users in the form of permit fees, and sometimes to the general public in the form of taxes.

Information collection and the assessment of environmental effects both represent substantial transactions costs of an effects-based approach that are not necessarily incurred in an activities-based system. These transactional costs have perhaps long been overlooked in New Zealand, which raises the question of whether the benefits of an effects-based system outweigh its costs – whether, in fact, it is truly more economically efficient than an activities-based approach. It is conceivable that given the marginal costs of a purely effects-based approach due to its data-intensive nature, the cost-savings argument may be unjustified.

[114] Ministerial Panel 2001, section 5.2.4

Because successful implementation of an effects-based approach requires considerable scientific understanding of natural systems, it also raises the question of what to do when effects are scientifically uncertain, as in the case of numerous emerging environmental issues such as genetically modified organisms, climate change, and loss of biodiversity. Some believe this is poorly handled under the RMA. Although included in draft versions of the Resource Management Bill, explicit incorporation of the precautionary principle was excluded from the final version of the Act.[115] The onus, therefore, is placed on the regulator to determine the adverse effects prior to creating a rule in a plan disallowing a given activity. If the effects cannot be objectively established thereby justifying restriction or prohibition, the activity, and consequently its effects, will be allowed.

Cumulative Effects

There are limited mechanisms under the RMA that drive local governments to adequately account for and address the cumulative effects of activities and resource usage.[116] As stated by the Parliamentary Commissioner for the Environment in its 1997 review of the RMA:

> The need to understand, measure and manage the cumulative effects of the use of natural and physical resources, as required under the RMA, remains acute. Gradual erosion of environmental values by incremental development and changes in use suggests that there is a need to address the measurement and management of cumulative effects, sooner rather than later.[117]

This problem is partly due to the fact that one of the primary mechanisms that serves to give effect to the Act's "sustainable management" purpose on a daily basis is the administration of resource consents. In practice, although not the intent of the Act, consents are typically considered on a case-by-case basis in isolation from one another – an approach that has been characterized as ecosystem degradation 1,000 trees at a time.[118] Thus, similar to NEPA in the U.S., the RMA has been accused of fostering a piecemeal, reactive approach whereby decision-makers focus their attention on the effects of the activities in the one proposal immediately before them for determination rather than a more holistic and intergenerational consideration of ecosystem health based on past, present, and future development in the larger area.

Accessibility and User Friendliness

Another perceived drawback of the strictly effects-based approach is its tendency to be incomprehensible to resource users and the general public. Critics have suggested that true effects-based plans are not user-friendly. For instance, when designing a new facility, companies prefer to be able to give their contractors and engineers detailed specifications and parameters regarding precise limits allowable for wastewater discharges, rather than having to adhere to vague language regarding the expected water quality of receiving bodies (as embodied in the Act as currently written).[119] In the agricultural sector, a typical farmer does not have the time or interest to conduct a study to determine the nutrient loadings entering a waterway due to her cattle grazing. Instead of being told that she shall not cause a waterway to exceed 'x' level of nutrient loading, the farmer

[115] As mentioned above, it can be argued that the precautionary principle is implicitly incorporated due to the inclusion of potential and cumulative effects.
[116] Hughes 2000, p. 6
[117] PCE 1996, p. 23
[118] Morgan Williams, Parliamentary Commissioner for the Environment, personal communication, January 2000.
[119] Among the effects described in the RMA that are frequently accused of vagueness are those resulting from discharges to water such as the "production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials" and "any conspicuous change in the color or visual clarity." Section 70(1)(c) and (d).

might prefer simply to know the size the treatment pond will have to be based on the total head of cattle on the farm.[120]

Many New Zealanders approached the shift to "effects based" planning as entailing complete abandonment of activity- or process-based regulation. However, there is an emerging recognition that in many instances people may actually prefer simply to know "off the shelf" whether they can do something or not, and that perhaps some degree of activity-based regulation is helpful. The two are not mutually exclusive. It may be the case that the best solution to address the shortcomings of both the effects- and activities- based approaches would be to develop a model that reflects a combination of the two.

The more science and information there is, the more an effects-based approach can be taken – the less information, the more process oriented. For example, non-point source pollution may be better tackled via process rather than by effects because the data are not available to tie the activities to the effects. The combined approach could also involve bundling types of activities for purposes of regulation, based on the effects they may have. In order to ensure user-friendliness, a matrix showing links between activities and effects can accompany a plan. On one hand, the command and control model of prescriptive activities-based regulation has proven inefficient, and sometimes ineffective, at ensuring environmental protection. On the other hand, New Zealand's effects-based approach has proven difficult to understand and apply. A combined approach may hold promise for addressing the challenges inherent in both models.

Environmental Monitoring Under the RMA

The RMA has created a system that is reliant upon an extensive information base, and has largely placed the burden upon government to establish this information base and determine the acceptable levels of environmental effects accordingly. However, there was wide agreement among the range of stakeholder groups interviewed (though particularly among environmental groups and others outside government) that environmental monitoring has been one of the most abysmal failures in implementation of the RMA.[121] The failure to establish clear baseline data and an effectively functioning monitoring regime has precluded any ability to objectively gauge the successes (or failures) of the RMA at actually improving environmental protection, and has significantly hindered the ability of local government to develop effects-based policies and plans. As observed by the OECD in its 1996 Environmental Performance Review of New Zealand, "local authorities cannot yet fully implement the effects-based regulation called for by the RMA. This in part is due to a lack of data about and understanding of the ambient environment by both local officials and the private sector."[122]

The MfE has acknowledged the information and monitoring problem, most notably in its first State of the Environment (SOE) Report published in 1997. In this report, MfE unequivocally stated: "Our first, and strongest, conclusion then is that New Zealand's environmental information, including the collection and integration of data, needs to be improved. Many of the other conclusions in this chapter should be read with the caveat that they are often based on limited information."[123]

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[120] At a broader and more conceptual level, a number of interviewees noted that an inherent shortcoming of the effects-based approach is that it runs counter to human nature because it is negative in its orientation, and because it is ill suited to provide a positive vision (or even a set of possible desired outcomes) for the future. Most people, they suggest, would prefer to know what is allowed, as opposed to a list of environmental effects they are not permitted to cause.

