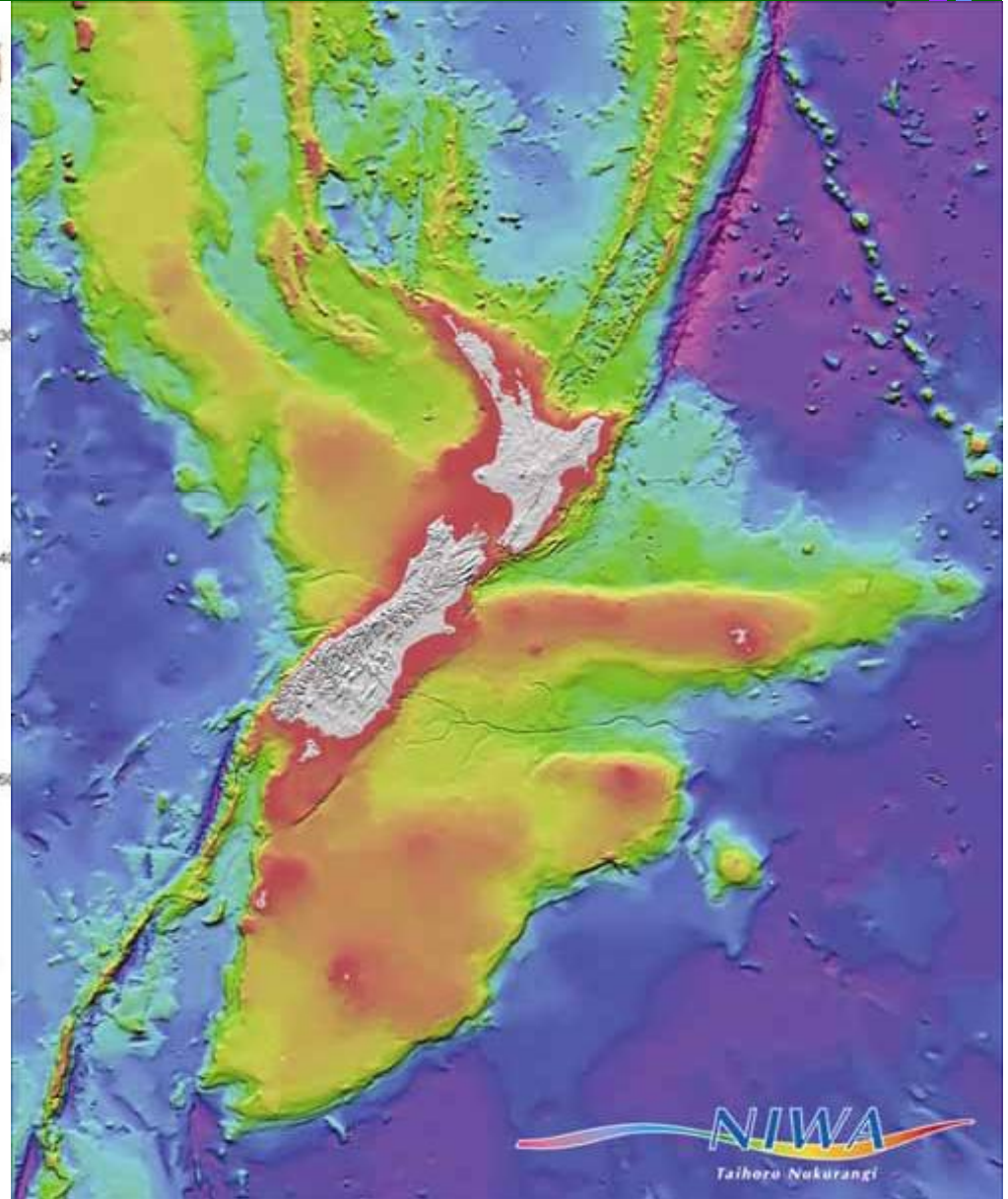
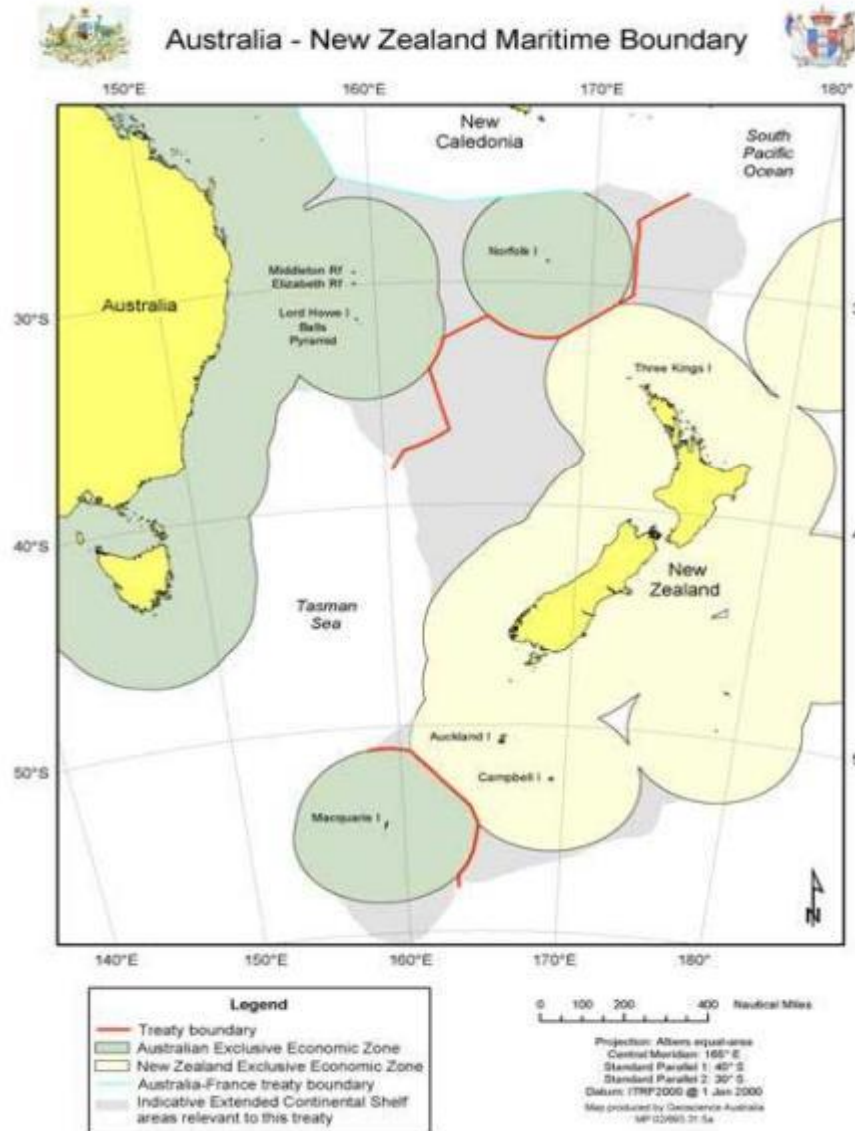


# New Zealand Environmental Management

Cath Wallace,

ECO

# New Zealand minus territories.



# Some key issues in NZ Law & Policy:

- Constitution & Environment –covered already
- Principle of separation of the Judiciary, the Executive and the Legislature
  - Treaty of Waitangi – founding agreement between (some) Maori and the British Crown.
- Public Participation? Ignoring local opinion
- Openness, Transparency, Accountability
- Allocation of power -Increasing tendency to accrete power to Ministers
- Due Process – never so under attack
- Sustainability and 4 well beings Also at risk.
- Overarching Policy Goals?

