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Robert Goodin’s Green Theory of Value and the Politics of Fishing and the Aquatic Environment in New Zealand

An explanation as to how and why fisheries-related policy fails to meet Goodin’s public policy and moral criteria for the maintenance of natural resources

by Lance Pickett

Thesis presented in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Political Studies, University of Auckland, August 2001
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I wish to thank, in the first instance, Professor Hugh Laracy, of the History Department, University of Auckland, for suggesting that I take my original idea for a political history of fishing in New Zealand to the Political Studies Department!

Next, I would like to express my undying gratitude to Associate Professor Steve Hoadley of the Political Studies Department, for making me feel welcome and suggesting that I examine policymaking in the fishing arena. My thanks to Professor Barry Gustafson, for recommending an extension of deadline when ill health threatened to terminate the project, and to Doctor Tim Tenbensel for providing vital supervisory advice during its latter stages. My warmest thanks, too, to Doctor Alan Simpson, Senior Lecturer, Department of Political Science and Public Policy, Pro Dean (Academic Planning) School of Social Sciences, University of Waikato, for his constructive demolition of the original submission.

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My deepest appreciation for the unstinting assistance of Ms Kahu McClutchie of Treasury in offering unhindered access to files. My thanks to Mr M.F. Beardsell, Manager, MAF Publication Services; to Dr J.L. McKoy, Director MAF Fisheries Research; Mr R.I.K. Hart, Group Director, MAF Fisheries, and to all those personnel of the several other Government agencies who rendered assistance. My most sincere thanks to Ms Rosemary Windelov, Librarian, NZFIB, for, among other things, her unique understanding of the financial constraints within which a superannuitant war pensioner sailor student is forced to operate.

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Lance Pickett

Devonport

30 April 2000
ABSTRACT

The proposition of this thesis is that, policy and legislation pertaining to natural resources, specifically the fisheries and the aquatic environment of New Zealand, do not meet Robert Goodin's public policy and moral criteria for successful maintenance of such resources in accordance with his green theory of value. This proposition is derived from an assessment indicating a policy tradition in New Zealand resulting in failure to ensure ecological sustainability in accordance with this country's international obligations to biodiversity and futurity. This thesis urges change from the prevailing narrowly economistic political agenda to one based upon Robert Goodin's green theory of value. Such a political agenda would be promoted by a third force over and above the traditional parties of the Left and Right, arguably, The Greens: the Green Party of Aotearoa New Zealand.

The argument for change is based upon an analysis of fisheries related policy and legislation in New Zealand to April 2000. The analysis is organised into successive historical periods, beginning with the arrival of the first Polynesians and ending with the outcome of the 1999 general election. These periods include the development of the common property subsistence fishery of the Maori and its commercial open access Pakeha successors, the institution of an export industry involving in turn delicensing, rationalization, privatization, corporatization, and the process of devolution of fisheries management to industry. It is argued the cumulative outcome is impoverishment of natural resources, the capitalization of Nature and the theft of the "people's right of fishery".

Goodin's green theory of value is carefully stated, developed, analyzed, and compared and contrasted with the prevailing economistic argument. The validity and desirability of the green theory of value and the political agenda to which it gives rise is established. This political agenda is found similar to that of green parties. The political and social milieu in which The Greens must presently operate is analysed. Current environmental policy in general, and fisheries related policies in particular are analysed.
and found incompatible with Goodin’s criteria. The outcome of policies and legislation affecting aquatic ecosystems-maintenance is examined in case studies covering major fisheries and the aquatic environment, and found to be generally disastrous. Alternative policies are proffered, based upon a green political agenda arising from a philosophy similar to that explicated in Goodin’s green theory of value.
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(National Geographic, November 1995)
end paper

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end paper
(Author’s illustration)

“Harvesters of the High Seas”.
(National Geographic, November 1995)

New Zealand EEZ and Quota Management Areas
(MfE, The State of New Zealand’s Environment)
### ABBREVIATIONS

