Securing exchanges – the end of biodiversity offsets

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Compensatory mechanisms

Compensation
Mitigation
Biodiversity offsets

All commonly used and none are really new concepts (trade-offs are inherent in planning)

Generally expressed as a condition of consent for some kind of harm

Follow-up relies on normal monitoring and compliance processes

Political realities

Vulnerable and irreplaceable biodiversity should not be involved

The political reality is very different

Inherent power imbalance

A poor exchange will always perpetuate poor outcomes

John Leathwick

Gulf between good practice and reality

- New Zealand has taken up biodiversity offsetting in advance of a sufficiently mature policy framework
- Limited parameters on where trade-offs are appropriate and what the performance measures should be
- Solid progress, but policy, transparency and accountability all need work

NZ context for biodiversity offsets

Usually invoked or offered in situations of serious harm

Increase the rigour and more explicitly demonstrate loss and gain

Weak policy context perpetuates poor outcomes
"If you ask for nothing, you tend to get it"

Poor follow-up is a serious concern

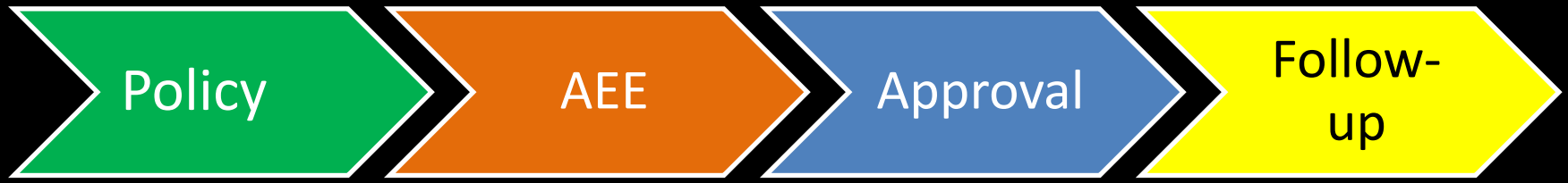
Angela Simpson

Process for ‘offsetting’ follow-up

I will focus on the follow-up process under the relevant legislation

- Resource Management Act 1991
  Conservation Act 1987
- EEZ Act 2012

What are the follow-up processes like?
What do we know about compliance and outcomes?
Broad definition as from a compliance perspective it doesn’t matter what you call it as such



A crucial stage

"The efficacy of offsets is ultimately dependent upon adequate compliance" (Gibbons and Lindenmayer, 2007)

If requirements are not met –regardless of how good they are – the environment suffers a double blow

Little attention generally paid to this stage of the policy and project cycle

IUCN Guidelines

Following the mitigation hierarchy means:

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10. Identify and put in place the legal, institutional and financial measures needed to ensure long-term governance of all mitigation measures (including any biodiversity offsets)

11. Apply a rigorous monitoring, evaluation and enforcement system that includes independent verification of all mitigation measures

