ECOlink

NEWSLETTER OF THE ENVIRONMENT AND CONSERVATION ORGANISATIONS OF NEW ZEALAND

JUNE 2012

# Environmental Responsibility: Leadership, Inclusion and Good Governance

**ECO Annual Conference**
**Friday – Sunday 6-8 July 2012, Wellington.**

How responsible is New Zealand on the environment? Is it showing leadership, good governance and inclusiveness? How are the environment and the community being considered and treated in recent law and policy? Is this government cutting corners on due process in making law and is it running roughshod over local and regional government?

What are the new developments in international environmental law? What is the emerging thinking on ecocide, and the Aarhus Convention? What positions does New Zealand take these days and how does it measure up to international standards? Is due process being followed by government in Parliament, policy and law and can we call this good governance?

Is New Zealand falling behind in good governance and in an open society? Is democracy and citizen participation being eroded and is this a reasonable price for encouraging business?

How will the coast, gulls and other birds be considered in marine management? One of the many issues to be discussed at the ECO Conference this year

What's happening at the Rio+20 international conference and the IUCN Congress in Jeju, Korea, and how is ECO to be involved?

What was the recommendation of the Waitangi Tribunal on Wai262, and how do we respond? How should democracy, the Treaty and justice interlock? What are the changes to the Resource Management Act and the Exclusive Economic Zone and Continental Shelf Act? What about Antarctica and the Ross Sea?

These questions and more are to be explored by leading experts and the community at ECO's Environmental Responsibility: Leadership, Inclusion and Good Governance conference Friday 6 July – Sun 8 July 2012. Friday and Saturday's programme (including the AGM) will be held at the Salvation Army Citadel, 8 Jessie Street, Wellington Central, then the conference will migrate on Sunday to Turnbull House at the Parliamentary end of town and Victoria University's Pipitea campus at the Railway West Wing for the workshops.

Member groups and other groups will have a chance to present to the conference in sessions on Friday or

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Saturday, while ECO's annual general meeting will be held on the afternoon of Saturday 7 July.

Friday evening will be an Antarctic special event as we join with the newly formed Antarctic Ocean Alliance, with a public reception including displays, presentation and footage from the soon to be released and beautiful film The Last Ocean.

Saturday evening is a celebration of ECO's forty years of work promoting better environmental practice, law and policy, and protection of species and areas, with a look back and a look forward.

On Sunday morning, departed environmentalists and conservationists will be remembered and celebrated with a memorial tree planting event in the Botanic Gardens. Trees will be planted for epidemiologist and former ECO Chair, Dr Ian Prior; Kevin Smith (formerly from Forest and Bird); Christchurch's Neil Cherry, and Marion Henderson of Wellington. We will also celebrate the life of Ray Weeber, long time ECO supporter who died in June 2011.

After the Sunday morning memorial event, we will move for coffee to historic Turnbull House, at 11 Bowen Street, at the foot of the Treasury Building.
The rest of Sunday 8 July will be devoted to two workshops, one on mobilising to protect the Ross Sea and Southern Ocean with the Antarctic Oceans Alliance, the other on using community data for recording and mapping environmental information to nationally useful standards.

The Antarctic workshop will be held at Turnbull House. The data and mapping workshop will be nearby in the Victoria University Pipitea campus at the Railway Station West Wing, in the "cyber commons" Room RWW 102.

This data and geographic information mapping workshop will be presented by Elise Smith of ECO, using a computer training suite on the downtown Pipitea campus which is provided by the School of Geography, Environment and Earth Sciences of Victoria University. Participants will have hands-on training in each repeated two-hour workshop.

More details on the topics in the Conference can be found in the insert to this copy of ECOLink. Register now at http://www.eco.org.nz/what-we-do/eco-conference-2012-2.html and get the reduced Early Bird registration fee. A conference flyer/registration form is also enclosed.

Member groups - this is your conference! Please make sure you send at least two delegates. Please forward any remits or items for the AGM agenda as soon as you can.

We also recommend you organise accommodation ahead of time, as two major sporting events are to be held in Wellington on the same weekend. Suggestions can be found on our website www.eco.org.nz along with conference updates.

**Early Bird Rates close June 15**

Invite a friend and we look forward to seeing you in July.

## Constitutional Review

The Government has begun the first phase of a wide-ranging review of New Zealand's constitutional arrangement, a major part of its confidence and supply agreement between the National and Maori Parties. The review will be led by Deputy Prime Minister Bill English and the Minister of Māori Affairs Pita Sharples, and will have an appointed Constitutional Advisory Panel (CAP). The review will include matters such as the size of Parliament, the length of the electoral term, Maori representation, the role of the Treaty of Waitangi and whether New Zealand needs a written constitution.

The review is entering a phase of public consultation and discussion. The Panel will report in 2013 to the responsible Ministers, who will then report to Cabinet. More information can be found on the Ministry of Justice website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/consideration-of-constitutional-issues-1/consideration-of-constitutional-issues.

Opportunities for public input: the Constitutional Advisory Panel will establish a forum to develop and share ideas on the constitutional topics. It will seek the views of New Zealanders on these topics in 2012 and 2013.