[121] Worth noting, however, is that a number of people interviewed suggested that this problem was not new to New Zealand, and was equally problematic under the legislative framework that preceded the RMA.

[122] OECD 1996, p. 110

[123] MfE 1997b, p. 10-3

Section 35 of the RMA requires that "every local authority shall gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under the Act." Among other things, local authorities are required to monitor "the state of the whole or any part of the environment of its region or district to the extent that is appropriate…the suitability and effectiveness of any policy statement or plan for its region or district…and the exercise of the resource consents that have effect in its region or district." Based on such monitoring, they are expected to then "take appropriate action (having regard to the methods available to [them] under the Act) where this is shown to be necessary."[124] However, despite the clear obligations set forth in Section 35, few governmental authorities have taken their monitoring responsibilities seriously. Figure 2, based on the MfE's "Annual Survey of Local Authorities," illustrates the extent to which local governments are carrying out their monitoring responsibilities.

Figure 2: Percentage of Local Authorities Conducting Monitoring

Type of Monitoring	RCs	UAs	TAs
State of the environment	100	80	36
Effectiveness of policies and plans	83	80	54
Resource consent compliance	100	100	96

At first glance, these data suggest that monitoring is, in fact, being conducted quite regularly. However, our review of local SOE reports, as well as responses from our interviewees, reveal that the effectiveness of this monitoring is limited. For example, for purposes of the MfE survey, monitoring might consist of occasional well testing for groundwater quality. This sampling might be considered "monitoring," but its sporadic nature means its value for purposes of policy and planning is limited. While local government may have gathered information, it has relatively little *useful* information for purposes of genuinely monitoring environmental quality over time.

State of the environment monitoring is still at a nascent stage in New Zealand. At the policy level, the lack of SOE information hinders the ability of local government to establish appropriate objectives, rules, and methods. At an operational level, the biggest problem resulting from the lack of SOE information has been that local governments are unable to develop appropriate conditions for resource consents. The paucity of environmental information available to the public and to the market also acts as a limitation on the use of information- and market-based mechanisms as viable alternatives to regulations.[125]

The lack of effective, ongoing environmental monitoring by local authorities is compounded by the fact that the RMA did not require them to conduct initial environmental reviews to establish a baseline of environmental conditions. The absence of this baseline information makes setting long-term performance objectives difficult, if not impossible. Processes for evaluating the cumulative effects in a region and ensuring that scientific information is fed into the decision-making processes have also been missing, further exacerbating the difficulties in implementation.

In response to criticism from those outside government, local government representatives by and large explained their collective failure to establish baseline data and effective monitoring programs on a combined lack of resources and time. Once again, interviewees provided the catchall explanation that territorial authorities and regional councils were focusing most of their attention and resources on developing their statutorily required policy statements and district plans. Some interviewed expressed the belief that the monitoring issue may be a problem of the past, based on the notion that plans have been completed and made operational in recent years, and that the

[124] RMA Section 35
[125] Frieder 1997, p. 57

attention of local authorities is now being turned to carrying out their monitoring responsibilities. For a full description of stakeholder views on information and monitoring in New Zealand, see Table 5.

Table 5: How Would You Assess Environmental Monitoring Under the RMA?

General Themes and Individual Responses	NGO	CG	TA	RC	Priv	Ac/CRI	Total
Number of Individuals Asked this Question	5	5	3	5	9	5	32
Lack of monitoring is problematic							
Overall, not enough monitoring is being done, and this presents many problems and difficulties in implementation of the Act.	5	1	1	-	2	3	12
State of the environment monitoring in particular is, and has always been a problem; more is needed.	3	-	2	-	2	1	8
Need more monitoring of conditions placed on resource consents	2	1	-	2	-	1	6
Need more/better monitoring of plan effectiveness and compliance	1	1	1	-	-	2	5
It has been getting better over time							
More councils are now starting to monitor	-	-	1	1	2	1	5
Once fully operational, MfE indicators program will help local government monitoring. CG should have done this much earlier.	2	1	1	1	-	-	5
Monitoring is better post-RMA than it was pre-RMA	-	-	1	-	2	-	3
Explained by a lack of capacity							
Councils had to spend much time up front preparing plans, and had little or no financial/human resources to devote to monitoring	-	2	3	-	1	1	7
Wealthier councils can afford to implement monitoring programs, poorer councils cannot	-	2	1	-	-	1	4
Monitoring has been hindered by corporatisation of CRIs	1	1	1	-	1	-	4
Consent holders do much of the monitoring, with varying degrees of reliablity	-	-	-	-	-	3	3
Need to develop mechanisms for sharing best monitoring practices among councils	1	-	-	1	-	-	2
Should be done in within a larger planning context							
Must be conscious of benefits vs. costs of monitoring. Before collecting more information, need to decide whether anything will be done differently based on the information…if not, it will only result in a waste of resources.	-	-	-	2	1	1	4
Difficult to go back and overlay monitoring framework on a plan that was not developed in contemplation of future monitoring	-	1	-	1	-	1	3
Should not create extensive monitoring framework in a vaccuum prior to knowing what is considered important by the community; should identify issues, set goals, and then establish monitoring regime once plans are operative	-	-	-	2	1	-	3
Plan effectiveness is difficult to evaluate without SOE monitoring; must have bottom-line thresholds as standards against which to measure	-	-	2	-	-	-	2
Need to ensure that data being collected are fed back into plans and policies	-	-	-	-	1	-	1
Currently lacking incentives							
Political pressures influence some councils not to monitor, as it may reveal negative trends and/or poor performance	1	3	1	2	-	-	7
Councils won't impose monitoring conditions for fear of being perceived as anti-development	1	-	-	-	1	-	2
Not being done because no sanctions if local authoritites fail to monitor	-	1	-	-	-	-	1
Noteworthy random responses							
Plans fail to reflect the true priorities of the public, making it difficult to monitor what is important	-	1	-	-	-	-	1
Lack of data should not be used to "paralyze" decision-making that can be based on common-sense knowledge	-	-	1	-	-	-	1