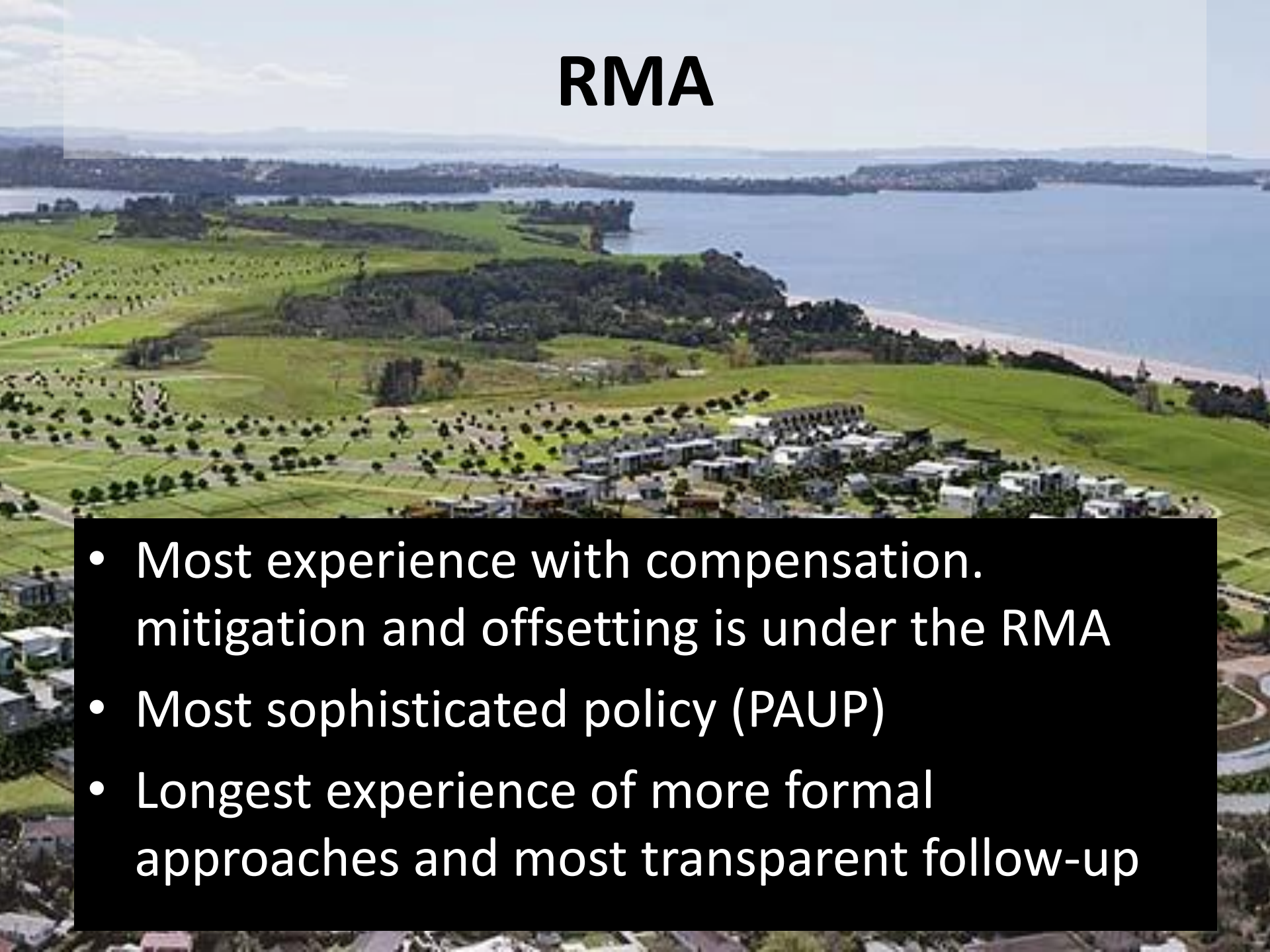
Conservation Act 1987

- Trade-offs are not uncommon
- Often cash payments vs management requirements
- Land swaps are quasi-offsets too
- Monitoring is required of approvals
- Breaches can be prosecuted but it’s rare
- Lack of transparency potentially increases risk to the public interest in nature conservation

EEZ Act

- No greater clarity on these mechanisms in the new Act
- No consented activities thus far either
- Experience from hearings to date is that similar approach to RMA will be taken
- Compliance and monitoring approach/capacity of EPA yet to be demonstrated
- Similar enforcement provisions to RMA

RMA



- Most experience with compensation. mitigation and offsetting is under the RMA
- Most sophisticated policy (PAUP)
- Longest experience of more formal approaches and most transparent follow-up