## Longfin Eels and the Quota Mismanagement System

by Mike Joy

To find out about the commercial fishing of eels in New Zealand the logical place to look is the webpage for the new Ministry for Primary Industries (previously the Ministry of Fisheries). There you can find the 'Eel fact sheet' but beware, it is one crucial fact short of the truth. It misses the fact that one of the two eel species managed as a commercial fishery, the endemic longfin eel, is listed as a threatened species. The omission of this vital detail is not surprising considering it contradicts the Ministry's strident claims that all fish stocks managed under the much lauded Quota Management System (QMS) are sustainable. If the Ministry admitted that longfins are threatened then the obvious question would be; how could this fishery be sustainable when many independent scientists have declared that longfin eels are in serious decline?

Closer examination of the Ministry's so-called 'sustainable management' of the commercial harvest of this threatened endemic species reveals more inconsistencies.

- The South Island QMS finally introduced in 2000 treats our two very different eel species as one. This unprecedented approach where there is one TAAC for two very different species is obviously utterly flawed, as one of the two species could become extinct and the quota would have no effect.

- In the North Island where they have separate quota longfin eel numbers are declining so fast fishermen can't catch enough for the quota to have any effect. Despite a major drop in the total allowable catch (TAAC) of longfin eels in the North Island in 2007 the QMS has had no effect as the catch has always been far short of the limit. In other words, the catch is declining faster than the Ministry can drop the limit.

- Commercial fishers have requested, and been given, permission to harvest within the Conservation Estate. This reveals the unsustainable nature of their harvest; if the fishery were sustainable there would be no need to move away from their traditional fishing areas. This is to say nothing of the duplicity of the Department of Conservation allowing the harvesting of a threatened endemic species in the Conservation Estate.

The symptoms of decline are stark and consistent with historic destruction of fisheries. There has been a 75% reduction in recruitment longfin elvers since commercial fishing began in the early 1970s and the size, weight, and distributional range of longfin eels has been decreasing ever since. In regularly fished rivers there is a minimum harvest size and because female longfins are larger than males, monitored rivers now show males dominate by more than 90 males to every female.

Longfin eel *Photo: Mike Joy*

It is important also to be aware of the "allee effect ". This is an ecological term used to describe populations that require a minimum number of breeding adults to achieve a successful breeding event. An example is the passenger pigeon in the USA whose population crashed after continued human destruction reduced their numbers from billions of breeding individuals down to an estimated 6 million. Once the population was reduced to this low level in one season total extinction occurred because large numbers were required for a mass breeding event, so it failed. Hence, in the case of longfin eels the species cannot be saved from extinction after getting down to a few individuals like other well publicised species like kakapo. The reality is that the minimum number of migrating eels might be a few million but the crucial fact is we won't know what the number is until after the fact when it is too late to save them from total extinction. So every last longfin migrant female eel is precious at this stage in their decline and the ministry is playing with fire allowing their continued harvest.

The final appalling fact also not in the 'fact sheet' is that most of the harvest of this threatened species goes to the Northern Hemisphere where their eels are either extinct or on the verge of extinction.

**To join in the call for a moratorium on this deplorable process and for more facts see the Lifeline for Longfins webpage at longfineel.co.nz.**

# Feeble and Environmentally Unsound: the EEZ and Continental Shelf Bill

by Cath Wallace

Bad law, unstable policy and an excessive focus on extraction and activities over other values are hallmarks of the reported back EEZ and Continental Shelf (Environmental Effects) Bill. It was reported back by a Select Committee dominated by the government, and accompanied by dissenting minority reports from Labour, the Greens and NZ First.

It is a truly feeble bill. ECO understands that even Government MPs thought it needed fixing but were overruled by Ministers keen to rush oil and gas and seabed mining exploration and mining ahead.

The incompatibility of the Bill with international law is that it continues to aim to "achieve a balance between the protection of the environment and economic development in relation to activities in the exclusive economic zone and in or on the continental shelf.

The UN Convention on Law of the Sea, whence derives New Zealand's duties and entitlements in the EEZ and Continental Shelf is clear that there is a right to exploit resources but that this is constrained by the duty to protect and preserve the marine environment. Articles 192 and 123 (boxed) make the hierarchy clear. Articles 56 and 61 lay down general rights and duties as well. Article 192 is an unqualified obligation, while Article 193 is a right contingent on Article 192:

**Article 192**
*General obligation*
*States have the obligation to protect and preserve the marine environment.*

**Article 193**
**Sovereign right of States to exploit their natural resources**
*States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.*

A deplorable element of this Bill is the repetition in it of the restriction in the RMA of consideration of greenhouse gas emissions. The language debars consideration of *"the effects on climate change of discharging greenhouse gases into the air"* (Cl 59 (6)b);

Given that many of the activities considered will be the exploitation of oil, gas, methane hydrates, and other activities with large greenhouse gas emissions, this is a particularly reprehensible provision.

*Photo © Malcolm Pullman / Greenpeace*

Greenpeace activists in front of oil survey ship Orient Explorer

The changes made amount largely to shifting things around within the Bill, a limp attempt to widen the reference to the international obligations, and a firming up of the reference to the Treaty of Waitangi and the provision of a Maori Advisory Committee. The latter two no doubt, the price of Maori Party compliance, but in marine issues the Maori party mostly seems to toe the line of the fishing industry.

The Bill remains a hodge-podge "gap filler" and fails to provide a coherent policy framework. It lists a wide range of conflicting objectives (cl 59) without resolving the hierarchy of how these conflicts shall be resolved. For a sample of this problem just some of the matters to be taken into account include:
*(c) the effects on human health that may arise from effects on the environment; and*
*(d) the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes; and*
*(e) the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species; and*
*(f) the economic benefit to New Zealand of allowing the application; and*
*(g) the efficient use and development of natural resources;* (the list just in this section goes from a to m) and the EPA also has to have regard to the value of the investment the activity of the existing consent holder.