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<tr>
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<th>Full Form</th>
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<td>AAB</td>
<td>Allocation Appeals Board</td>
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<tr>
<td>ACC</td>
<td>Administrative Committee for Coordination</td>
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<td>ACE</td>
<td>Annual Catch Entitlement</td>
</tr>
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<td>Association of Consumers and Taxpayers</td>
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<td>AFMA</td>
<td>Australian Fisheries Management Agency</td>
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<td>ANZUS</td>
<td>Australia, New Zealand and United States Military Alliance</td>
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<td>Auckland Regional Authority</td>
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<td>Biodiversity Convention</td>
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<td>Brierley Investments Ltd</td>
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<tr>
<td>BRT</td>
<td>Business Roundtable</td>
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<tr>
<td>Bo</td>
<td>Virgin Biomass</td>
</tr>
<tr>
<td>BOPRC</td>
<td>Bay of Plenty Regional Council</td>
</tr>
<tr>
<td>CAFCA</td>
<td>Campaign Against Foreign Control of Aotearoa</td>
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<tr>
<td>CCAMLR</td>
<td>Commission for the Conservation of Antarctic Marine Living Resources</td>
</tr>
<tr>
<td>CBD</td>
<td>Convention on Biodiversity</td>
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<td>CCMAU</td>
<td>Crown Company Monitoring and Audit Unit</td>
</tr>
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<td>CCSBT</td>
<td>Convention for the Conservation of Southern Bluefin Tuna</td>
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<tr>
<td>CE</td>
<td>Chief Executive</td>
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<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>CFEO</td>
<td>Commissioner for the Environment. See also PCE</td>
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<td>CFP</td>
<td>Common Fisheries Policy</td>
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<tr>
<td>CHH</td>
<td>Carter Holt Harvey</td>
</tr>
<tr>
<td>CPUE</td>
<td>Catch per unit of effort</td>
</tr>
<tr>
<td>CRI</td>
<td>Crown Research Institute</td>
</tr>
<tr>
<td>CSC</td>
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</tr>
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<td>CSD</td>
<td>Commission for Sustainable Development</td>
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<td>CSIRO</td>
<td>Commonwealth Scientific and Industrial Research Organisation</td>
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<td>DDT</td>
<td>Dichloro-Diphenyl-Trichloroethane</td>
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<tr>
<td>Doc</td>
<td>Department of Conservation</td>
</tr>
<tr>
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<td>Department of Lands and Survey</td>
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<td>Department of the Prime Minister and Cabinet</td>
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<tr>
<td>DSSC</td>
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</tr>
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<td>ECA</td>
<td>Employment Contracts Act</td>
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<td>ECO</td>
<td>Environment and Conservation Organisations of New Zealand</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>EFC</td>
<td>Exploratory Fishing Company</td>
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<td>ENGO</td>
<td>Environmental Non-Governmental Organisation</td>
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<td>Environmental Protection Agency</td>
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<td>EU</td>
<td>European Union</td>
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<td>Fisheries Authority</td>
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<tr>
<td>FAA</td>
<td>Forests Amendment Act</td>
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<tr>
<td>FAAQ</td>
<td>Fishing against another's quota</td>
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<tr>
<td>F&amp;B</td>
<td>Forest and Bird</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>FAO</td>
<td>Food and Agriculture Organisation</td>
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<td>Fisheries Council</td>
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<td>Fiordland Fishermen's Association</td>
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<td>FFR</td>
<td>Freshwater Fisheries Regulations</td>
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<td>FFV</td>
<td>Foreign Fishing Vessel</td>
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<td>FIA</td>
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<td>Fishing Industry Board</td>
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<td>FLC</td>
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<td>FMA</td>
<td>Fishstock Management Area</td>
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<td>FMP</td>
<td>Fishing Management Plan</td>
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<td>FoRST</td>
<td>Foundation for Research, Science and Technology</td>
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<td>FPP</td>
<td>First Past the Post</td>
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<td>FSROC</td>
<td>Fisheries Structural Reform Officials' Committee</td>
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<td>Fisheries Task Force Report</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>HFMC</td>
<td>Hoki Fishery Management Company</td>
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<td>HGMP</td>
<td>Hauraki Gulf Maritime Park</td>
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<td>HSNO</td>
<td>Hazardous Substances and New Organisms</td>
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<td>ICES</td>
<td>International Council for the Exploration of the Seas</td>
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<td>ICFA</td>
<td>International Coalition of Fisheries Associations</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>ILRWG</td>
<td>Iwi Legislative Review Working Group</td>
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<td>INL</td>
<td>Independent Newspapers Ltd</td>
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<tr>
<td>IOI</td>
<td>International Ocean Institute</td>
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<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
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<tr>
<td>ITQ</td>
<td>Individual Transferable Quota</td>
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<td>IWC</td>
<td>International Whaling Commission</td>
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<td>JFV</td>
<td>Japanese Fishing Vessel</td>
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<td>KRA</td>
<td>Key Result Area</td>
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<td>LBMR</td>
<td>Long Bay Marine Reserve</td>
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<tr>
<td>LFA</td>
<td>Leigh Fishermen's Association</td>
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<td>LGAA</td>