Empirical research

PhD research evaluated compliance with ecological compensation

Scale of 0-3

110 case studies nationwide

Overall compliance

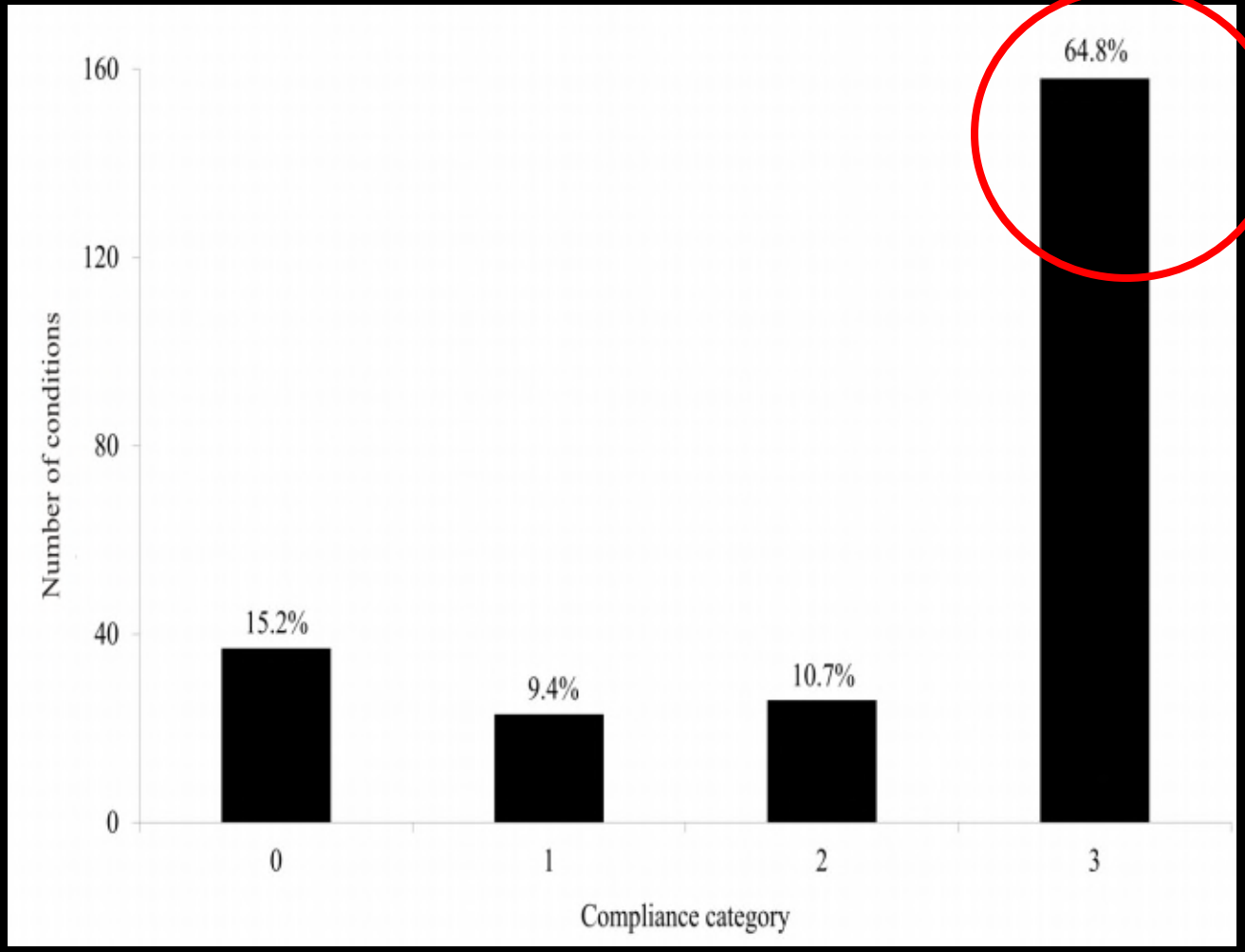


Table 5. The distribution of cases (%) across the compliance scale for different categories of consent assessed in this study.

Consent category	Number	0	1	2	3
Energy generation	11	0.0	0.0	0.0	100.0
Education	8	0.0	0.0	12.5	87.5
Subdivision	104	8.7	11.5	6.7	73.1
Resource extraction	30	13.3	3.3	13.3	70.0
Recreational	14	7.1	14.3	14.3	64.3
Water discharge	22	9.1	9.1	18.2	63.6
Water take	10	0.0	20.0	20.0	60.0
Infrastructure	18	27.8	11.1	5.6	55.6
Waste management	6	16.7	16.7	16.7	50.0
Agriculture	21	71.4	4.8	19.0	4.8

Note: See Table 2 for a description of the compliance scale.

Different industries have different risks of non-compliance

Different requirements have different levels of compliance

Table 8. A breakdown of the distribution of cases (%) across the compliance scale within the administrative and non-administrative condition categories presented in Table 7.

Administrative	Number	0	1	2	3
Bond	14	14.3	0.0	0.0	85.7
Mitigation trust	2	50.0	0.0	0.0	50.0
Plan content	29	0.0	6.9	3.5	89.7
Consent notice/Covenant	18	11.1	5.6	0.0	83.3
Vesting of land	8	0.0	0.0	0.0	100.0
Financial Payment	17	17.7	0.0	0.0	82.4
Monitoring	22	31.8	0.0	4.6	63.6
Protection (restriction)	5	0.0	0.0	0.0	100.0
Non-administrative					
Hydrological changes	5	0.0	20.0	40.0	40.0
Maintenance/Pests	38	7.9	18.4	18.4	55.3
Restoration Intention	10	50.0	20.0	0.0	30.0
Planting	58	10.3	15.5	22.4	51.7
Fencing	17	35.3	5.9	11.8	47.1
Translocation	1	100.0	0.0	0.0	0.0

Office-based compliance (i.e. reliance on self-monitoring) is likely to obscure true rates of compliance

Table 7. The distribution of cases (%) across the compliance scale for administrative and non-administrative conditions assessed in this study.

	Number	0	1	2	3
Administrative	115	13.0	2.6	1.7	82.6
Non-administrative	129	16.3	15.5	18.6	49.6

Note: See Table 2 for a description of the compliance scale.

So what do we know?

- Biodiversity offsets and their cousins can entail significant risk to biodiversity due to non-implementation
- Most concern about uncertainty focusses on the feasibility of the offset, not obvious risk of non-implementation
- Monitoring is generally undercooked and we need a more sophisticated approach to assessing uncertainty
- Unless we want these tools to lock in decline we have some work to do

New Zealand framework needs work

- IUCN guidelines clearly signal that NZ's *ad hoc* approach is not best practice
- Concerns about implementation of ecological compensation highlighted in our recent book; Vanishing Nature

Vanishing nature; facing New Zealand's biodiversity crisis
Brown, Stephens, Peart & Fedder (2015)
$45.00+P&P
www.eds.org.nz

Pathways to prosperity

- Follow-up report released in November outlining new tools to better protect biodiversity in development
- Report will recommend
  - Enhanced incentives to promote avoidance
  - Robust policy framework for impact mitigation
  - Spatial planning for biodiversity
  - Third party mitigation to be investigated

  And many more ideas…

Questions?

Trent Bell