There is much more too that has to be taken into account, or had regard to. The EPA has to consider also a long list of marine regimes.

This failure to rank considerations for their importance (as does say the RMA) is nightmare policy design and

will lead to instability of decision making and hence uncertainty for all concerned. It will serve teachers of public law and public policy as a shining example of how not to design law and policy. It is bound to lead to inconsistent decision making, uncertainty for applicants and for others and is sure to have to be revised.

This idea of "balancing" these considerations is also fatally flawed because it is inconsistent with the UN Convention on the Law of the Sea (UNCLOS) and the Convention on Biodiversity. Shamefully, we hear that New Zealand has been trying to weaken international commitment and the legal standing of the Convention on Biodiversity which imposes obligations for the protection of biodiversity. UNLOS too requires that states *protect and preserve the marine environment* with rights to use resources subject to that obligation.

The list of conflicting objectives is the sort of thing that a group of stakeholders might throw onto a whiteboard: it seems as though the policy staff of the Ministry for the Environment, the Ministers, and now the MPs in the Select Committee found no means of sorting these through to figure out what should take precedence over which with the result that decision makers can simply choose between these in striking a "balance". The result of this failure to structure and prioritise grounds for decision making will be environmentally harmful decision making and policy instability since successive EPA decision makers can just choose according to their impulses.

The Bill controls activities and their impacts on other activities and the environment where these are not elsewhere controlled unless exempted. To a large extent the Bill preserves existing activities and consents or licences, including fishing, but does nothing to preserve the existing benefits and values that we derive from ecological services and amenity values, the passive non-consumptive but vital benefits from the sea, since these are not classified as "existing interests".

The Bill has been modified to delay parts of its introduction until July 2014, pending the development of regulations, so just how these will be drafted and when is unclear.

Public notification of consents remains in the Bill and any person has a right to make submissions, as with the RMA.

The Information Principle has been moved to 33A. Precautionary Principle is apparently again deliberately not cited in its internationally accepted form. Instead it contains this, in relation to regulating and consenting decisions:

**33A 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 is an improvement on the Fisheries Act's information principle, but it removes the pre-caution, and only provides for caution. It is unclear what this means given that this is not language used elsewhere in international jurisprudence.

The Precautionary Principle is then inverted by subsection 3, which is essentially a "suck it and see" approach – risky in that you may stop if it turns out to do harm – and this for activities that might otherwise be prohibited!

One crucial weakness in the Bill is its provision for regulations to be made by Order in Council to determine what is and is not a permitted use. Permitted uses can be done without further application though may have conditions applied so it is not possible at this stage to judge how this will play out.

Where consents are required, the Environmental Protection Authority is the decision maker, but there is no recourse to the Environment Court, and only appeal to the High Court on points of law. This will make it very difficult for community members and the experience in environmental matters of those Environment

Court decision makers will not come to bear on these marine issues.

Where consents are required (which excludes permitted uses) Impact Assessments must be done, and these relate to the environment and to existing interests: but the latter does not appear to include the public who benefit from the integrity and functioning of ecosystem and biophysical processes, or others with particular non-"activity" interests such as amenity values, appreciation of science and ecosystem functions and so on. Obligations to consult are only to those with existing interests and are restricted at that to those *"likely to be adversely affected"* (Cl 40(1)d), so again it will primarily be other extractive interests, those generating power or controlling pipelines and Maori claimants.

In an invitation to risky decision making, applicants only have to make a *"reasonable effort"* (cl 40(3)) to get needed information, there is not any obligation for actual information sufficiency for the decision to be made.

ECO understands that pressure from economic interests, particularly seabed mining and the oil and gas industry is one reason why this Bill has been put through in such an unsatisfactory state. It seems that minerals applications including the tendered oil and gas blocks, Chatham Rise Phosphate and others will be able to slide in with minerals consents without even the flimsy regulation that this Bill will provide.

ECO is dismayed at the inadequacy of this Bill, and the sense that after 10 years of effort by various governments this government has produced a minimalist bill devoid of vision and devoid of any form of integrating spatial management. It will certainly have to be radically revised or replaced – if it does get passed, as it is likely to be.

You will find the Bill as reported back from the Select Committee, with track changes and also the dissenting party reports (which are well worth reading) at http://www.legislation.govt.nz/bill/government/2011/0321/latest/whole.html#DLM4464016 . The Greens, Labour and NZ First have all said that they will oppose the passage of this Bill, but we can expect the Maori Party, Peter Dunne, ACT and National to push this half-baked law through.

## Release of EEZ regulations public discussion document:

The Minister for the Environment has released a document for public consultation: ***Managing our oceans: A discussion document on the regulations proposed under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill***. The document is available for viewing and downloading at www.mfe.govt.nz/issues/oceans/eez-regulations-consultation. The Minister's press release is available at www.beehive.govt.nz.

New Zealand's exclusive economic zone and continental shelf is about 20 times its landmass and is the 5th largest in the world. We have exclusive rights to explore and exploit the resources on and under the seafloor and in the waters of the EEZ. We also have a duty to preserve and protect these resources which include vulnerable marine animals and unique seafloor habitats.

The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill will establish an environmental management regime that will include the exercise of consenting, monitoring, and enforcement functions by the Environmental Protection Authority, and a framework for regulations that will classify activities as permitted, discretionary, or prohibited. Public consultation on the Bill is now completed and it is being considered by Parliament.