<td>Local Government Amendment Act</td>
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<td>LMR</td>
<td>Leigh Marine Reserve</td>
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<td>LOS</td>
<td>Law of the Sea</td>
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<td>MAF</td>
<td>Ministry of Agriculture and Fisheries</td>
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<td>MAFCorp</td>
<td>Ministry of Agriculture and Fisheries Administration</td>
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<td>MAFFish</td>
<td>Ministry of Agriculture and Fisheries, Fisheries Management</td>
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<td>MAFQual</td>
<td>Ministry of Agriculture and Fisheries Quality Management</td>
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<td>MAFTech</td>
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<td>MARPOL</td>
<td>Internation Marine Pollution Convention</td>
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<td>MCY</td>
<td>Maximum Constant Yield</td>
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<td>MDC</td>
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<td>MEY</td>
<td>Maximum Economic Yield</td>
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<td>MFA</td>
<td>Maori Fisheries Act</td>
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<td>MFAF</td>
<td>Ministry of Foreign Affairs and Trade</td>
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<td>MFC</td>
<td>Maori Fisheries Commission</td>
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<td>MFE</td>
<td>Ministry for the Environment</td>
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<td>MFish</td>
<td>Ministry of Fisheries</td>
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</table>
MK  Market Keynesian
MLS  Minimum Landing (or Legal) Size
MMP  Mixed Member Proportional
MMPA  Marine Mammals Protection Act
MoF  Ministry of Forests
MoMD  Ministry of Maori Development
MoRST  Ministry of Research Science and Technology
MP  Member of Parliament
MPA  Marine Protected Area
MRA  Marine Reserves Act
MSA  Maritime Safety Authority
MSY  Maximum Sustainable Yield
MScY  Maximum Social Yield
MTA  Marine Transport Act
MWD  Ministry of Works and Development
NAFMAC  National Fisheries Management Advisory Committee
NBR  National Business Review
NCD  National Development Council; Northland District Council
NFA  National Fisheries Agency
NFC  National Fisheries Council
NFMA  National Fisheries Management Agency
NGO  Non-Governmental Organisation
NIWA  National Institute for Water and Atmospheric Research
NPM  New Public Management
NRLMG  National Rock Lobster Management Group
NSFIWG  Nonfish Species and Fisheries Interactions Working Group
NSFSMG  Northern Snapper Fisheries Strategic Management Group
NWASCO  National Water and Soil Conservation Organisation
NZ  New Zealand
NZAC  New Zealand Aquaculture Federation
NZFIA  New Zealand Fishing Industry Association
NZFCF  New Zealand Federation of Commercial Fishermen
NZFIB  New Zealand Fishing Industry Board
NZFIG  New Zealand Fishing Industry Guild
NZGFC  New Zealand Game Fishing Council
NZMSS  New Zealand Marine Sciences Society
NZRFC  New Zealand Recreational Fishing Council
NZRLC  New Zealand Rock Lobster Industry Council
NZSIB  New Zealand Seafood Industry Board
NZTLA  New Zealand Tuna Longliners Association
NZUA  New Zealand Underwater Associated
OIA  Official Information Act
ORMC  Orange Roughy Management Company
OSC  Officials’ Steering Committee
OSP  Optimum Sustainable Population
PC  Privy Council
PCB  Polychlorinated biphenyl
PCE  Parliamentary Commissioner for the Environment. See also CfE
PGs  Progressive Greens
PIM  Pacem in Maribus
<table>
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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<td>PKMR</td>
<td>Poor Knights Marine Reserve</td>
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<td>PM</td>
<td>Prime Minister</td>
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<td>PMR</td>
<td>Parinihi Marine Reserve</td>
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<td>PPC</td>
<td>Primary Production Committee</td>
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<td>PWD</td>
<td>Public Works Department</td>
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<td>QAA</td>
<td>Quota Appeal Authority</td>
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<td>QMS</td>
<td>Quota Management System</td>
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<td>RFRWG</td>
<td>Recreational Fishing Rights Working Group</td>
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<td>RM</td>
<td>Radical Monetarist</td>
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<td>RMA</td>
<td>Resource Management Act</td>
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<td>RNZAF</td>
<td>Royal New Zealand Air Force</td>
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<td>RNZN</td>
<td>Royal New Zealand Navy</td>
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<td>RRC</td>
<td>Regulations Review Committee</td>
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<td>RSNZ</td>
<td>Royal Society of New Zealand</td>
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<td>SDML</td>
<td>Seaward Defence Motor Launch</td>
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<td>SDP</td>
<td>Social Democrat Party</td>
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<td>SeaFIC</td>
<td>Seafood Industry Council</td>
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<td>SILNA</td>
<td>South Island Landless Natives Act</td>
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<td>Stock Management Area</td>
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<td>SOE</td>
<td>State Owned Enterprise</td>
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<td>Scientific Observer Programme/Supplementary Order Paper</td>
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<td>Sustainable Spawning Biomass</td>
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<td>State Services Commission</td>
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<td>Strategic Transition Plan</td>
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<td>TAC</td>
<td>Total Allowable Catch</td>
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<td>Total Allowable Commercial Catch</td>
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<td>TAG</td>
<td>Tocsins Awareness Group</td>
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<td>TCBA</td>
<td>Tutukaka Charter Boat Association</td>
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<td>TCE</td>
<td>Transaction-Cost Economics</td>
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<td>Treaty of Waitangi</td>
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<td>Timberlands West Coast Ltd</td>
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<td>TV</td>
<td>Television</td>
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<td>Urban Maori Authority</td>
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<td>World Conference on Economic Development</td>
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<td>Whale Watch Kaikoura</td>
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<td>WWF NZ</td>
<td>World Wide Fund for Nature New Zealand</td>
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Introduction