Key:
Ac/CRI = Academia & Crown Research Institutes
CG = Central government
NGO = Non-governmental organization
Priv = Private sector
RC = Regional council (includes unitary authorities)
TA = Territorial authority

There was another factor at play that constrained the ability of cash and resource-strapped local governments to carry out their monitoring responsibilities under the RMA. Ironically, at a time when local governments were being driven toward an information intensive, effects-based approach for environmental management, central government drastically altered the funding structure for its research programs and science agencies. Beginning in the 1980s, the prevailing ideology of down-sizing the role of central government led to the privatization of a majority of its scientific research and data collection organizations, known today as Crown Research Institutes (CRIs). After the spin-off, CRIs, in order to cover their operating expenses, began charging local governments for information that was provided at no cost under the prior regime. This resulted in a reduction of publicly available, free information, though according to CRI representatives interviewed the total amount of data collected actually increased because of productivity gains associated with privatization.

Another problem created in part by the spin-off of the CRIs was that it eliminated potential feedback loops between scientific information and government policy. This lack of access to scientific information was a significant impediment during the first round of district plan development under the RMA, and an effective framework for integrating science and policy remains lacking today.

Environmental monitoring was further hindered by the politics of local environmental decision-making. The majority of decision-making under the RMA takes place in a political setting, with elected officials having ultimate responsibility for issues such as evaluating and approving environmental plans, as well as considering resource consent applications through the public hearing process. The politicized nature of environmental decision-making has proven in cases to be a powerful disincentive for environmental monitoring. Elected officials have little interest in actually assessing whether plan objectives have in fact been realized, for fear that if they have not, it would amount to a political "black eye" for them.

As noted in our assessment of government structure and function under the RMA (see Chapter IV), territorial authorities are also faced with conflicting functions, unlike regional councils, which have a singular mandate relating to environmental management. Similar to Californian municipal governments, district councils are under much pressure to attract investment and encourage job creation in their areas. Thus to place burdensome and prescriptive monitoring requirements as conditions of environmental permits may drive away prospective businesses. Moreover, this creates a tension between district and regional councils, as decisions made by regional councils to impose stringent monitoring conditions may directly impact a territorial authority by discouraging investment in its area.

Lastly, a major factor in local government's failure to comply with the monitoring requirements of Section 35 has been the lack of any threat of enforcement by central government. As discussed in Chapters IV and V, the RMA did not give MfE any enforcement authority over local government. The absence of this essential check-and-balance has effectively given local government little incentive to undertake the costly and time-consuming process of creating an effective monitoring regime. The MfE's Annual Survey takes a small step toward creating this political will by highlighting the disparities in performance, fostering a competitive spirit among local authorities. But this alone will not suffice to ensure that a long-term, effective monitoring framework is established under the RMA.

Findings and Conclusions

Although an effects-based system has many alluring attributes that can address certain shortcomings of a "command and control," activities-based system, it is not the panacea. Purely effects-based systems do not lend themselves well to policy and decision-making in the

context of subjects not supported by clear, objective, and scientific information. An example of this is land-use decisions that take into account urban amenity and cultural values, which are founded on more subjective bases.

Stakeholder expectations that the effects-based approach would be more cost-effective and flexible have not been met. Moreover, all stakeholders supported the flexibility virtue of the RMA, but perhaps due in part to a degree of naiveté regarding the implications for certainty. While both flexibility and certainty are appreciated as desirable, there is a fundamental tension between them, with one often coming at the expense of the other. The private sector in particular sought and fought for the increased flexibility inherent in the Act, but now, with hindsight, has learned that perhaps the prescription of an activities-based approach can be (in some circumstances) tolerated in favor of the greater certainty it delivers. Done correctly, the effects-based approach is not necessarily more economically efficient than an activities-based system, as the expense of assembling and maintaining the information base necessary to carry out the approach simply shifts costs to a different part of the environmental protection system.

New Zealand's failure to create a robust information base and monitoring framework at the outset contributed to ineffective implementation of the RMA and the inability to measure whether it is achieving intended outcomes. The fundamental principle of government accountability sought by the RMA has been largely undermined by the consequences of an inadequate information base, which among other things has severely limited central government's ability to gauge whether the Act is resulting in improvements in environmental quality. The poor information base and a lack of scientific understanding of natural systems has significantly stifled implementation of the effects-based approach at the regional and local levels. Specifically, the lack of a comprehensive information base has made it exceedingly difficult to set and justify regional performance goals, as well as to determine credible and quantifiable resource consent conditions for resource users. Monitoring requirements imposed on local governments fell prey to other political priorities because they were not accompanied with either incentives to comply with the requirements, or the threat of sanctions for those that did not.

