

# **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.