This thesis proposes that, in the matter of the protection of New Zealand’s fisheries and aquatic environment, existing practices pertaining to natural resources do not meet Robert Goodin’s criteria for successful maintenance under policies arising from a green political agenda based upon his “green theory of value”. The aim of this thesis is to demonstrate how and why these practices fail to meet such arguably necessary criteria.

An implication of the thesis proposition is that, in order to correct what it sees as the inadequate protection of New Zealand’s natural resources, specifically those of fisheries and the aquatic environment, a radical change from the policy so far pursued into the Third Millennium is urgently required. It will be argued that such policy change might come about as a result of political change arising out of the creation of a credible “third force” over and above the traditional parties of the Left and Right. This third force would come from significant support attaching to a green2 party, for example, The Greens: The Green Party of Aotearoa New Zealand, with a political agenda based, ideally, upon Goodin’s green theory of value.

Such notions are highly contentious. In the first instance, proponents of current policy are adamant as to its appropriateness and effectiveness in ensuring sustainable utilization of New Zealand’s natural resources. Secondly, the majority of the electorate appears loath to cede political power and policymaking to green parties, which generally are seen as inhibitors of economic development, a perception that the traditional parties, particularly those of the Right, actively foster and encourage

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2 Unless quoting directly from a source, or naming a particular party, e.g., The Greens, this thesis will use the term “green” to describe all environmental groups or parties. It will not, therefore, adopt a convention of Andrew Dobson and others which employs the device of using “green” (lower case “g”) to refer to those who think that environmental problems can be solved within the present political systems, and “Green” (capital “G”) for those who think sustainability depends upon the system being fundamentally changed. See Andrew Dobson, *The Green Reader*, Andrew Deutch, London, 1991, p. 4.

3 Hereafter referred throughout this thesis as The Greens.
among their supporters and the electorate at large. Finally, Goodin’s green theory of value embraces a particular worldview⁴ that opposes many of the most cherished ideas held by significant sectors of society, such as mainstream economists⁵ and others influential in policymaking. Essentially, the argument of this thesis is located in the context of competing interpretations as to what constitutes an appropriate political agenda in general and an effective environmental⁶ policy in particular, with emphasis upon fisheries and the aquatic environment.