# New Zealand Constitution and Admin.

- New Zealand comprises New Zealand, Tokelau, the Ross Dependency and the self-governing states of the Cook Islands and Niue.
- Constitution – dispersed in several Acts and guides – with well (?) recognised principles, rules, norms for due process. Westminster democracy. The Constitution Act 1986; the State Sector Act 1988, the Electoral Act 1993, the Judicature Act 1908 and the Supreme Court Act 2003, Treaty of Waitangi.
- Important legislation includes the:
- Treaty of Waitangi Act 1975, Ombudsmen Act 1975, the Official Information Act 1982, the Public Finance Act 1989, the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and some British laws, such as Magna Carta 1297 and The Bill of Rights 1688, which have been incorporated into New Zealand law by the Imperial Laws Application Act 1988.

<http://gg.govt.nz/role/constofnz.htm>;

- The Cabinet Manual tells Ministers how to behave.

<http://www.cabinetmanual.cabinetoffice.govt.nz/1>

# Sustainable Development:

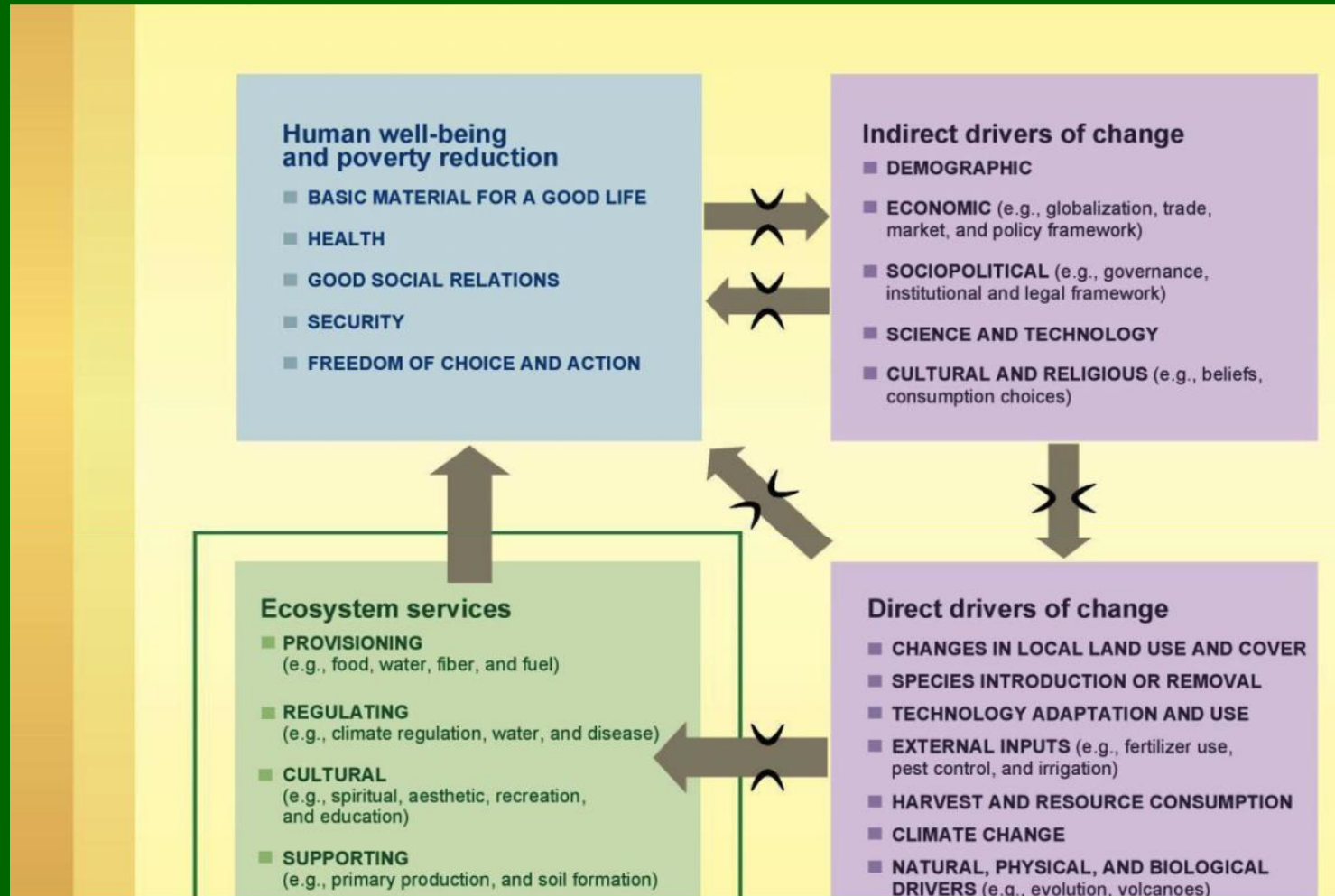
World Conservation Union - IUCN

“Caring for the Earth” c1981

“Sustainable Development means improving the quality of human life while living within the carrying capacity of supporting ecosystems”

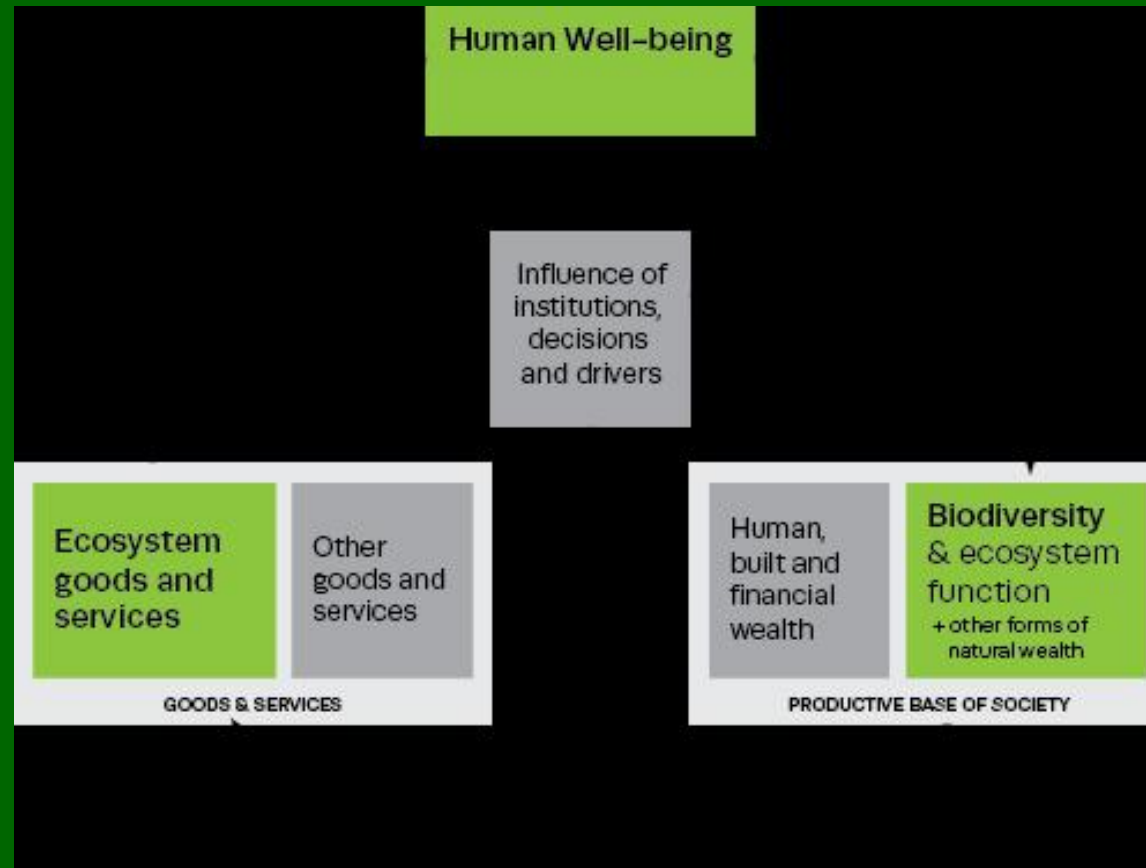
## Bruntland Report (World Commission on Sustainable Development) 1988:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”