Lessons for California

While effects-based innovation programs and policies hold promise for achieving higher levels of environmental protection, California should be realistic about the gains and losses that accompany them. Effects-based programs can augment the existing regulatory system, and indeed might be necessary given projected increases in environmental pressures in California. In considering the development of any performance- or effects-based programs or policy frameworks, proponents should refrain from making sweeping promises of efficiency gains in the short term. New Zealand perhaps oversold the efficiency, cost-effectiveness, and flexibility gains of such an approach, leaving many ardent proponents of the RMA disillusioned and disappointed.

Performance-oriented regulatory innovation projects closer to home have experienced a similar fate. Project XL, an innovation initiative undertaken by U.S. EPA that promised greater regulatory flexibility in exchange for "superior environmental performance," has been seen by many as a failure due to the significant transactions costs involved in project participation and the struggles involved in determining what "superior" outcomes or effects merit flexibility, as well as the appropriate nature of the flexibility offered. It is essential that the expectations of all stakeholder groups are properly managed up front, so that each group is aware of, and willing to accept, the drawbacks or difficulties associated with varying degrees of flexibility, as well as the corresponding benefits and efficiencies.

Flexibility associated with performance-based programs or policies may come at the expense of certainty. In short, the effects-based approach appears simpler in theory than in practice. The

optimal system of environmental management may, in fact, involve the combination of effects-based and activities-based approaches. In California's exploration of innovation models, it should recognize the value of drawing from the strengths of both approaches. This combined approach may allow for flexibility, but also provide certainty in areas that do not lend themselves to a scientific effects determination. It would also serve to reflect the degree of science and information available with regard to effects.

Activities-based approaches may be more effective in those areas where the causal link between activities and their effects is not well defined or supported by objective, scientific information, or is attenuated due to the lack of discrete, identifiable sources (e.g., land-use decisions, non-point source pollution, open space preservation). Conversely, those areas with a wealth of data and information, and for which effects can be more easily measured, such as point source air or water emissions, are likely to be better suited for performance-based approaches.

California must develop the information base that is necessary for establishing a baseline of environmental conditions and tracking progress toward long-term goals. The absence of baseline information, performance bottom lines, and feedback loops linking scientific information to policy decision-making have come back to haunt New Zealand, because it has impeded the ability to measure progress or establish accountability for decision-makers. California should take steps immediately to identify the categories of environmental quality information for which baselines should be established, begin assembling those baseline data against which future progress will be measured, and should commit to long-term monitoring programs and state of the environment reporting.

The information base in California is not presently being effectively used to evaluate overall environmental quality, to inform environmental policy decisions, or to inform the public of the state of the environment. This is largely due to the lack of consensus on what information is important, and a lack of sufficient baseline information upon which to base long-term planning and policy decisions. Thus, California's effort could begin by identifying and "cleaning up" the data currently held, and would involve a comprehensive assessment of what data has been (and continues to be) collected, how it is organized, the relative value of that information, and an identification of information gaps or deficiencies. This assessment should serve to inform changes in data collection and analysis activities of state agencies, as well as in reporting requirements for the private sector, both to eliminate reporting requirements that have no value to government or the public and also to impose new requirements if needed to fill information gaps. The process of identifying what information is important and where future monitoring efforts should focus should be a participatory process engaging the key stakeholder groups – industry, the public-interest community, and government. This broad-based engagement is essential to developing the political will in all sectors to fund and implement monitoring programs and reporting policies.

Existing data should be organized to develop a comprehensive state of the environment report, which can serve as the baseline of environmental quality against which future improvements (or degradation) can be benchmarked. The development of a SOE report is a key step that California state government should take in order to improve its accountability for environmental policies and programs. The report should be updated on a periodic basis and subsequent versions should be adapted to reflect the environmental quality parameters determined to be important through the extensive public consultation process suggested above.

As part of its "information initiative," California should also develop core indicators that can apply across the state, and require the collection of necessary information in a uniform manner to monitor

progress over time.[126] Local authorities should then be encouraged to align their regional planning documents with the state indicators and produce their own annual SOE reports that measure progress for their geographic area.

In order for California to avoid the pitfall experienced in New Zealand resulting from the disconnection of scientific information from government policy, "feedback loops" must be created between environmental quality information and policy and planning decisions. Such feedback loops should be designed to ensure that decisions evolve generationally to reflect environmental quality trends, information needs and progress toward the achievement of environmental goals, and to improve government accountability by demonstrating the basis for policy decisions in areas where environmental quality is susceptible to objective measurement. More generally, they should serve to improve government accountability by providing a basis for demonstrating whether government is actually fulfilling its role of serving the public by protecting the environment in a manner that most effectively and efficiently utilizes public resources. Finally, feedback loops providing greater transparency into decision-making and the overall state of the environment would increase trust among the stakeholder groups – a much-needed change in California.

[126] To its credit, Cal/EPA has recently initiated the Environmental Protection Indicators for California (EPIC) project, which has produced a voluminous draft set of indicators for the state. Cal/EPA should take care to ensure that the EPIC project indicators are user-friendly, and that they are truly representative of the public will, as some have observed that the draft indicators are somewhat inaccessible, and that little public participation was involved in their development.