This thesis will argue that, based upon the historical record, policy pertaining to natural resources, and specifically those of fisheries and the aquatic environment, has been disastrous. It will further argue that, even into the age of supposed environmental awareness, such policy continues to lack both a scientific and a moral basis and to be directed toward narrowly economistic goals that are both ultimately destructive of the environment and its resources and injurious to the commonweal.

This thesis will concede that the electorate will continue in the short term to lend its support chiefly to the traditional parties of the Left and Right. However, it will argue that greens at least have the potential to attract a following sufficient to allow it to constitute a powerful third force in New Zealand politics. At the same time, this

⁴ “A worldview is an explanation of the world, general beliefs about the nature of reality. In part, this is a very murky definition. Worldviews are not simple. They are often contradictory and on occasion self-destructive. Worldviews consist of ideologies, economic structures, language, cultural and political institutions. At a fundamental level, worldviews shape the relationship between people and place. In the United States (US) [and in New Zealand (NZ)], the ‘dominant worldview’ is based upon ideas of power, order, conquest of the landscape, a vision of progress, the desirability of economic growth, and an unabiding optimism in technology.” L.M. Benton, ‘Selling the Natural or Selling Out? Exploring environmental merchandising’, Environmental Ethics, 17, 1, 1995, p. 8, Note 9.

⁵ These, in the informed assessment of the green economist Herman E. Daly insist economic growth rate is the standard and that natural growth rate must accommodate economic growth. Mainstream economists fail to acknowledge that the economy must be multi-disciplinary. Daly points out that an economy is a community living in communality. The environment contains the economy, the economy is a subsystem of the environment. The technological fix can only work within natural growth rates, not economic growth rates. Herman E. Daly, “From Naked Ape to Super Species”, presented by David Suzuki, RNZ National Programme, 2 April 2000.

⁶ Klaus Bosselmann draws attention to the inadequacies of the word ”environment". In common usage it describes humankind’s surroundings and places people importantly at the centre, rather than as merely part of existence. It also enables humans to affect a detachment, and an independence from the rest of Nature. Bosselmann, together with the present writer, prefers the German ”mitwelt” (with-world) rather than ”unwelt” (surrounding world), and both writers wish to convey the meaning of the former when using the term environment. See Klaus Bosselmann, When Two World Collide: Society and Ecology, RSVP, Auckland, 1996, (first published as Germany as In Namen der Natur, 1992), pp. 11-12. The terms, ”environmentalist” and ”environmentalism” also require some explication. Whereas Dobson and others tend to use these in association with their definition of ”green”, this thesis will employ the more general application implicit in the inclusiveness of ”environment” defined as ”with-world”. Finally, unlike Dobson, it will not distinguish between ”environmental groups” and ”conservation groups”. See Andrew Dobson, Green Political Thought, Harper Collins Academic, London, 1990, p. 3. In NZ, both terms are generally used to describe ”greenies” subscribing to such organizations as ECO: The Environment and Conservation Organizations of NZ, which include Forest & Bird and Greenpeace NZ among its membership of approximately 100 groups.
thesis will not attach too much significance to the result of the 1999 general election, which saw The Greens gain seven seats in Parliament. It will argue that, although encouraging, such a result might well be a temporary aberration arising from transitory disillusionment with parties of choice rather than out of green conviction on the part of a significant 5.1% of the electorate.

This thesis will argue the merits of Goodin’s green theory of value as the basis for a political agenda that will attract rather than repel the electorate in general, instead of merely preaching to the converted of the tiny green constituency. Goodin posits that green political theory consists of two quite separate principal components. These are a green theory of value and a green theory of agency, associated with a third, non-political component containing personal lifestyle recommendations. A green theory of value represents the core of green political theory’s public policy: it tells people what things are of value and why. A green theory of agency advises on how to go about pursuing those values. The green theory of value’s “unified moral vision” ensures the morality of actions undertaken in accordance with the green theory of agency, and therefore takes precedence over the latter where necessary. Personal lifestyle recommendations imply, but are not implied by, green policy recommendations. It is therefore perfectly acceptable to pursue green policies without necessarily adopting a green personal lifestyle. This thesis considers such a point to be crucial to the general acceptance of a green political agenda, given that New Zealand will be shown to be among the archetypes of materialist and consumerist societies.