## Millennium Ecosystem Assessment framework

Source: Millennium Ecosystem Assessment (MA 2005)



From IPBES.

Supply of services from the environment and from other capital and production.



## Development – international meaning

- Increases in human well-being
- Future-regarding – safeguarding the interests of future generations/people
- Increased environmental quality
- Improved health, education
- Greater access to decision making
- Personal freedoms limited by obligations
- Maintenance or restoration of valued social and cultural heritage.

# Key elements of Sustainable Development.

- Environmental protection: from species to ecosystems and bio-geo-chemical systems. Living within biophysical limits
- North-South debates.
- Inter-temporal and ethical dimensions of the human/nonhuman/ ecosystem; & social justice.
- Strong v weak sustainability – maintaining capitals as a prerequisite for sustaining ecosystems, societies, cultures, economies, versus allowing natural capital (not the annual yield) to be converted to manufactured or human-made capital.

# Weak v Strong Sustainability

- Weak sustainability requires the maintenance of the total amount of capital – allows substitution of human made capital for natural capital
- Strong sustainability does not allow sacrifice of net natural capital or critical natural capital for human made capital – non-substitutability rule because of irreversibility and irreplaceability.

# The multifunctional environment – how do we achieve integrated management and how do we factor in market and non-market values? – the RMA and the EEZ & CSA

- Purpose and Principles
- Functions
- Do they integrate management?
- How are values incorporated into decisions?
- Institutions and instruments.
- Assessment

# Well-being is multi-dimensional:

- i. Material living standards (income, consumption and wealth) - both absolute and relative.
- ii. Health;
- iii. Education;
- iv. Personal activities including work
- v. Political voice and governance;
- vi. Social connections and relationships;
- vii. Environment (present and future conditions);
- viii. Insecurity, of an economic as well as a physical nature.

Stiglitz, Sen and Fitoussi, Report by the Commission on the Measurement of Economic Performance and Social Progress p 15.

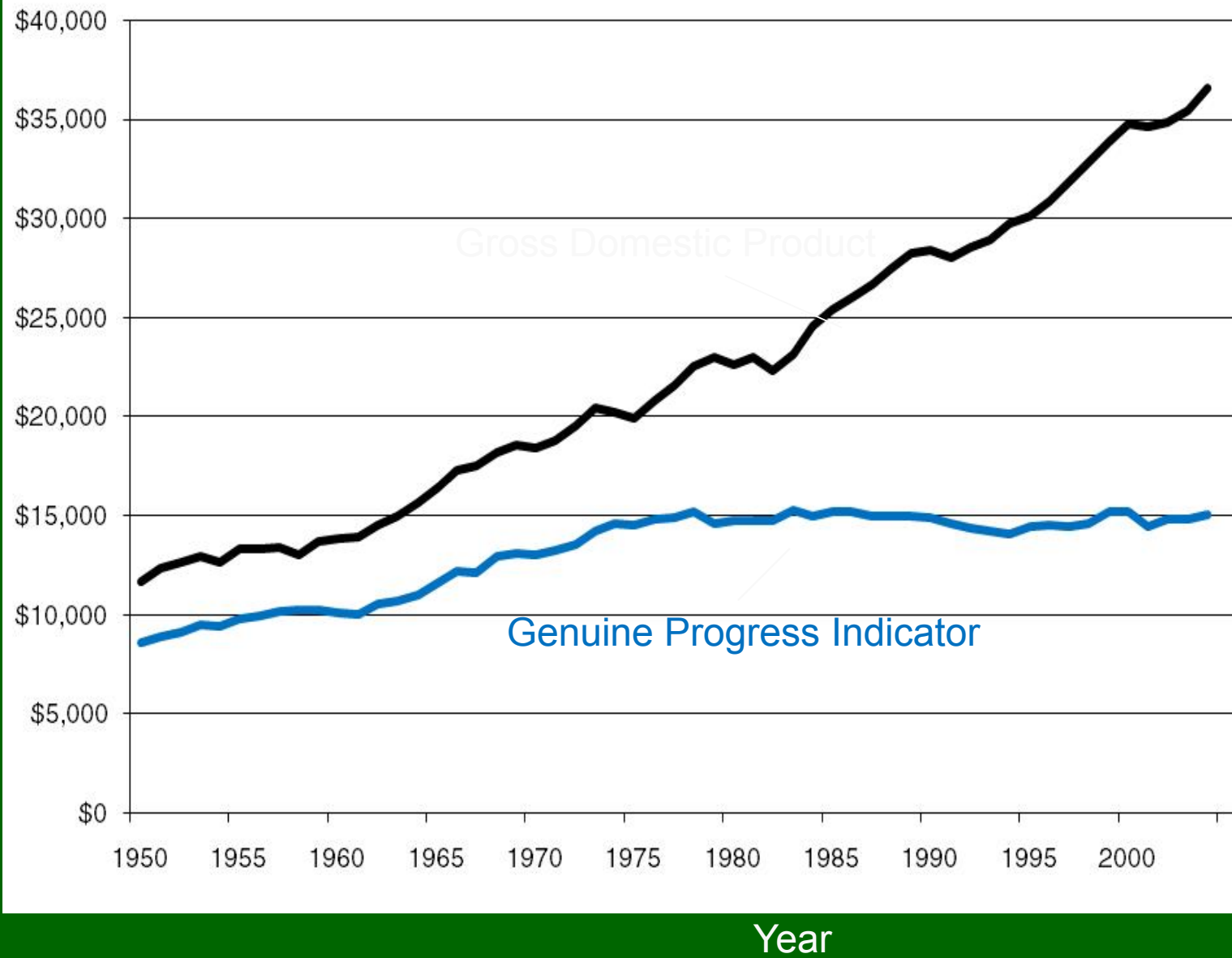
SEE New Zealand Wellbeing study: Sovereign Wellbeing by AUT at

<http://www.mywellbeing.co.nz/mw/sovereign-wellbeing-index.html>

# Alternative Aggregate indexes: developments

- Measured Economic Welfare (MEW) – Nordhaus and Tobin, 1972, time series for USA, 1929-1965. MEW positively correlated with Gross National Product (GNP) but Daly and Cobb showed increasingly less so.
- Index of Social and Economic Welfare ISEW. Daly and Cobb. – showed divergence from GNP. Replaced MEW, includes environmental costs, distributional changes, limits leisure.
- Genuine Progress Indicator (GPI)– similar to ISEW shows divergence.