Conclusion

New Zealand's experience under the RMA is not a glowing success story. Numerous unanticipated shortcomings, both in the design of the legislation and in the performance of the stakeholder groups in carrying out their responsibilities under the Act, have hindered implementation and inhibited full realization of the vision and purpose of the RMA. Nevertheless, while New Zealand does not represent a model that California should (even if it could) try to duplicate in its entirety, it does offer many valuable lessons. To its credit, the RMA represents a visionary attempt to create an all-encompassing sustainability framework for New Zealand, with numerous elements that hold promise for achieving that mission.

California has much work to do to keep pace with increasing socio-economic and environmental pressures, and its marching orders are clear – find new, efficient and effective means of protecting environment quality, while at the same time contributing to a vibrant economy and acceptable standard of living. As a first step, California must seek to develop a coherent framework for comprehensive environmental and resource planning and management by refining, integrating, and filling in the gaps that exist among elements of the state's current environmental protection and resource management system. In the pursuit of these specific goals, California can learn a great deal from the New Zealand experience.

Articulating a statewide vision, measurable goals, and an overarching policy purpose, based on an extensive, collaborative process involving all stakeholder groups, would be another valuable step on the path toward creating a framework for sustainability for the state. Defining the boundaries of and balance between the "3Es" of sustainability is a critical component of this process. A robust and manageable information base will be essential to monitor whether the state's environmental protection framework is truly improving the sustainability of our environment, society, and economy. Without information and monitoring to serve as the compass on our journey, we will not know whether the steps we take are truly advancing us toward our destination.

Enabling local government to pursue sustainability initiatives, through incentives, the removal of barriers, the creation of channels for sharing information and best practices, and the integrated management of media are also necessary steps. Effects-based approaches that offer greater flexibility and stimulate innovation should be explored. Although many of these key principles and objectives – flexibility, certainty, efficiency, inclusiveness, decentralization, integration, rationalization, and accountability – are fundamental to sustainability-oriented policy, they cannot all be fulfilled simultaneously. Compromises and prioritization among competing objectives will be necessary, and stakeholder expectations need to be carefully managed to avoid disillusionment and ensure patience during transitions.

There is much truth in the adage, "if you don't know your destination, any road will get you there." To date, California's approach to environmental protection can be characterized as simultaneous steps in multiple directions, but without a clear destination guiding those actions in an informed and intentional manner. It is time for California to begin planning strategically for its future, rather than responding in an ad hoc, reactive manner to environmental problems as they arise. The journey will not be without obstacles and setbacks, but the time is now to begin to define the destination and the course to get us there.

Appendix A: Research Methodology and List of People Interviewed

Over our five-month stay in New Zealand, we conducted formal and informal interviews with over 50 people, representing a broad array of interests, including central and local government agencies, private businesses, practitioners (lawyers and consultants), community and environmental organizations, academia, and scientists from the Crown Research Institutes. Of course, the responses to interview questions may not necessarily reflect consensus views of a particular stakeholder group, the interviewees collectively, or that of the country as a whole. The sample size is not statistically significant, but instead should be considered anecdotal in nature. Nonetheless, we did attempt to interview a cross section from within each stakeholder group so as to gain a broad range of input and perspectives. It is our belief that, collectively, the individuals interviewed are fairly well representative of their larger stakeholder group.

Total Number of Formal Interviews by Stakeholder Group

Academia/CRI	8
Central Government	9
Territorial Authority	7
Regional Council/Unitary Authority	8
Non-Governmental Organization	5
Private Sector/Practitioner	10
Total Interviews	**47**

Understanding the Text Tables

Throughout this study are a number of text tables summarizing the responses to select interview questions. The authors attempted to draw out general themes or categories of related responses that emerged within and among any particular stakeholder groups. In interpreting the tables it is important to note that rows highlighted and in **bold type** represent such "themes," which have been identified and grouped solely by the authors. Our grouping of responses under each theme reflects our effort to organize, tabulate, and in some instances, interpret, the actual interviewee responses.

It should be noted that not all questions were asked of every person interviewed, thus the number of interviewees changes depending on the question asked. The first row of each table shows the total number of individuals by stakeholder group asked that particular question. Because interviewees may have provided more than one response to a given question, the number of responses in a column may exceed the total number of people asked a given question in certain instances.

Below is a list of the individuals interviewed, as well as their organizational affiliation and the stakeholder group to which each person was assigned. It should be noted that a significant percentage of interviewees have held numerous positions in various stakeholder groups over the course of their careers. In such instances, the authors categorized individuals based on the proportion of their career in a particular sector, or the stakeholder group with which the interviewee proclaimed to most identify.