Proposals for regulations (to be issued once the Bill is passed) are now open for public consultation through the attached discussion document. They focus on:

- how activities should be classified and conditions for permitted activities
- how the Environmental Protection Authority should recover its costs.

Submissions need to be sent by 5pm 20 June through the online form, which can also be accessed at the website above, or by email to: EEZregulations@mfe.govt.nz or by post to:

Submission on proposed EEZ regulations policy proposals
Ministry for the Environment
PO Box 10362
Wellington 6143

Submissions will be considered by the Government before the final form of regulations is decided.

The table below shows what are proposed "permitted uses". The transitional arrangements would also allow the current prospecting licences for minerals as a permitted activity.

**Table 4: Summary of proposed permitted and discretionary activities**

| Permitted | Discretionary |
|---|---|
| **Seismic surveying** | |
| • Use of air guns<br>• High-resolution electronic source seismic surveys (ie, chirp and boomer) | • Seismic surveying activities that exceed specified conditions. |
| **Submarine cabling** | |
| • Use of air guns<br>• High-resolution electronic source seismic surveys (ie, chirp and boomer)<br>• Collection of small surface samples<br>• Cable lowering and raising<br>• Cable trenching and installation<br>• Cable maintenance (effects related to lowering and raising) | • Cabling activities that exceed specified conditions. |
| **Marine scientific research** | |
| • Use of high-resolution electronic acoustic sources (ie, chirp, boomer) and air guns<br>• Conductivity, temperature and depth (CTD) data collection methods<br>• Use of moored arrays or buoys<br>• Research dredging<br>• Seabed and subsoil sampling (sleds, box cores, multi-cores, piston cores or directed sampling from ROVs or submersibles(except for on massive sulphide deposits where the vehicle travels along the seafloor))<br>• Research drilling<br>• Installations of structures on the seabed | • Use of seafloor explosives<br>• Other research activities that exceed conditions (ie, larger-scale sampling of the seabed and larger-scale disturbance) |
| **Oil and gas** | |
| • Use of high-resolution acoustic sources for seismic surveying (eg, boomer, chirp)<br>• Use of air guns for seismic surveying<br>• Shallow core sampling at low concentrations (this does not include collection of biological samples which is regulated under the Fisheries Act 1996)<br>• Collection of small surface samples<br>• Use of ROVs or submersibles that have an impact on the seafloor or its communities (except for on massive sulphide deposits where the vehicle travels along the seafloor)<br>• Maintenance of structure | • Well-drilling activities (exploration/appraisal and production/development) with the purpose of discovering, evaluating and producing oil and gas<br>• Construction of platform structure, including anchors and moorings<br>• Underwater pipeline laying, trenching, inspection and maintenance<br>• Well capping (decommissioning)<br>• Removal of all equipment, plant and machinery (decommissioning) |
| **Seabed mining** | |
| • Seismic surveying involving high-resolution electronic sources (eg, boomer, chirp)<br>• Core sampling at low concentrations (this does not include collection of biological samples which is regulated under the Fisheries Act 1996)<br>• Use of ROVs or submersibles (except for on massive sulphide deposits where the vehicle travels along the seafloor)<br>• Spot sampling<br>• Rock dredges<br>• Bulk sampling (other than discharges to the water) | • Core sampling at concentrations higher than allowed for a permitted activity<br>• Test mining techniques, including the use of test pits<br>• Test drilling<br>• Seafloor suction<br>• Seafloor slurry pipes<br>• Mooring blocks or anchors<br>• Seafloor cutting/fragmentation<br>• Any smothering of the seabed from a sediment plume<br>• The creation of an extraction and deposition plume that affects the seabed<br>• Deposition of tailings in stock piles or pits |

## International attention to Maui's and Hector's Dolphins' plight

by Cath Wallace

In September 2012, the IUCN World Congress in Jeju, South Korea will focus on the plight of New Zealands's endangered Hector's and critically endangered Maui's dolphin and other endangered dolphin and porpoise species. ECO is coordinating a draft motion to the Congress which covers also the Mexican Vaquita porpoise, or Gulf of California harbour porpoise, and several endangered river dolphin species in Southern Asia.


Petition supporters outside parliament in April *Photo: Barry Weeber*

Scientists now estimate that there are only 55 individuals (excluding calves) of the North Island west coast Maui's dolphin. They breed slowly and are killed by gill netting, boat strike and other human impacts.

The global organisations AVAAZ and NABU with New Zealand organisations, presented copies of international petitions with about 65,000 signatures to New Zealand MPs in April in Wellington. The same month 21 international and local organisations asked Prime Minister John Key for more effective closures and other action to protect Maui's and Hector's dolphins

The IUCN draft motion, asks the New Zealand government:

*a) to urgently extend dolphin protection measures and in particular to ban gillnet and trawl net use from the shoreline to the 100 metre depth contour in all areas where Hector's and Maui's dolphins are found including harbours;*

*b) to increase immediately the level of monitoring and enforcement and to require 100 percent observer coverage on any gillnet or trawling vessels allowed to operate in any part of the range of Hector's and Maui's dolphins until such bans can be implemented; and*

*c) to report action taken.*

The IUCN Red List of Threatened Species has classified the Vaquita porpoise or Gulf of California harbour porpoise, a species endemic to the Upper Gulf of California, Mexico, as 'Vulnerable' in 1978, 'Endangered' in 1990 and 'Critically Endangered' since 1996. The then Mexican President supported action but the fisheries ministry and some branches of the fishing industry in Mexico have thwarted the full implementation of measures to protect the Vaquita, and the dolphins remain at risk.