GDP and GPI  
Per Capita (2000 US \$)



# Alternative Aggregate indexes

- Sustainable Net Benefit Indicators SNBI 1990s-2000s (Lawn and Sanders, Lawn)
- ISEW, GPI, SNBI all show divergences from GDP or GNP – suggest increasing disutility of macro-economic growth.

Moves to reconsider GDP, GNP and to work for sustainable development options to maintain natural, cultural and social capital as part of objective of increased well being.



# New Zealand Management Area

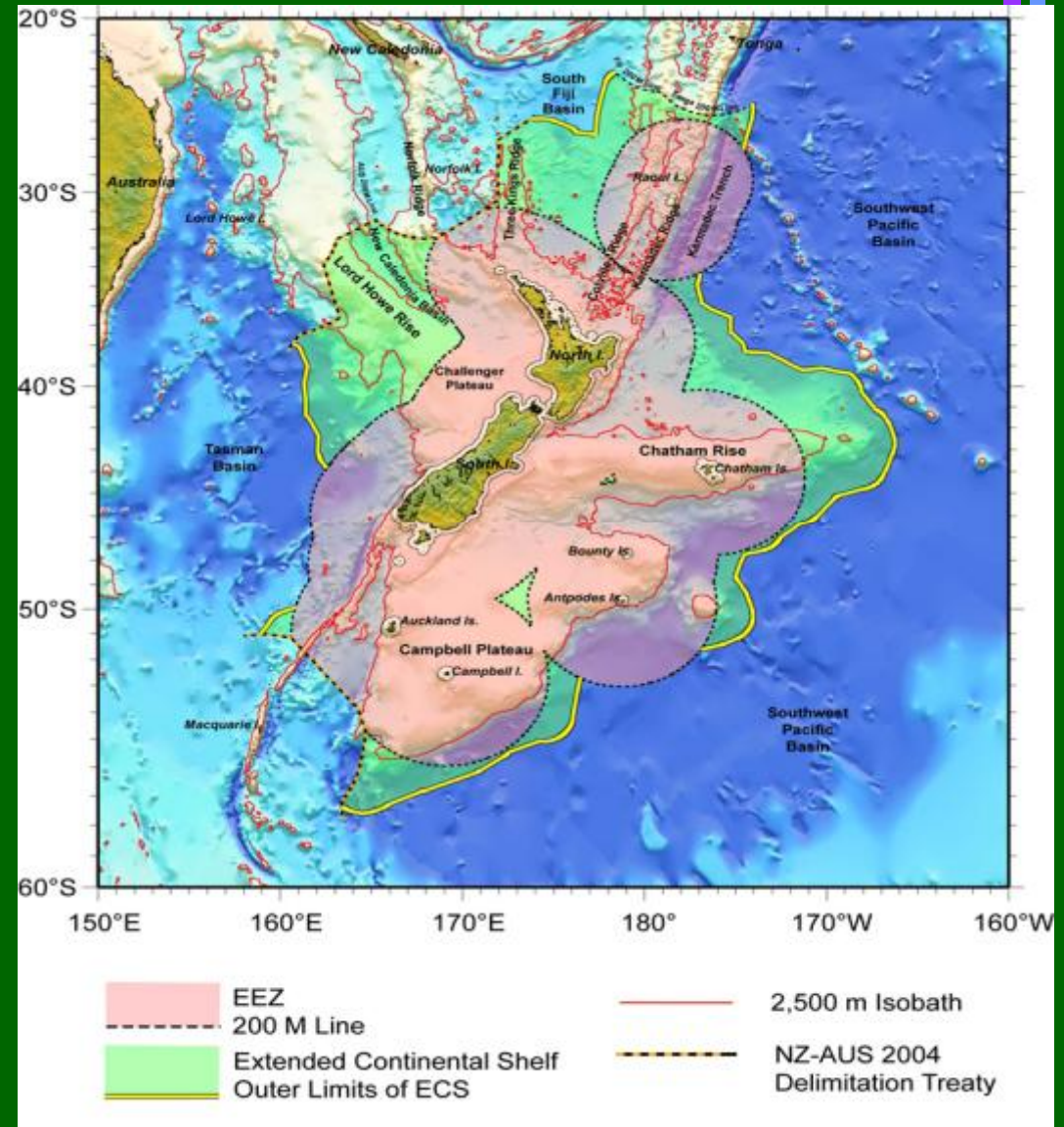
Coast -12 nm – Territorial Sea (TS) – NZ Sovereignty

12-24 nm – Contiguous Zone – border protection zone

12-200 nm Exclusive Economic Zone (EEZ) – resource rights and management obligations.

Marine area to 200nm Exclusive Economic Zone is x15 the land area of NZ.

Delineation of the continental shelf took seabed area of sovereign rights to approx 23x land area



• Source: LINZ

## Typically, if want to do an activity, have to check which Acts apply

Non-standard activities on public conservation areas, need consent of Minister/Dept of Conservation, and Resource Management Act – and if say, mining, also Crown Minerals consent.

Health and Safety Act applies to most – MoBIE

On private land need to check status of activity under the RMA, then also check any specialised acts – eg Biosecurity Act, Animal Welfare Act, Crown Minerals Act – etc.

On land, coast and at Sea out to 12 nm., Regional Councils control many issues related to land, air, water, pollution control, but not allocation of access to minerals (Crown Minerals Act 1991) or to fish (Fisheries Act 1996).

Beyond 12 nm. In EEZ & Continental Shelf, Fisheries Act, EEZ& Continental Shelf Act plus others such as Maritime Safety etc.

# Law at Sea

- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 [EEZ&CS Act], & Regulations 2013- from 12 nautical miles out. – Ministry for the Environment, MfE, Env Protection Agency (EPA).
- Territorial Sea, Contiguous Zone and EEZ Act – Min of Foreign Affairs and Trade, (MFAT).
- **Resource Management Act 1991, RMA – land out to 12 nm - MfE**
- Maritime Transport Act 1994– Maritime Safety Authority.
- Continental Shelf Act 1964 – minerals licences by MOBIE
- **The Contiguous Zone** is from 12 – 24 nm. NZ has customs and immigration control rights.
- Fisheries Acts 1983, 1996 – Min Primsty Industry, (MPI) Fisheries Quota Management System (QMS) & Customary and Recreational Fishing.
- **Treaty of Waitangi (Fisheries Settlement) Act 1992.**
- Aquaculture Act & Amendment Act (MPI)
- **Marine and Coastal Area (Takutai Moana) Act 2011 replaced the Foreshore & Seabed Act 2004**
- Marine Mammals and other Acts – see below.