Formal Interviews

Name	Affiliation[127]	Sector
Ali Memon	Univ. of Canterbury	Academia
Alistair Poulson, Cath Petrey	Federated Farmers	Private
Barry Weeber	Royal Forest & Bird Protection Society of New Zealand	NGO
Bill Armstrong	Montgomery Watson	Private
Bill Bayfield	Taranaki Regional Council	RC
Bob McClymont	Parliamentary Commissioner for the Environment	CG
Brett MacKay	Wellington City Council	TA
Bruce Taylor, Martyn Pinckard	Parliamentary Commissioner for the Environment	CG
Cath Wallace	ECO	NGO
Claire Johnstone	Maori Pacific International Clemenger BBDO	Private
Craig Mallett	Ministry for the Environment	CG
Daphne & Allison	Kapiti Environmental Action	NGO
David Young	Independent journalist	Private
Dennis Bush-King, Steve Markham	Tasman District Council	RC (UA)
Eric Pyle	World Wildlife Fund	NGO
Fiona Illingsworth	Department of Internal Affairs (CG); Otorohanga District Council (DC)	DC
Geoffrey Palmer	Chen & Palmer	CG
Helen Atkins	Phillips Fox	Private
Jane Bradbury	Wellington Regional Council	RC
Jenny Dixon	Auckland University	Academia
Jessica Wilson	Formerly Action of Community & Environment	NGO
Jo Brosnahan	Auckland Regional Council	RC
Joan Allin	Chapman Tripp	Private
John Hutchings	Local Government New Zealand	RC
Keith Johnston	Department of Conservation	CG
Lindsay Gow	Ministry for the Environment	CG
Mark Bellingham	Massey University	Academia
Martin Pynckard	Office of the Auditor General	CG
Martin Ward	Private consultant	Private
Mike Freeman, Raymond Ford, George Griffiths	Environment Canterbury	RC
Paul Moseley	National Institute of Water and Atmospheric Research (NIWA)	CRI
Peter Reaburn	Waitakere City Council	TA
Peter Skelton	Univ. of Canterbury	Academia
Philip Woollaston	Former Minister of Conservation	CG
Philippa Richardson	Formerly Porirua City Council	TA
Ray Mercer	Wellington City Council	TA
Ray Salter	Ministry for the Environment	CG
Richard Keys	Marlborough District Council	RC (UA)
Robert Schofield	Boffa Miskell	Private
Roger Blakeley	Porirua City Council	CG
Roger Kerr	Business Round Table	Private
Scott Blair	Porirua City Council	TA
Stew Cameron, Michael Rosen, Paul White	Institute of Geological and Nuclear Sciences (GNS)	CRI
Sue Veart	Porirua City Council	TA
Sylvia Allan	Montgomery Watson	Private

[127] All affiliations listed represent either the interviewee's affiliation at the time of the interview, or a former affiliation that served as the context for the interviewee's responses.

Tom Fookes	Univ. of Auckland	Academia
Ton Buhrs	Univ. of Canterbury	Academia
Wayne Hastie	Wellington Regional Council	RC

Informal or Indirect Meetings and Interviews

Bob Harvey	Mayor of Waitakere	TA
Craig Lawson	Treaty of Waitangi Fisheries Commission	CG
Denise Church	Ministry for the Environment	CG
Graeme Drake	Standards NZ	Private
Guy Salmon	Ecologic Foundation	NGO
Helen Beaumont	Parliamentary Commissioner for the Environment	CG
Morgan Williams	Parliamentary Commissioner for the Environment	CG
Paul Sage	Trinity Lakes Consulting	Private
Peter Horsley	Massey University	Academia
Rob McLagan	Forestry Owners Association, formerly with Federated Farmers	Private
Rob Steele	Standards NZ	Private
Royden Somerville	Queen's Counsel	Private

Appendix B: Roles of the Three Levels of Government

Powers and Affirmative Duties

Central Government	Regional Councils	Territorial Authorities
Recommend the adoption of National Policy Statements on matters of national importance	Produce Regional Policy Statements for matters within the authority of regional government to provide for integrated management of the natural and physical resources within each region	Produce a District Plan(s) to assist in carrying out the functions of the territorial authority under the RMA
Produce a National Coastal Policy Statement. Final approval of mandatory Regional Coastal Plans.	Within its discretion, prepare a Regional Plan(s) to assist in carrying out the Regional Policy Statement	Impose "rates" (i.e., taxes) on citizens within the district or city to fund the council's implementation of the RMA
Promulgate national environmental standards and regulations	Impose "rates" (i.e., taxes) on citizens within the region to fund their implementation of the RMA	Issue resource consents (i.e., permits)
Oversight & monitoring of RMA	Issue resource consents (i.e., permits)	
Consider project proposals which raise matters of national significance		
Develop guidance for local government and the public regarding environmental matters and execution of responsibilities under the RMA		

Note: Unitary authorities have the powers and duties of both Regional Councils and Territorial Authorities

Other Subjects Within Authority

Central Government	Regional Councils	Territorial Authorities
Coastal management	Limited aspects of coastal management	Control of natural hazards avoidance and mitigation
Management of hazardous waste, explosives, and hazardous substances	Use of land for soil conservation, maintenance or enhancement of the quality of water bodies and coastal water, maintenance or quantity of water bodies and the coast, avoidance and mitigation of natural hazards, and the prevention or mitigation of the adverse effects of the storage, use, disposal, or transport of hazardous substances	Local control of hazardous substances use
Allocation of Crown-owned energy and coastal resources	Pollution management control: Discharges of contaminants into land, air, or water	Noise control
	Water: taking, use, damming or diverting, as well as quality, flow and levels	Control of land use and subdivision
	Management of geothermal resources	
	Introduction or planting of any plant in or at a bed of a river or lake for any purpose listed above	
	Emissions of noise arising from any activity referred to above and the mitigation of the effects of noise	
	Management of areas of regional significance	

Note: Unitary authorities have the powers and duties of both Regional Councils and Territorial Authorities