IUCN called for urgent cooperative regional action for the conservation of river dolphins (Platanista spp. and Lipotes spp) in 2000. The Ganges River Dolphin (Platanista gangetica), Indus River Dolphin (Platanista minor) and the Yangtze River Dolphin are found only in Asia The Ganges and Indus River Dolphins stretch across political boundaries in various river systems shared by four nations, i.e. Bangladesh, Bhutan, India and Nepal. The Chinese River dolphins of the Yangtze are now thought to be extinct though the Red List has not yet listed them as such in the hope that they may yet reappear, the others remain at risk.

The motion calls on all the governments involved to redouble efforts to protect these endangered species and to take specific actions needed to that end.

The IUCN World Conservation Congress takes place in Jeju, South Korea, from 6-15th September this year.

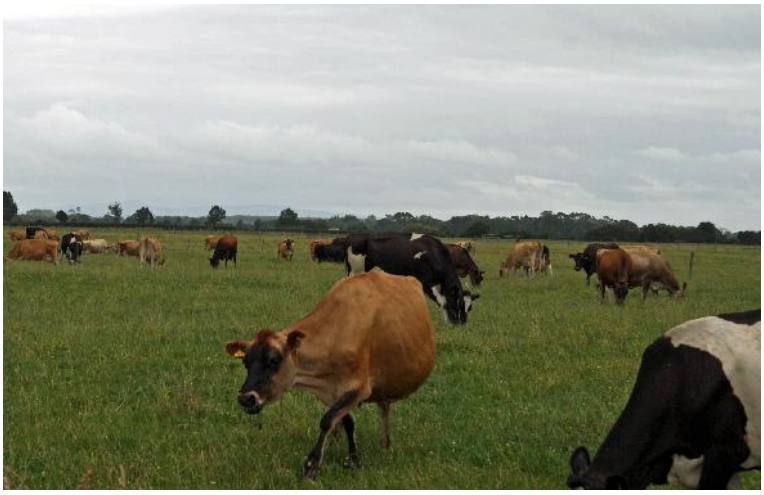
ECO has gained widespread co-sponsorship of the motion, including NGOs from the USA, Australia, Mexico, New Zealand, Guatemala, Costa Rica, Italy, the Cook Islands, the Canary Islands, and a government agency from France. It remains to be seen whether the New Zealand government will by September have taken the steps needed to protect the Maui's and Hector's dolphin. The world is watching.

## Emissions Trading Scheme: Updating or Weakening?

by Cath Wallace

The government consultation on the *"Updating of the Emissions Trading Scheme"* has closed with a discussion paper that betrays little sense of urgency about climate change or the need for all countries to reduce emissions.

The main changes proposed would further weaken the ETS, and further indulge the agricultural sector particularly with signals of further delay to it kicking in for agriculture and many weasel words in criteria for taking action. The government wants *"a power to delay the entry of emissions from animal livestock and fertiliser use for up to three years if certain, (vaguely worded) criteria are not met, following a review in 2014"* (p5).



More land will be converted to dairy farming *Photo: Barry Weeber*

The "transition measures", that is the concessions to polluters, are proposed to be phased out later than at first planned. For instance the two emissions credits for one bought would go in 2015 (or later), not 2013. The fixed price of NZ Units at $25/tonne is a price ceiling and so a subsidy when the price is above that. The already very emissions-indulgent Review Team report had suggested raising this ceiling gradually at the rate of $5/pa, but the government is suggesting retaining the $25/unit price cap, and potentially extending this fixed price further in the future. This means that the international market signals would be further muted. Compare this approach to that in the UK and other countries which are imposing a price floor, rather than a ceiling to provide a carbon price high enough to induce investment decisions that encourage the switch to low carbon technologies and practices.

The mooted changes would also continue to burden tax payers present and future with the cost of emissions that they cannot alter since agriculture accounts for about half of NZ's emissions.

The government is proposing a cap on the available amount of greenhouse gas emissions and an auction system but this is primarily designed to stem the flow of funds overseas to buy cheap international units, leaving the government potentially holding low value NZ Units and New Zealand with funds draining away. The government's proposal seems to have a fiscal objective rather than to set a cap to limit New Zealand's emissions.

The government at Durban negotiated land use flexibility so that if someone logs pre 1990 forests here, they can offset that by planting somewhere else instead of replanting on the same area. This was pushed for to help the plantation foresters and land owners who want to be able to convert land that has been harvested of trees to dairy farming. This would be a triple whammy against the climate with the loss of forest and soil carbon, the emissions from nitrogenous fertilisers, and the emissions from the cows themselves.

The policy has nothing in it to address biodiversity losses, and one particularly pernicious element is that any offset land must be planted and not left to regenerate, a provision damaging for native biodiversity.

There are various other proposals such as linking to the Australian ETS, removing the requirement on the government to back NZUs with international credits, extending the ban on the export of NZUs from non-forestry sectors, and adopting international greenhouse gas accounting standards.

Significant detail in the proposals is deferred until later in the year which makes it difficult to evaluate some aspects of the proposals.

For more on this and accompanying documents, see www.climatechange.govt.nz/ets

ECO made a submission as did a wide array of other organisations.

# Plantation Forestry Standards and Impacts

by Cath Wallace

**New Zealand Forest Accord 1991**

Like several organisations, ECO is a member of the NZ Forests Accord of 1991 and the Forest Stewardship Council (FSC) New Zealand Environmental Chamber.