According to Goodin, a theory of value is a theory of the Good. For their part, mainstream economists, who are the main adversaries of green political thinkers, generally do not enjoy debate involving the use of the language of environmental philosophers. Thus they prefer, for demonstrably invalid reasons, to argue in terms of a theory of value. However, this situation actually favours the greens twice over.

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7 Goodin, Chapter 1.
Using the language of the economists, greens can present their ethical arguments in terms of a green theory of value that covers their agenda. They can also attack the arguments of mainstream economists, which can be argued to have wrought the damage that gives rise to the need for such an agenda.⁸

This thesis will discuss the appropriateness of New Zealand’s environmental policy with regard to the protection of its natural resources, specifically those of fisheries and the aquatic environment, against the background of a growing human-generated global environmental crisis. It is more than forty years since the marine biologist Rachel Carson⁹ first alerted the world to the looming problems associated with ill considered human intervention in natural processes. Carson’s meticulously observed findings would face scathing condemnation from sections of academia and the industrial-scientific establishment in total, and widespread indifference or disbelieve among the general public. However, in the 1970s, Carson’s successors in the pioneering work of environmental awareness, such as the human welfare ecologist Barry Commoner,¹⁰ would demonstrate that science and technology alone

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⁸ Ibid.
¹⁰ See Barry Commoner, The Closing Circle: Confronting th Environmental Crisis, Houghton Mifflin, New York, 1972. Commoner is referred to as human welfare ecologist for the reason that his work informs what the environmental philosopher Robyn Eckersley calls the “human welfare ecology stream”, briefly examined in Part One of this thesis. See Robyn Eckersley, Environmentalism and Political Theory: Towards an Ecocentric Approach, State University of New York Press, Albany, 1992, p. 37. It is probably useful to note that eco, which forms the prefix for so many terms used throughout this thesis, including economy and economist, is derived from the Greek oikos, “household”. Thus, ecology “is concerned with the relationship between plants and animals and the environment in which they live”. See Andrew Dobson, ‘The Science of Ecology’, in Andrew Dobson, ed., The Green Reader. Andrew Deutch, London, 1991, p. 19. Ecologists, therefore, are those who study plants, animals, people and institutions in relation to their environment. See Chambers Concise Dictionary, G. W. Davidson, et al., eds., Cambridge, 1989, p. 303. Some ecologists subscribe to ecologism, which “makes the Earth as physical object the very foundation-stone of its intellectual edifice, arguing its finitude is the basic reason why infinite population and economic growth are impossible, and why, consequently, profound changes in our social and political behaviour need to take place.” See Andrew Dobson, Green Political Thought, Harper Collins, London, 1990, p. 15. Such ecologists are frequently referred to as radical ecologists. These are divided into: deep ecologists, who explain the ecological crisis as the outcome of anthropocentric humanism; social ecologists who blame authoritarian and social structures for the plight of the planet; and ecofeminists, who ascribe the crisis to the outcome of the patriarchy that follows the “logic of domination”. See Michael E. Zimmerman, Contesting Earth’s Future: Radical Ecology and Postmodernity, University of California Press, Berkeley, 1994, pp. 1-2. The proto-typical deep ecologist, the philosopher Arne Naess, developed his concept in a book published only in Scandinavian languages: Ekologi, Samhalle och Livstil [Ecology, Community and Lifestyle], LT’s Forlag, Stockholm, 1981. However, he has produced many articles on the topic, including ‘A Defence of the Deep Ecology Movement’, Environmental Ethics, 6, 3, 1984, pp. 265-270. Murray Bookchin is probably the best known social ecologist. See Murray Bookchin, The Ecology of Freedom: The Emergence and Dissolution of Hierarchy, Cheshire Books, Palo Alto, California, 1982. Ariel Salleh is arguably the most representative among a variety of exponents of ecofeminist viewpoints. See Ariel Salleh, ‘Deeper than Deep Ecology: The Eco-Feminist Connection’, Environmental Ethics, 6, 4, 1984, pp. 339-345. Most radical ecologists whether of the deep, social or ecofeminist persuasion can be categorized as “social” ecologists to the extent that they all recognize the connection between “ecological problems and hierarchical, patriarchal, authoritarian, militaristic social structures”. Zimmerman, p.150. An ecosystem is an “assemblage of species that interact with each other and their physical environment in a particular location”. See Ministry for the Environment, The State of New Zealand’s Environment, M.E., Wellington, 1997, 9.10. “The term ecosystem was coined by Sir Arthur Tansley in 1935 in Introduction to Plant Ecology, George Allen and Unwin, London, 1935. The concept developed from Tansley’s interest in the plant ecological community but
could not adequately address the problems of which it had been the cause. In the meantime these problems had become a crisis of global proportions. Finally, the United Nations Conference on Environment and Development (UNCED), held in Rio de Janiero in 1992, would confirm both the enormity and the potential irreversibility of the crisis.\footnote{11 See The Earth Summit: The United Nations Conference on Environment and Development (UNCED), Introduction and Commentary by Stanley P. Johnson, International Environmental Law and Policy Series, Graham and Trotman, London, 1993.}