# Laws & Agencies re Environment

- **Environment Act 1986** established MfE & PCE.
- **Resource Management Act 1991** & amendments – Ministry for the Environment (MfE)/ Territorial Authorities (TLAs) /Dept of Conservation (DoC)
- **Hazardous Substances and New Organisms Act** – Now administered by the Environment Protection Authority (EPA). – [Which does not have environmental protection as a goal].
- **Climate Change Response Act 2002**, implements Kyoto obligations and sets up the Emissions Trading Scheme.
- **Energy Efficiency and Conservation Act 2000** – Establishes EECA.
- **Waste Minimisation Act 2008** – MfE & Local Authorities.

# Acts & Agencies: 1980s reforms.

- **The Environment Act 1986 - created:**
  - Ministry for the Environment (MfE)  
(replaced Commission for the Environment – no statutory power)
  - Parliamentary Commissioner for the Environment (PCE). [PCE is an independent Officer of Parliament, not part of executive government]
- **Resource Management Act 1991**
  - Administered by MfE;
  - Implemented by Regional and local councils & Dept Conservation (DoC, coastal policy);
  - National Policy Statements, National Environmental Standards, developed by MfE, DoC (coastal),
  - Hearings by Councils, Environment Court, Boards of Inquiry, EPA, law courts on points of law.
- **Department of Conservation via Conservation Act 1987**
- Related disestablishment of the **Ministry of Works and Development, the NZ Forest Service, the Dept of Lands and Survey**. Separation of protection and resource management from production and development functions<sub>21</sub>

# Oceans Policy:

- Resource Management Act extends only to the 12 nautical mile Territorial Sea limit. No environmental management law beyond this. New Zealand has recognised its management of human impacts at sea beyond 12nm is patchy, haphazard, disorganised and lacking.
- To deal with human impacts from both land and sea based activities, Oceans Policy development began c2002, but stalled first due to Foreshore and Seabed anger, then change of government.
- The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act - It has limited scope, competing objectives, lacks integrative ability.
- Fisheries, Maritime Transport Acts continue.

## Local Govt Act 2002 Amendment Act

- Removed goal of sustainability
- Removed 4 Wellbeings
- Allows Ministers much more power
- Follows Repeal of local democracy in Canterbury.

# Resource Management Act 1991

Purpose as at beginning of 2013 : “sustainable management of natural and physical resources” + + +

Effects-based planning law.

“Architecture” of the Act:

Purpose and Principles of the Act (Part II) [Principles sections 6 & 7 under attack]

Provides for agencies and communities to develop Policies, plans, rules at national, regional and district levels. Water conservation orders, “designations”, heritage orders. Resource Consents. National Policy Statements and National Environmental Standards. Regional and local government implements.

2004 amendment disallowed consideration of greenhouse effects of activities;

National government is reducing roles of community, time for decision making, Critically modifying Principles, increasing ministerial power – See RM Reform Bills.



# RMA: Purpose – Section 5

- The Purpose of the RMA section 5
- “is to promote the sustainable management of natural and physical resources.”
- “In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -

-

# Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

- EEZ&CS (Environmental Effects) Act and Regulations
- “Gap filling” not a comprehensive integrated management law as originally envisaged for Oceans Policy.
- Economic and environmental criteria. No primacy for environment.
- Regulates activities in EEZ and on extended Continental Shelf.
- Weakness is lack of integration of management with existing activities – fishing. Permissive regime.
- Provides for consents to be issued by EPA. Preserves existing consents. Environmental Impact Assessment Statements.
- Has provision for areas to be designated and regulations and standards to be set.
- Regulations are weak and permissive.
- Minerals activities consents are covered.

# Other Marine related Acts

- Aquaculture Act & Amendment Act (MPI)
- Drift Net Prohibition Act 2007
- Hauraki Gulf Marine Park 2000
- **Crown Minerals Act 1991**
- And more – see conservation list, note re the Crown Minerals Act and amendments.



# Climate Change

- **Climate Change Response** (Moderated Emissions Trading) Amendment Act 2008 (09/57) set up ETS.
- **ETS:** Weak measures, cap on permit price of \$25. Requires households and small to medium enterprises to subsidise farming, and about 65 big emissions companies by paying for most of their pollution. National's measures delayed introduction of agriculture, halved liability of big polluters by requiring 1 permit for 2 tonnes of Carbon Dioxide equivalent (CO<sub>2</sub>e) instead of 1 for 1.
- **Consideration of greenhouse gas emissions of projects outlawed under 2004 amendment to the RMA on grounds there would be a carbon charge which was not ever introduced.**
- Consideration of GHG emissions of activities in EEZ & Continental Shelf Act also disallowed.

# RMA: Underpinning concepts

- Sustainable management of natural and physical resources.
- Effects based, environment protecting
- Future regarding – needs of future generations
- Needs and enablement of constrained pursuit of well being
- Integrated management via a cascading hierarchy and spatial levels of policies, standards, plans, rules, resource consents and other measures.
- Instrument choices – must consider alternatives.
- Public regulation/ private regulation. Community vigilance. Eroded.
- Open standing, access to information.
- “One stop shop” – consider all media, all aspects under one Act and with one hearing to reduce transactions costs, improve decisions.
- BUT no Precautionary Principle.
- 2009 Changes to reduce costs to business, extra costs, hurdles to communities. Removal of presumption of public notification.

# Integration and management mechanisms. The Resource Management Act: Policies, Plans, Standards, & other Instruments.

The Act provides for **Policies, Plans, Standards, Rules, resource consents, Water Conservation Orders, Heritage Orders, Designations..**

Resource consents may be required by regional or local government for;

- subdivision; discharges to air, land or water;
- taking of water; land disturbance, land use, etc

Relies on community input BUT:

- Only 5% of applications for resource consents were publicly notified; fewer to be in future.

## RMA: Purpose – Section 5

### The Purpose of the RMA section 5

- “is to promote the sustainable management of natural and physical resources.”
- “In this Act, “sustainable management” means managing the use, development, and protection of natural **and physical resources** in a way, or at a rate, which enables people **and communities** to provide for their **social, economic, and cultural** wellbeing **and for their health and safety** while -

[Text in **PINK** is omitted from the EEZ&CS Act purpose.]

## RMA Purpose continued:

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

### Sections

6 (Matters of National Importance),

7 (Other Matters) ,

8 (Waitangi) are Principles to inform decision making.



## RMA: S 6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights.

# S 7 Other Matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) kaitiakitanga:

(aa) the ethic of stewardship:

(b) the efficient use and development of natural and physical resources:

(ba) the efficiency of the end use of energy:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(e) [Repealed]

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

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

(h) the protection of the habitat of trout and salmon:

(i) the effects of climate change:

(j) the benefits to be derived from the use and development of renewable energy

## S8 The Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, **shall take into account** the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

# The Exclusive Economic Zone and Continental Shelf Act 2012 (EEZ&CS Act 2012)

## 10 Purpose

(1) The purpose of this Act is to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf.

(2) In this Act, *sustainable management* means managing the use, development, and protection of **natural resources** in a way, or at a rate, that enables people to provide for **their economic well-being** while—

- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of the environment; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

(3) In order to achieve the purpose, decision-makers must—

- (a) take into account **decision-making criteria** specified in relation to particular decisions; and
- (b) apply the **information principles** to the development of regulations and the consideration of applications for marine consent.