Appendix C: Drivers Behind the RMA By Stakeholder Group

Driver[128]	Government	Private Sector	NGOs
Response to "Think Big" Muldoon era's environmental problems and lack of transparency	X	-	X
Rationalization of environmental legislation that was cumbersome, complex, and overlapping	X	X	X
Efficiency in process (e.g., resource consents)	X	X	X
Leadership of key players	X	X	X
Culture of reform in the late 1980's (Local Government reforms, State Sector reforms)	X	X	X
Anticipation of global sustainability movement, due to Brundtland report and 1992 Earth Summit	X	-	X
Neo-liberal, free-market, non-interventionist mentality	X	X	-
Economic policy of the 1980's	X	-	-
Need for greater integration in the management of different media (land, air, water)	X	-	X
Trend to devolve/delegate environmental decision-making to local government (i.e., to the level most closely effected by environmental decisions)	X	X	X
Susceptibility of prior system to abuse by parties seeking to interfere or obstruct a proposed project	-	X	-
Need to address public participation processes	X	X	X
Desire for greater flexibility in achieving environmental outcomes	X	X	-
Desire to shift from activities-based to effects-based planning and regulation	X	X	X
Desire for legislation to reflect stronger environmental values	X	-	X
Reduction of costs associated with the former processes	X	X	X
Desire to shift from adversarial to more cooperative decision-making procedures	X	X	X
Need for greater access to information	-	-	X
Desire to reduce the discretionary powers of government	-	-	X
Desire to expand standing	-	-	X
Maturing of the environmental movement	-	-	X
Culture of "clean and green"	X	X	X
Desire to operationalize Treaty of Waitangi and rights conferred there under	X	-	-
New generation of socially-conscious thinkers in government	X	-	-

X = Denotes that the driver is applicable for the designated stakeholder group.

[128] This list of drivers was derived from responses by interviewees, as well as supplemental research and literature reviews.

Appendix D: Roles and Responsibilities of Central Government Environment and Resource Management Authorities

Ministry for the Environment	Parliamentary Commissioner for the Environment	Department of Conservation
Establish policy influencing the management of natural and physical resources and ecosystems as necessary to fulfill the objectives of the Environment Act 1986	Review government systems and processes for managing natural and physical resources and report results to Parliament	Manage, for conservation purposes, all land and other natural and historic resources held by DoC or whose owner otherwise agrees with the Minister should be managed by DoC
Evaluate the environmental impacts of public or private sector proposals, particularly those not adequately covered by legislative or other environmental assessment requirements currently in force	Investigate effectiveness of environmental planning and mgmt carried out by public authorities and advise them on remedial actions	Preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats
Provide for effective public participation in environmental planning and policy formulation processes in order to assist decision-making, particularly at the regional and local level	Investigate matters in which the environment may have been adversely affected, advise public authorities on appropriate remedial actions, and report results to Parliament	Advocate the conservation of natural and physical resources generally
Solicit and obtain information needed for the formulation of environmental policies	Report to Parliament on any petitions or bills which may affect the environment	Promote the benefits to present and future generations of • Conservation of natural and historic resources (generally and specifically of New Zealand), • Conservation of New Zealand's sub-antarctic islands • International cooperation on matters of conservation

Ministry for the Environment	**Parliamentary Commissioner for the Environment**	**Department of Conservation**
Advise government on the application, operation, and effectiveness of environmental and resource management laws (including the RMA) in relation to the objectives of the Environment Act 1986	Inquire into any matters that have had or may have a substantial and damaging effect on the environment and report results of inquiry to Parliament	Prepare, provide, disseminate, promote, and publicize educational and promotional material relating to conservation
Advise government on the procedures for assessment and monitoring of environmental impacts	Encourage preventive measures and remedial actions for the protection of the environment	Foster the use of natural and historic resources for recreation and tourism (to the extent not inconsistent with its conservation)
Advise government on pollution control and the coordination of management of pollutants in the environment		Advise government on matters relating to DoCs functions or conservation generally
Advise government on the identification and likelihood of natural hazards and the reduction of their effects		Produce the New Zealand Coastal Policy Statement mandated by the RMA
Advise government on the control of hazardous substances, including their management of the manufacture, storage, transport, and disposal		Review and approval of mandatory Regional Coastal Plans prepared by regional councils under the RMA
Facilitate and encourage the resolution of conflict in relation to policies and proposals which may affect the environment		Decide on applications for coastal permits for restricted coastal activities

Ministry for the Environment	Parliamentary Commissioner for the Environment	Department of Conservation
Provide and disseminate information and services to promote environmental policies, including environmental education and mechanisms for promoting effective public participation in environmental planning		Monitor effects of coastal policy statements, regional coastal plans, and coastal permits
General provision of advice on matters relating to the environment		
Produce an Annual Report on the operations of the Ministry for each calendar year		

Appendix E: Possible Subject Areas for a Best Practices Database

Local Government:

- Land use planning – general plan guidance
- Stakeholder engagement
- Creating incentives geared toward sustainability
- Permitting
- Inspections
- Enforcement
- Data collection
- Compliance assurance
- Monitoring
- State of the environment reporting

Private Sector:

- Factors to consider in siting decisions (e.g., transportation, housing, impacts to traditional environmental media, etc.)
- Community and stakeholder engagement in the selection of alternatives to avoid or mitigate adverse effects, in the siting, development and operation of a facility
- Compliance audit programs
- Pollution prevention programs
- Environmental management best practices, including the development of environmental management systems (e.g., ISO 14001)
- Energy and water efficiency/conservation initiatives
- Product life-cycle considerations
- Producer responsibility
- Monitoring
- Reporting

Environmental Community:

- Assist government in the identification of environmental quality and resource management priorities, goals, indicators, and performance standards
- Engagement with government in the development of policy and identification of environmental quality information needs
- Innovative partnerships with government and industry to improve environmental performance
- Urban growth management initiatives
- Recommended funding priorities for foundations