This thesis will not embark upon the fruitless exercise of entering into prolonged philosophical argument over the merits of technological optimism, otherwise known as technological utopianism, espoused by significant sectors of society, including some academics, most politicians, mainstream economists and the scientific-industrial establishment. A worldview that perceives humanity dwelling outside and above the confines of Nature and about to enter an era, founded upon human intelligence, which will consist only of the wealthy and the very wealthy, is obviously, like religious conviction, unassailable to argument.\footnote{12 See Max Singer, Passage to a Human World: The Dynamics of Creating Global Wealth, Hudson Institute, Indianapolis, 1987. Apropos the Hudson Institute, it should perhaps be noted that, in November 1999, one of its members visiting New Zealand on behalf of the US manufacturers of artificial fertilizers, claimed that organic farming was, among other things, “a conspiracy, a fraud, and a highly dangerous health hazard”, RNZ National Programme, “Morning Report”, 5 November 1999. In rebuttal of technological optimism Herman Daly points out that, “It is impossible for the world economy to grow its way out of poverty and environmental degradation….As the economic subsystem grows it incorporates an even greater proportion of the total ecosystem into itself and must reach a limit at 100%, if not before”. See Herman E. Daly, ‘Sustainable Growth: An impossibility Theorem’, Development, 3/4, 1990, p. 45.}

The method employed by this thesis in offering its argument for urgent change in policy pertaining to fisheries and the aquatic environment is to present it in four interconnected stages. First, the conceptual and expository stage argues the validity of Goodin’s green theory of value and the political agenda to which it gives rise, then discusses with reasoning the milieu in which such an agenda must presently operate. Second, the historical stage explains the evolution of policy and legislation pertaining to fisheries and the aquatic environment, argues their appropriateness in the light of the accumulating experience, and proffers green alternatives. Next, the
demonstration stage provides case studies that indicate the outcome of policy decisions in a range of fisheries and environments, and tests the merits of their results in the field against those of proposed green alternatives. Finally, the solution stage summarizes the argument for the adoption of a green political agenda, arising out of Goodin’s green theory of value, which would produce policy for New Zealand’s fisheries and aquatic environment appropriate to the Third Millennium.

Structurally, the thesis is divided into four parts that correspond to the four stages of the argument. Part One, Concept and Exposition consists of three chapters and provides the theoretical basis and the social setting for the thesis. Chapter One first briefly discusses the philosophical origins and nature of the current environmental debate, and the side of the debate from which Goodin’s green theory of value springs. Chapter One then devotes itself to an analysis of the green theory of value and argues its validity and utility as the basis for a green political agenda, which is also subjected to analysis and its merits argued. Chapter Two discusses the current political, economic and financial policy milieu, dominated by the New Right, in which this green political agenda is to be proffered and argues the facility of its acceptance within such a milieu. To this end, Chapter Two first briefly examines public policy and public management and the modus operandi of government. To the same end, the nature of policy advice and the manner of its provision are argued in some detail. Chapter Three examines current environmental policy and argues that it is both inappropriate and ineffective.