# EEZ & CS Act - 11 International obligations

“11 This Act continues or enables the implementation of New Zealand’s obligations under various international conventions relating to the marine environment, including—

- (a) the United Nations Convention on the Law of the Sea 1982:
- (b) the Convention on Biological Diversity 1992”

[NOTE: Why not “requires the implementation of” ?  
There is no apparent *duty* to implement, only that implementation is enabled.]

## EEZ & CS Act: S 12 Treaty of Waitangi

- In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act,—
- (a) [section 18](#) (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise the Environmental Protection Authority so that decisions made under this Act may be informed by a Māori perspective; and
- (b) [section 32](#) requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and
- (c) [sections 33](#) and [59](#), respectively, require the Minister and the EPA to take into account the effects of activities on existing interests; and
- (d) [section 45](#) requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them

# EEZ & CS Act: S 34 The Information Principles

- (1) When developing regulations under section 27, the Minister must—
  - (a) make full use of the information and other resources available to him or her; and
  - (b) base decisions on the best available information, and
  - (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary. [This twists the Precautionary Principle into “suck it & see”]
- (4) In this section, *best available information* means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

# Resource Management Act 1991: Scope

- Geographic, activities, effects, space

Covers “natural and physical resources” including land and air, freshwater and coastal and marine area to 12 n miles, ecosystems, built environment.

Controls land use; taking, use and discharge of water, air, pollution control, noise, consideration of natural and historic and Maori values, protection of the natural character of the coast.

Prescribes public participation with detailed processes – but for resource consents, only if resource consent is publicly notified – 2009 amendment removed presumption of public notification of resource consents.



# Resource Management Act 1991

Covers “natural and physical resources” including land and air, freshwater and coastal and marine area to 12 n miles, ecosystems, built environment.

Controls land use; taking, use and discharge of water, air, pollution control, noise, consideration of natural and historic and Maori values, protection of the natural character of the coast.

Prescribes public participation for policy making, plans, and used to for consents but this drastically cut.

“Open Standing” means do not have to prove financial interest – but curtailing of participation.

# RMA

- Provides for National Environmental Standards and National Policy Statements – largely ignored until 2000's, though NZ Coastal Policy Statement mandatory and done, revised.
  - Development of National Environmental Standards for:
    - air quality, water flow measurements, [plantation forestry standards stalled] , and other aspects, but not all passed.
  - National Policy Statement for: Renewable Electricity Generation 2011, Freshwater Management 2011, Electricity Transmission 2008.
  - Pending: Urban Design, Biodiversity.
- Activities may be permitted (no resource consent required), or, resource consent required: discretionary, non-complying; or prohibited.
- Resource consent notification: can be either non-notified, limited notification, or public. National-led government has reversed presumption of openness, <5% of consents are publicly notified.

# RMA

- Huge fuss about RMA BUT less than 5% publicly notified.
- 2003-04, of 49,000 resource consent applications, only 900 went to the Environment Court, only 300 declined there. Campaigns against RMA.
- **Amendments 2009, 2013**, cut processing time, removed some rights of public participation, removed protections for trees, created barriers to appeals by community groups, allowed primacy to a range of kinds of applications for infrastructure and other economic interests. Creation of “Environmental Protection Agency” actually designed to fast track big projects.
- **Phase II amendments** reach further – see announcement on 10 August 2013. Government decisions at <http://www.mfe.govt.nz/publications/rma/resource-management-summary-reform-proposals.html>
- Changes to process, removal of environmental Principles, insertion of non-environmental and economic considerations.
- Abolition of Regional Council, Environment Canterbury in April 2010 done with Urgency in Parliament with no public participation. Same Act severely weakened Water Conservation Orders.
- Future: Watch out for the 2013 RM Reform Bill. September 2013?

# Assessments and Contrasts

## RMA

- Highly integrating of media and decisions.
- Sustainable management – contains most of sust. development ideas.
- Enables 3 well-beings and Environ't protection for people and communities
- Provides for a policy and plan fabric against which consents are considered

## EEZ&CS Act

- Gap filling, deliberately not integrating of regimes or environmental media (ie air, water, land).
- “Sustainable management” but not as we know it.
- Enables only economic wellbeing and only of people, not communities.
- No policy or plan, fabric though spatial planning can be done but not yet

# Crown Minerals Act 1991

- Establishes mineral programmes for the allocation of Crown owned minerals and sets in place a framework for granting access to those minerals on or off shore.
  - Includes 1) petroleum (oil, gas); 2) coal, metallic minerals (eg gold, silver, copper, lead, zinc, , non-metallic minerals (phosphate, aggregates, silica etc).
- The Act is administered by Min of Business, Innovation and Employment (MoBIE) and NZ Petroleum and Minerals (NZPAM).
- Also Regulations and the Minerals Programmes.
- No provision for public input on minerals permits, though promise of notification of major mines on conservation land. RMA hearings though may apply.

## Crown Minerals Act 1991

- The only public processes the Act requires are the establishment of mineral programmes. Its area of application is within 12 nm,  
**Except** that it covers the area outside of 12 nautical miles for petroleum mineral activity. This is done via the provisions of section 4 of the Continental Shelf Act 1966. For non-petroleum minerals the Act is restricted to within 12 nautical miles. [May have changed!]
- Outside 12 n. miles, the EEZ & Continental Shelf Act is used to issue minerals permits.

# Crown Minerals (Permitting and Crown Land) Bill 2012

- NOTE: **The Crown Minerals (Permitting and Crown Land) Bill**, an omnibus bill, was introduced to amend the Crown Minerals Act 1991, via the Minerals Amendment Act 2013.
- This Bill also amended the Conservation Act 1987, the Continental Shelf Act 1964, the Reserve Act 1977 and the Wildlife Act 1953 **to give non-conservation Ministers joint decision making over minerals-related consenting and the (re-)designation of protected area status in protected areas. This weakened conservation protection.**
- The Crown Minerals Act, Regulations and Minerals Programmes were also amended in various other ways.
- See <http://www.buddlefindlay.com/article/2013/05/28/legal-update-crown-minerals-amendment-act-2013>

# Territorial Sea, Contiguous Zone and EEZ Act 1977

- Establishes the 200 n.mile Exclusive Economic Zone and the 12 nautical mile territorial sea. The Act is administered by the Ministry of Foreign Affairs and Trade and implements elements of the UN Convention on the Law of the Sea, UNCLOS. The Act has no stated purpose, has no public processes and includes no environmental evaluation of an activity. Most of the provisions of the Act operate outside the 12 nautical mile limit.



# The EEZ&CS Act. Section 10 Purpose

(1) The purpose of this Act is to promote the sustainable management of the natural resources of the exclusive economic zone and the continental shelf.

(2) In this Act, sustainable management means managing the use, development, and protection of natural resources in a way, or at a rate, that enables people to provide for their **economic well-being** while—

- (a) sustaining the potential of natural resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of the environment; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- (3) In order to achieve the purpose, decision-makers must—
  - (a) take into account decision-making criteria specified in relation to particular decisions; and
  - (b) apply the information principles to the development of regulations and the consideration of applications for marine consent.

# Marine Management Regimes (s7)

## (1) Regs etc under Acts that apply to the:

- (a) territorial sea:
- (b) exclusive economic zone:
- (c) continental shelf.