The NZ Forests Accord was signed in 1991 between environmental groups and farm and industrial forester organisations and some timber industry companies. This allowed an accord that those companies and organisations would agree to avoid planting (or logging) on areas with native forest canopy species and that in return, the environmental groups would support plantation forests so long as these are sustainable.

**The Forest Stewardship Council**

The Forest Stewardship Council is a global organisation (see www.fsc.org) which is another but separate and global voluntary agreement between forestry interests and environmental and social interests. In New Zealand, there is a fourth chamber for Maori interests.

The global governance represents these sectors and has processes, rules, standards and principles and criteria for the certification (or not) of forestry activities in particular places. The point of all this is to provide global guidance for good practice. The involvement of the various chambers in these then allows, after assessment of compliance by forestry companies with these standards by independent assessors, that the forests can be certified as compliant and can be allowed to use the FSC logo as an indicator of sustainability.

ECO, Greenpeace NZ, Forest and Bird and several other groups took the view some years ago that we lack resources to engage in a series of individual forest inspections and engagement for certifications and instead focused on developing National Standards to implement the international principles and criteria and the rules from the international FSC. This left a hole though, and many New Zealand forests have been certified as compliant with virtually no New Zealand non-governmental environmental organisation scrutiny.

Instead of engaging in case by case scrutiny, we spent several years working with the economic and other chambers to try to reach agreed New Zealand standards. Several times industry and farm foresters walked away from the draft standards, particularly on the issue of areas that must be reserved and set aside under the international rules which have to be translated into New Zealand rules. The industry has toyed with a range of substitute and weaker certification standards, but the demand of consumers and particularly retailers, and no doubt in some cases, genuine concern, has pressed them back to the table. Finally New Zealand FSC National Standards were largely agreed and the March 2012 text of the New Zealand National Standards can be found here at:

Pine clearance, Coromandel

http://www.nzfoa.org.nz/images/stories/pdfs/content/certification/natstd_5.5_feb_2012.pdf

These have not yet been implemented and future FSC certifications will have to comply with NZ National Standards when finally these take effect but they will also have to be revised within two years.

All this took so long from the 2002 start of the discussions that meanwhile the global FSC Principles and Criteria have been revised. Countries have been given two years to adjust their National Standards to comply. Thus we are about to engage in this revision process which must be compliant with the new international principles and criteria. This revision must be negotiated between the Environmental, Economic, Social and Maori chambers of the FSC in New Zealand. Close inspection of these chambers shows a range of economic interests in the Maori and social chambers, but few affected communities are represented in these.

It is of increasing concern to ECO and other groups that there are many anecdotal accounts and often photographs and communications which suggest that there may be FSC certified forests with environmentally, socially or culturally dubious practices.

Some affected communities have approached the FSC environmental chamber for help in holding companies

with FSC certification up to the standards of the FSC. ECO welcomes these approaches since vigilant communities are needed to keep companies to the standards they are certified as complying with. If plantation forest companies are operating in an area and you are monitoring their compliance with their FSC certification if they have it, then let ECO know. A list of New Zealand certificate holders can be sorted from the certificate holder database at http://info.fsc.org/ . We will engage with other Forest Stewardship Council Chambers about the need to get cracking on revising the New Zealand FSC National Standards, and about the need to ensure that FSC standards are complied with in practice.

Communities and environmental groups, iwi and hapu are urged to inform themselves of whether companies in their vicinity are FSC certified or not, and whether the companies seem to be complying with the FSC standards. For more information, see the FSC website at www.fsc.org

**How good are the Assessor companies?**

The companies who assess the forestry companies as to whether they earn the FSC certification, themselves too need to maintain the integrity of the standards-keeping. Slack forestry practices have been certified, and at least one certification company has been hauled by environmental groups before the association that certifies independent certifiers for serious lapses in their own interpretation and implementation of the Principles and Criteria.

**Government National Environmental Standards – are they stalled?**

While these non-governmental initiatives and processes have been underway, the forest industry and the Ministry for the Environment have worked on a set of National Environmental Standards (NES) for Plantation Forestry under the Resource Management Act (RMA). Initially the Ministry for the Environment excluded environmental groups but engaged with the industry on these standards. Eventually public consultation and discussions between the Ministry and other interested parties happened, but for most of 2012, we have heard virtually nothing and it may be that the industry or the Ministry has dropped the Plantation Forestry National Environmental Standards as too difficult to determine. Details of the process and where it has got to are recorded on the Ministry for the Environment website, at http://www.mfe.govt.nz/laws/standards/forestry/

The Ministry's own account of the policy process is this: *"The proposed National Environmental Standard for Plantation Forestry (NES) was released in September 2010 for consultation.*

*"During September 2010 six consultation workshops were held to inform people about the proposed NES.*

*"The period for submissions closed on 18 October 2010. 117 submissions were received on the proposed NES. View the submissions.*

*"In response to submissions and further analysis, a revised NES proposal was released in May 2011 and comments were sought from existing submitters. The Ministry received 62 comments. View the comments*

*"The Ministry has considered comments that relate to the high level policy (activity status, ability to be more stringent and scope). The Ministry is still working through comments on the more detailed policy (terms and conditions).*

*"Following on from the comments phase on the revised NES proposal, the Ministry has considered the costs and benefits of the proposed NES. The cost-benefit analysis has identified gaps in the data that requires further investigation.*

*"The Ministry is working with a group of key stakeholders to complete this work. The policy proposal may change as a result of this process."*

ECO has not been invited to be part of this group, but we are vitally interested. Who is in the group? That is not revealed by MfE.