Appendix F: Useful Websites

New Zealand

Organization Name/ Description	URL
Auckland Regional Council	http://www.arc.govt.nz/
Chamber of Commerce	http://www.chamber.co.nz/
Courts of New Zealand	http://www.courts.govt.nz/
Crown Minerals (within Ministry of Economic Development)	http://www.crownminerals.govt.nz
Department of Conservation	http://www.doc.govt.nz/
Environment and Conservation Organizations (ECO)	http://www.converge.org.nz/eco/
Environment Canterbury (Regional Council)	http://www.ecan.govt.nz/echome/echome.asp
Environment Waikato (Regional Council)	http://www.ew.govt.nz/
Federated Farmers	http://www.webnz.com/fedfarm/index.html
Forest & Bird (NGO)	http://www.forest-bird.org.nz/index.asp
Law Commission	http://www.lawcom.govt.nz/
Legislation	http://www.knowledge-basket.co.nz/gpprint/welcome.html
List of all Councils on the web	http://www.localgovt.co.nz/OtherSites/default.htm
Local Government Commission	http://www.lgc.govt.nz/
Local Government New Zealand	http://www.lgnz.co.nz/
Ministerial Panel on Business Compliance Costs	http://www.businesscompliance.govt.nz/reports/index.html
Ministry for the Environment	http://www.mfe.govt.nz/
Ministry for the Environment – Environmental Indicators Programme	http://www.environment.govt.nz/
Ministry of Agriculture and Forestry	http://www.maf.govt.nz
Ministry of Economic Development	http://www.med.govt.nz/
Ministry of Fisheries	http://www.fish.govt.nz/
Ministry of Maori Development	http://www.tpk.govt.nz/
Ministry of Research, Science & Technology	http://www.morst.govt.nz/
National Archives	http://www.archives.govt.nz/index.html
National Institute of Water & Atmospheric Research (NIWA)	http://www.nzwa.cri.nz
New Zealand Business Roundtable	http://www.nzbr.org.nz/
New Zealand Government	http://www.govt.nz/
New Zealand Institute of Environmental Health	http://www.localgovt.co.nz/nzieh/
New Zealand Local Government Online	http://www.localgovt.co.nz/
New Zealand Minerals Industry Association	http://www.minerals.co.nz
New Zealand Parliament	http://www.parliament.govt.nz/
New Zealand Planning Institute	http://www.nzplanning.co.nz
New Zealand Trade Development Board	http://www.tradenz.govt.nz/
New Zealand Treasury	http://www.treasury.govt.nz/
Parliamentary Commissioner for the Environment	http://www.pce.govt.nz/
Quality Planning Project (MfE and LGNZ)	http://www.qualityplanning.org.nz/index.php
Regional Councils in New Zealand	http://www.govt.nz/localgov/councils.php3
Resource Management Law Association	http://www.rmla.org.nz
RMA Legal Decisions online	http://www.rma.co.nz/rma_bin/frame.html
Standards New Zealand	http://www.standards.co.nz/
State of the Environment Report 1997 (MfE)	http://www.mfe.govt.nz/about/publications/ser/ser.htm
State Services Commission	http://www.ssc.govt.nz/
Statistics New Zealand	http://www.stats.govt.nz
Sustainable Management Fund	http://www.smf.govt.nz/

The Natural Step - New Zealand	http://www.tns.org.nz
Waitakere City Council	http://www.waitakere.govt.nz/
Waste Management Institute of New Zealand	http://www.wasteminz.org.nz
Wellington City Council	http://www.wcc.govt.nz/
Wellington Regional Council	http://www.wrc.govt.nz/
Zero Waste	http://www.zerowaste.co.nz

California

Organization Name/ Description	URL
Air Resources Board	http://www.arb.ca.gov/homepage.htm
American Planning Association, California Chapter	http://www.calapa.org/
Association of Bay Area Governments (ABAG)	http://www.abag.ca.gov/
Bay Area Alliance for Sustainable Development (BAASD)	http://www.bayareaalliance.org/
Cal GOLD permit assistance center	http://www.calgold.ca.gov/
Cal/EPA	http://www.calepa.ca.gov/
California Coastal Commission	http://www.coastal.ca.gov/
California Courts	http://www.courtinfo.ca.gov/reference/guide.htm
California Integrated Waste Management Board	http://www.ciwmb.ca.gov/
California Planners' Information Network	http://www.calpin.ca.gov/
California Resources Agency	http://resources.ca.gov/
CEQA Guidelines & Information	http://ceres.ca.gov/ceqa/
CEQAnet Database	http://www.ceqanet.ca.gov/
Department of Conservation	http://www.consrv.ca.gov/
Department of Fish & Game	http://www.dfg.ca.gov/
Department of Pesticides Regulation	http://www.cdpr.ca.gov/
Department of Toxic Substances Control	http://www.dtsc.ca.gov/
Department of Water Resources	http://www.dwr.water.ca.gov/
Governor's Office of Planning and Research	http://www.opr.ca.gov/
League of California Cities (CA cities online)	http://www.cacities.org/cities_online/cities_online.asp
LUPIN – CA Land Use Planning Information Network	http://ceres.ca.gov/planning/
Office of Environmental Health Hazard Assessment	http://www.oehha.ca.gov/
Overview of California legislative process	http://www.leginfo.ca.gov/bil2lawx.html
Regulations	http://ccr.oal.ca.gov/
San Diego Association of Governments (SANDAG)	http://www.sandag.cog.ca.us/
San Francisco Bay Conservation and Development Commission	http://www.bcdc.ca.gov/
State Assembly	http://www.assembly.ca.gov/acs/defaulttext.asp
State Association of Counties (CA counties online)	http://www.csac.counties.org/counties_close_up/county_web/index.html
State of California	http://www.ca.gov/state/portal/myca_homepage.jsp
State Senate	http://www.sen.ca.gov/
State Water Resources Control Board	http://www.swrcb.ca.gov/
Statutes	http://www.leginfo.ca.gov/calaw.html

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