## (2) those established under the following Acts:

- (a) Biosecurity Act 1993:
- (b) Continental Shelf Act 1964:
- (c) Crown Minerals Act 1991:
- (d) Defence Act 1990:
- (e) Fiordland (Te Moana o Atawhenua) Marine Management Act 2005:

(f) Fisheries Act 1996:

(g) Hauraki Gulf Marine Park Act 2000:

(h) Marine and Coastal Area (Takutai Moana) Act 2011:

(i) Marine Mammals Protection Act 1978:

(j) Marine Reserves Act 1971:

(k) Maritime Transport Act 1994:

(l) Resource Management Act 1991:

(m) Submarine Cables and Pipelines Protection Act 1996:

(n) Wildlife Act 1953

## S12 Matters to be taken into account to achieve purpose continued .

In making decisions for the purposes of this Act, all persons performing functions and duties or exercising powers under it that may affect the environment or existing interests must take into account the following matters:

- (a) the adverse effects on the environment of all activities undertaken in an area of the exclusive economic zone or the continental shelf, including the effects of activities not regulated under this Act:
- (b) the economic well-being of New Zealand:
- (c) the efficient use and development of natural resources:
- (d) the effects of activities on existing interests: [No mention of values]
- (e) the effects on human health that may arise from adverse effects on the environment:
- (f) the nature and effect of other marine management regimes:
- (g) the protection of the biological diversity and integrity of marine species, ecosystems, and processes:
- (h) the protection of rare and vulnerable ecosystems and the habitats of threatened species

# EEZ &CS (EE) Bill – S 33(3)

The Minister must take into account—

- (a) any effects on the environment or existing interests of allowing an activity with or without a marine consent, including—
  - (i) cumulative effects; and
  - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and
- (b) the effects on the environment or existing interests of other activities undertaken in the exclusive economic zone or in or on the continental shelf, including—
  - (i) the effects of activities that are not regulated under this Act; and
  - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone; and

Consideration of effects on climate change disallowed (s 59(6)):

59(6) Despite subsection (4), the EPA must not have regard to—

- (a) trade competition or the effects of trade competition; or
- (b) the effects on climate change of discharging greenhouse gases into the air;

## 33A Information principles

- (1) When developing regulations under section 27, [I.e. does not seem to relate to deciding consents] the Minister must—
  - (a) make full use of the information and other resources available to him or her; and
  - (b) base decisions on the best available information; and
  - (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to the making of a decision under this Act, the information available is uncertain or inadequate, the Minister must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be prohibited, the Minister must first consider whether providing for an adaptive management approach would allow the activity to be classified as discretionary.
- (4) In this section, best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

## Information principles (s 13) [replaced by 33a]

- (1) In achieving the purpose of this Act, a person performing functions and duties or exercising powers under it that affect the environment must—
  - (a) make full use of the information and other resources available to it and of its powers to obtain information and expert advice and commission research; and
  - (b) base decisions on the best available information; and
  - (c) take into account any uncertainty or inadequacy in the information available.
- (2) If, in relation to the making of a decision under this Act that affects the environment, the information available is uncertain or inadequate, the person must favour caution and environmental protection.
- (3) If favouring caution and environmental protection means that an activity is likely to be a prohibited activity or a marine consent is likely to be refused, the person must first consider whether taking an adaptive management approach would allow the activity to be undertaken.
- (4) In this section, best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.

## EEZ & CS (EE) Act S 33(3) continued

- (c) the effects on human health that may arise from effects on the environment ; [note this is not effect of activities] and
- (d) the [unspecified] importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and
- (e) the [unspecified] importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and
- (f) New Zealand's international obligations; and
- (g) the economic benefit to New Zealand of an activity; and
- (h) the efficient use and development of natural resources; and
- (i) the nature and effect of other marine management regimes; and
- (j) best practice in relation to an industry or activity; and
- (k) in relation to whether an activity is classified as permitted or discretionary, the desirability of allowing the public to be heard in relation to the activity or type of activity; and
- (l) any other relevant matter.



The EEZ&CS Act Purpose – things to note  
Compare this with the RMA. The RMA refers to enabling people and communities. Social and cultural wellbeing are also considered in the RMA, but not in the EEZ&CS Act.

Purpose omits climate and interconnected systems

See the Act at

<http://www.legislation.govt.nz/act/public/2012/0072/latest/whole.html#DLM4670826>

Criteria for regulations (s33) and consents includes environmental and economic consideration without hierarchy to protect environment – can thus trade off.

Activities may be classified as permitted, discretionary or prohibited (s 35, 36, 37). In fact, regulations highly permissive, little is prohibited.

# Many other laws and agencies

- Complex jigsaw. [Interesting and gruesome!]
- Major problems of integration.
- Preserving existing uses and activities also preserves sources of harms.
- Agencies and institutions, policies and laws evolve, but usually not fast enough to contain environmental losses.
- Advances take major efforts – they don't just happen by themselves!
- Ad hoc government policies and conflicting goals can take many years to sort out.
- Political reluctance to clearly set out hierarchy of priorities of conflicting policies – leave ambiguous laws.

# More changes

- RMA changes are in the offing.
- The Marine Legislation Bill – Removed right to protest @ sea
- Conservation Act and Policy changes
- Marine Reserves Bill may be resuscitated.

## Loss of the Open Society

- GCSB Act amendments &
- Telecommunications Interception Bill
- OIA being ignored – loss of presumption of openness.

# Questions & Discussion

OUR TASK IS  
TO SHAPE AGENDA FOR 2014 & ON - POLICY  
DISCUSSION ON SUNDAY.

## Laws administered by the Ministry for the Environment:

- [Aquaculture Reform \(Repeals and Transitional Provisions\) Act 2004](#)
- [Climate Change Response Act 2002](#)
- [Environment Act 1986](#)
- [Environment Canterbury \(Temporary Commissioners and Improved Water Management\) Act 2010](#)
- [Environmental Protection Authority Act 2011](#)
- [Exclusive Economic Zone and Continental Shelf \(Environmental Effects\) Act 2012](#)
- [Fiordland \(Te Moana o Atawhenua\) Marine Management Act 2005](#)
- [Hazardous Substances and New Organisms Act 1996](#)
- [Ozone Layer Protection Act 1996](#)
- [Resource Management Act 1991](#)
- [Soil Conservation and Rivers Control Act 1941](#).
- [Waste Minimisation Act 2008](#)
- See <http://www.mfe.govt.nz/laws/>

# Acts Relevant to Conservation

- **The Conservation Act 1987** – Dept of Conservation (DoC); Conservation Law Reform Act 1990
- **National Parks Act 1980**- DoC
- **Reserves Act 1997** DoC, Local Government.
- **Wildlife Act 1953** - DoC – v old, Protected species can be killed by fishing
- **Native Plants Protection Act 1934**.
- **Marine Mammals Protection Act 1978**- DoC
- **Marine Reserves Act 1971** – DoC – Reform Bill stalled >12 years
- **International Trade in Endangered Species** – DoC/Min Foreign Affairs and Trade (MFAT)/Customs/ Min of Primary Industry (MPI).
- **Biosecurity Act 1993** – Min of Primary Industry (MPI). Economic focus intensifying at expense of indigenous species.
- **Antarctica Act 1960**, **Antarctic Marine Living Resources Act 1981**, **Antarctic (Environmental Protection) Act 1994**- MFAT  
[2002 – End of native forest logging on Crown Land].