Such standards might make things easier for the industry if the standards are not too tough, by giving nationally consistent rules. Environmental groups have been concerned that while good strong environmental standards would contribute to better outcomes nationally for forestry and by demonstration, for other activities, weak standards would become a baseline for other industries so fostering weakness all round.

ECO awaits further information about these governmental standards and just how representative of all concerns is their key stakeholder group.

## Anti-Frackers - Alarmists or Alarmed?

by Pauline Elliott

**Alarmist** - *n: a person given to spreading needless alarm; - adj: spreading needless alarm*
**Alarmed** – *n: frightened expectation of danger or difficulty: -v.tr – aroused to a sense of danger.*
(Concise Oxford Dictionary)

While there may well be a hard core of alarmists muscling in on the fracking debate, we haven't met one yet. But there is a rapidly growing number of citizens who are certainly alarmed.

Until quite recently there was no common knowledge that the Ministry of Economic Development (MED), from 1 July 2012 to be the Ministry of Business, Innovation and Employment (MBIE), on behalf of government, had allocated permits for oil exploration across 1.7m hectares of Hawke's Bay and East Coast, or that TAG/Apache would be drilling an exploratory well in Porangahau, Southern Hawke's Bay.

As news of wholesale exploration permit allocations across NZ emerged, so did communities engage in information-seeking including viewing the documentary Gas Lands. This documentary follows the aggressive, largely unregulated, pursuit of oil and gas which is leaving a legacy of environmental destruction, water and air pollution, and severe effects on human health. Communities want assurances that such a situation could never happen here.

**So who can provide such assurances? The Government?**

MED's role is to allocate permits. The job of managing them is that of local or territorial authorities under the Resource Management Act 1991. In Hawke's Bay the Hawke's Bay Regional Council (HBRC) is the authority.

It seems incomprehensible that central government, now touting oil and gas as the new economic saviour, has no cohesive strategy for managing the environmental effects of what they are hoping will become a major economic industry, previously little known outside Taranaki. There is no environmental framework to guide consenting authorities in their approach; no integrated regulatory framework; and only a pitiable pool of expertise to manage and monitor the industry. Legislatively, the Resource Management Act (RMA) applies with each Council applying its own rules and policies under its Regional Resource Management Plans (RRMP).

There is little resident expertise on oil and gas exploration in New Zealand outside the industry itself and the Taranaki Regional Council (TRC). Apart from RMA consents for water take and disposal, TRC does not have extensive experience in processing consent applications for fracking. Only in August of last year, following legal advice, did it declare a requirement for consent applications for these activities.

Council staff are gaining their knowledge from industry players, not independent sources, to gain an understanding of exploratory operations. In February, at the invitation of Apache Corporation, HBRC co-funded a "fact-finding" tour for a staff member to visit British Columbia. The public was not privy to a full report but was given a two page summary.

Petitioners calling on HBRC to make fracking a prohibited activity until an independent enquiry by the Parliamentary Commissioner for the Environment (PCE) could investigate, found such a move would require a change in the RRMP, a process that currently takes around eight years. TRC councillors unanimously supported Cr Remmerswaal's motion to request such an investigation.

In recent weeks the PCE, Dr Jan Wright, has determined there is a *"substantive case under the Environment Act"* and has announced an official investigation. She expects to be reporting to Parliament by the end of the year.

Although it will provide the long-awaited independent investigation, it has no bearing on the consent process in the meantime. Her findings and recommendations may or may not influence government thinking.
The most obvious way of ensuring transparency and confidence in this process is to call for all consent applications to be publicly notified.

The RMA specifies the grounds for public notification. Section 95A offers *"where it decides ... that the activity will have or is likely to have adverse effects on the environment that are more than minor"*. The concern is that we simply do not know if effects will be more than minor.

*"Special circumstances"* is another ground for public notification. Could the Regional Council consider fracking, a new activity for this region for which there is no reference in the RRMP, as a "special circumstance"? Not easily, apparently. Over the past

year a number of consent decisions have been overturned by the Court of Appeal. While significant public concern is not in itself sufficient reason, what provisions could make the TAG/Apache consent publicly notifiable?

Right now TAG/Apache could be drilling their first exploratory well near the tiny coastal settlement of Porangahau. At the time of writing, an application for Resource Consent had not been lodged although one was imminent. This is just one of many potential sites throughout New Zealand.

MPs Craig Foss and Chris Tremain support oil and gas exploration in Hawke's Bay as a new industry, "but not at any cost". So what is that cost? Who will make that call? Will it be us, or will it be our grandchildren?

Pauline Elliott is a spokesperson for the group Don't Frack the Bay which was formed in August 2011 to seek greater transparency and independent information on the implications of oil exploration in Hawke's Bay. For more information on developments in Hawke's Bay see the website:
www.frackfreehb.co.nz

## A Rocha - Christians in Conservation

By Betsan Martin

A Rocha, Portuguese for "the rock", and name of an international Christian Conservation organisation, originated in Portugal and is flourishing in New Zealand.

A Rocha has branches in many parts of Aotearoa New Zealand. A full time National Director, Kristel van Houte, is based in Hamilton. Kristel is a fresh water ecologist and works with a team which includes NIWA biologist Richard Storey, and A Rocha Aotearoa NZ Council of Reference Archbishop David Moxon. The A Rocha international network affords the opportunity to contribute to conservation projects in different parts of the world. Kristel worked in Kenya, and Richard in Lebanon.