## Hazardous Substances & New Organisms Act (HAZNO) - Was administered by ERMA, now by

Environmental Protection Authority, (EPA)

- Manages hazardous substances and the control of the import of new organisms, including genetically modified organisms. This requires environmental assessment and if required, hearings and submissions by the public, but EPA does no independent research.



## Biosecurity Act 1993 and Biosecurity Strategy

- Biosecurity Act and Biosecurity Strategy – control and containment of unwanted alien & invasive species.
- Ministry of Primary Industry (MPI) is the lead agency, but Regional Councils have Pest Management Strategies.
- Once strict provisions on imports of biological products and species because of our isolation, vulnerability of native biota to invasive species and diseases and our dependence on agriculture, forestry, and fisheries.



## Biosecurity Act 1993 – Administered by MPI



- An amendment in 1996 allowed the Ministry to take action out to 24 miles offshore - the edge of the Contiguous Zone. The Forests Act (section 69 and 71C) also contains powers to control potential biosecurity threats to forest products from cargo and vessels in the territorial sea;
- The Biosecurity Strategy is the policy currently operative.
- Controls on internal spread of invasives is weak – E.g. wilding pines, undaria (an invasive marine alga), phytophthera (microorganism) which is causing kauri die-back, didymo fresh water algae, etc.

# Marine Mammals Protection Act 1978

- Absolute protection to all marine mammals throughout the territorial sea and the EEZ. This Act is to control marine mammal watching, effects of fishing on marine mammals and the creation of marine mammal sanctuaries.
- New Zealand has six marine mammal sanctuaries
  - Banks Peninsula (1988) protects Hector's dolphin.
  - Within 12 nautical miles of the Auckland Islands (1993) protects Hooker's or New Zealand sea lions.
  - West coast North Island to protect Maui dolphins;
  - Clifford and Cloudy Bay, top of the South Island for Hector's dolphins;
  - Catlins for Hector's,
  - Te Waewae Bay, west of Invercargill – Hector's

# Conservation Act 1987

- **Conservation Act 1987** established the Department of Conservation (DoC).
- Responsible for various protected areas, including National Parks, other terrestrial reserves and World Heritage Areas, marine mammal protection, marine reserves, protected species, wildlife, biodiversity protection.
- All marine mammals and most native animals protected [but can be killed by fishing].
- **Separately:** DoC & Customs responsible for prevention of Trade in Endangered Species under Convention on the International Trade in Endangered Species (CITES).
- DoC also involved in other international agreements – eg, Convention on Biodiversity (CBD), World Heritage Convention, IUCN – International Union for the Conservation of Nature and Natural Resources, International Whaling Convention (IWC) etc.

# Watch out for more changes

- RMA changes are in the offing.
- There is a new Marine Legislation Bill.
- Marine Reserves Bill may be resuscitated.



## Wildlife Act 1954

Covers all birds, turtles, a few marine "species" - black and red coral and spotted black grouper (schedule 7A). Whale sharks, manta ray, katipo spiders and all giant weta recently fully protected.

In 1996 provisions were introduced to manage sea bird deaths in fishing. This control extends to the outer edge of the EEZ (section 3).



The provisions relating to Wildlife Sanctuaries, Wildlife Refuges, and Wildlife Management Reserves are restricted to within the territorial sea (12 nautical miles).



## Wildlife Act 1954

Conservation Management Strategies dealing with wildlife can extend throughout the EEZ while general policies and plans are restricted to the Territorial Sea (section 2B).

# Marine Reserves Act 1971

- Limited to the territorial sea (ie to 12 n miles). Reserves so far cannot be created outside 12 nautical miles. Fishing is usually excluded from all marine reserves, although the Act does allow recreational fishing (section 3(3)).
- The main purpose of the Act is to preserve areas "for the scientific study of marine life". Bill to amend MRA is (still) stalled in Parliament. This has other objectives including preserving areas in their natural state and protecting and preserving marine life.



## Fisheries Acts 1983 and 1996

- Fisheries Management is principally governed by the Fisheries Act 1996. The Ministry of Primary Industry administers this.
- The Act sets the framework and detail of fisheries management, commercial, recreational , customary purposes.
- Commercial fishing mostly in the Quota Management System.

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# Fisheries Act 1996

Taiapure (local customary fishery covering estuarine and littoral waters, Part IX of the 1996 Act) and

- Mataitai areas (Maori customary fishing areas, section 186, 1996 Act) (Ministry of Maori Development, 1993) and the
- recovery of costs from the commercial fishing industry.
- Fisheries Plans (1999 Fisheries Amendment Act) – Quota owners to pen management plans??

# Fisheries Act 1996

Purpose and principles and includes limited public processes (eg sections 12 and 266(7)).  
The Act's purpose (section 8):

- “is to provide for the utilisation of fisheries resources while ensuring sustainability” .
- “Ensuring sustainability” means:
- (a) Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and
- (b) Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment” .

# Fisheries

- The marine environment has been significantly damaged by over fishing, trawling and other fishing methods.
- There have been serious losses of fish stocks, destruction of the sea-floor ecosystems, and serious losses of marine mammals, seabirds and invertebrates.
- losses of marine mammals and of sea birds from fishing and whale hunting in the Territorial Sea, 200 nautical mile Exclusive Economic Zone (EEZ) , Southern Ocean and elsewhere.

# Maritime Transport Act 1994 (MTA)

- Covers a range of shipping related controls but most of the marine pollution, marine dumping and incineration provisions only apply outside 12 nautical miles. The wider shipping controls apply both to the territorial sea and the EEZ. This includes the oil pollution control parts of the Act.
- Administered by the Maritime Safety Authority, Maritime NZ. . This authority is appointed by the Minister of Transport.

# Maritime Transport Act 1994 (MTA)

- MTA- Maritime NZ - “To promote maritime safety and security, and protection of the marine environment in and beyond New Zealand, in accordance with New Zealand’s international obligations”.
- Includes public processes for establishing rules to control dumping, incineration and pollution but no public processes for considering permits.
- The Act has no principles and purpose for its environmental provision and no requirement for environmental assessments.
- Agency: Maritime NZ has the Maritime Authority which also does Maritime Security Act 2004, some responsibilities under Health and Safety in Employment Act 1992, Ship Registration Act 1992.
- Maritime NZ coordinates but does not control other agencies in emergencies – Rena There is no representative of the Minister for the Environment.

# Other relevant Acts

- Transport Act and related Acts – Min of Transport (MOT + other agencies).
- Electricity Act 1992; Energy Act– various, Electricity Commission
- Food related Acts eg Food Safety – Min of Health
- Local Government Act – Territorial authorities, ie regional and local government.
- Health Act 1954
- New Zealand Nuclear Free Zone etc Act 1987
- Antarctica Act and other acts that give effect to international agreements.
- Official Information Act
- GCSB Bill

## Marine issues beyond fisheries

- Major push on fossil fuels, including oil and gas, methane hydrates.
- Bioprospecting, marine energy generation, climate change impacts and mitigation are all issues.
- Ecosystem functions, intrinsic values.



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