In Aotearoa, the Mt Karioi Restoration project is a feature conservation initiative, restoring the native habitat with active pest control. Te Kaakano Community Garden in Hamilton, is a point of contact for people with fewer resources to grow and share food, thus expressing a quality of stewardship that resonates with Christian values and includes caring for people and creation. Kristel has found that growing food has led to excitement for conservation, through field trips to Karioi, and in March with the sightings of Maui's Dolphins on a day visit to Raglan.

A Rocha builds communities through hands-on conservation and education. Key platforms include protecting and restoring natural ecosystems, encouraging community responses to local environmental needs and encouraging a culture of care and support. Education includes inspiring and empowering people with conservation knowledge and skills, studying natural ecosystems to foster knowledge and love of them, and enabling informed conservation action.

A Rocha branches actively work with communities and other conservation groups to achieve mutual conservation goals. They have shown interest in ECO. Many churches have 'care for creation' in their mission statements. A Rocha is bringing this to life here with its practical activities for restoration and community building as an expression of Christian life.

When the world is calling for all sectors to unify in the common goal of planetary responsibility this Christian initiative is another stream in the flow of actions for the planet. It is welcome to have the church contributing to conservation. ECO and other environmental organisations espouse secularity. The spiritual quality of the natural world, often more comfortably expressed by tangata whenua, is inherent in many of the values associated with conservation commitments.

A Rocha, Caritas and the Otago University Centre for Theology and Public Issues are hosting a conference called 'Christianity and the Ecological Crisis: Lament, Hope, Action', October 5-7 in Wellington. See:
http://www.caritas.org.nz/sites/default/files/Christianity%20and%20the%20Ecological%20Crisis%20Conference%20Flyer.pdf

# Regional Coastal Plans and the coastal environment

by Shane Orchard

Many local authorities are now developing and in some cases consulting on various plans and policies and some of these affect the coastal environment. Coastal issues have been a somewhat neglected area of resource management in many respects and this is due for a significant overhaul in most regions. Though some authorities were already proactive in working on coastal issues a big catalyst for change has come about in the form of the New Zealand Coastal Policy Statement 2010 (NZCPS). Recently ECO's Coastal and Catchment Working Group produced a paper on the main implications of the NZCPS for communities to consider (available at http://www.eco.org.nz/). This will be useful background reading for those looking to get involved in this important part of our environment and there are many new provisions for local authorities to address. Decisions on these are now beginning to be made at regional and local levels.

Kapiti Coast *Photo: Bob Zuur*

**Regional Coastal Plans**

The Resource Management Act 1991 (RMA) requires the presence of a New Zealand Coastal Policy Statement (NZCPS) to provide guidance for coastal management at the national level. Regional and unitary councils are also required to prepare a Regional Coastal Plan (RCP) which must give effect to the NZCPS. However RCPs apply to the coastal marine area which extends from the mean high water spring tide line to the 12 nautical mile limit whereas the NZCPS applies to the coastal environment which is a considerably larger area. The coastal environment and may include a range of landward features that influenced by the marine environment and coastal processes. As such it typically varies in extent from locality to locality.

RCPs do not specifically cover these landward aspects, though they do need to consider the integration needed between activities in the coastal marine area and those on land. These aspects are essential for RCPs to be effective in assisting councils achieve the sustainable management of their coastal environment as is the intention of the NZCPS and RMA.

**Changes to key management tools in each region**

The new NZCPS 2010 is now in effect and this places new obligations on councils. It requires that regional policies, plans, proposed plans, and variations give effect to the NZCPS, and requires local authorities to amend these as soon as practicable, where needed.

The primary tools for achieving coastal policy objectives are Regional Coastal Plans and for some topics, regional and district plans. Regional Policy Statements (RPSs) provide higher level guidance to address resource management issues in the region including giving effect to all national policy statements.

Most RPSs will need to be updated to address the NZCPS and this would generally occur before RCPs are reviewed so that the appropriate policies are in place prior to the development of relevant plans.

Compared to the former NZCPS the new NZCPS 2010 is more prescriptive about the coastal topics required in RPSs regarding the coastal environment and consequently we can also expect the coastal chapter in future RPSs to be more detailed in most cases. For example the NZCPS 2010 now requires RPSs to specifically identify several different types of areas of particular value within the coastal environment. These include areas where preserving natural character is important, where protecting natural features and natural landscapes is important, and appropriate places for aquaculture.

In each region RCPs will also need to be updated and the nature of the changes will be of interest to all coastal communities and interest groups since RCPs provide the details of how many coastal policies are to be implemented. Amongst other things the degree to which RCPs will need to be updated depends on the issues present in each region, and the content of the previous RCP versus the requirements of the new NZCPS 2010.

Check out ECO's Catchment and Coastal issues webpage at http://www.eco.org.nz/what-we-do/eco-working-groups-2.html

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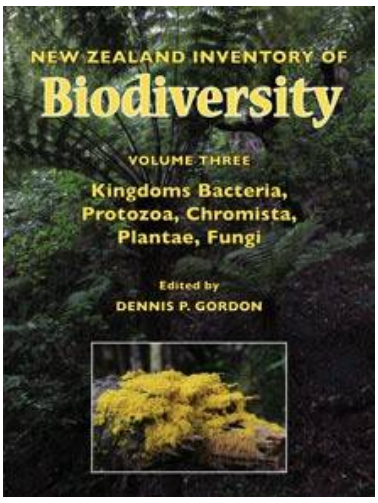


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