13 “Components of New Right thought have shaped Reaganism and Thatcherism. Those include economic theories associated with Friedman and Hayek, often described as ‘neo-liberal’, which exalt capitalism, not only for its productive capacity, but claim to be uniquely conducive to the maintenance of political and social liberty. The New Right thus opposes a strongly interventionist or ownership role for the state in the economy.” The Fontana Dictionary of Modern Thought, quoted in Brian Easton, The Commercialization of New Zealand, Auckland University Press, Auckland, 1997, p. 92. New Right ideology has dominated policymaking in New Zealand since the ascendance of “Rogernomics”, NZ’s equivalent of “Reaganomics”, in the Fourth Labour Government (1984-1990). Economists associated with the New Right are known as Radical Monetarists, who “advocate a much more vigorous use of the market, and have little confidence at all in government measures. They quote the new classical/rational expectations theory which argues that macroeconomic management by governments is ineffective or even destructive, except monetary policy can create price stability. Their microeconomics is deeply influenced by the work of the 1991 Nobel Prize winner Ronald Coase, as developed by the University of Chicago, and their public economics by the public choice theory approach of 1986 Nobel Prize winner James Buchanan. Thus they are heavily influenced by the New Right (the British term) or Neo-conservatism (the US term). Brian Easton, In Stormy Seas: The Post-War New Zealand Economy, University of Otago Press, Dunedin, 1997, p. 34. Environmentalists are anathema to the New Right, hence their inclusion, along with miners and other agitators, as part of British Prime Minister Margaret Thatcher’s “enemy within” British society. Dobson, Green Political Thought, p. 2.
Part Two, History, Experience and Current Fisheries Policy, provides a political and economic historical analysis of New Zealand’s fisheries from pre-European times, the purpose of which is to provide the necessary background against which an alternative green political agenda, together with an appropriate fisheries and aquatic environment policy, might be set in place. This history is largely reflected in fisheries legislation, the accumulated corpus of which, it is argued, illustrates the evolutionary process towards, first, the rationalization of the fishing industry, and the privatization of fisheries management, and, finally, the capitalization of Nature in the aquatic domain. In sum, Part Two provides an overview that encompasses an analysis of the times and the contemporary international background, and concludes with an analysis of current and future policy. These include domestic governmental and commercial structures, main issues and actors, internal and external dynamics behind changes, and consequences of no changes or no adoption of alternatives. There is also an outline analysis of the several Law of the Sea (LOS) Conferences, their provisions and implications.

Of Part Two’s five chapters, Chapter Four first covers the period to 1961, during which the exponentially increasing European presence, and, from 1866, the licensing of commercial fishing, had significant impact upon both the indigenous human population and the aquatic environment. Chapter Four also covers the period 1961 to 1979, which saw the liberalization of licensing and the encouragement of people into commercial fishing, and the impact of foreign fishers and international sovereignty and fisheries agreements.

Chapter Five covers the period 1979 to 1991, which witnessed the reversal of the “open slather” policy, the rationalization of industry, the introduction of the Quota Management System (QMS), the re-emergence of Maori into matters of commercial

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14 The fishing industry, now called the seafood industry, which will generally be referred to throughout the thesis as “industry”, means all aspects of commercial fishing from harvest to retail. “Fishing” covers all human extractive activity associated with the biota of the aquatic environment.

and customary entitlement. The period also saw the institution of the Ministry for the Environment (MfE) and the Department of Conservation (DoC).

Chapter Six covers the period 1991 to 1994. This period is notable for the passage of the Resource Management Act (RMA) 1991 and the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The legislative process also set industry upon what some critics would see as both the route to dominion over New Zealand's fisheries and the enabling of its quest into the capitalization of Nature. Conversely, other observers might see the legislation as ensuring the sound management of natural resources by taking the necessary steps to place it in the hands of highly responsible commercial stakeholders.

Chapter Seven examines the politics associated with the genesis of the Fisheries Bill 1994 and its passage into law as the Fisheries Act 1996, which completed the process described in Chapter Six. It must be emphasised that Chapters Four through Seven are essentially an introductory historical background, concerned with an outline of legislation and broad trends in administration concerning fisheries, industry, and some environmental matters. These chapters are designed simply to set the scene within which policy concerning fisheries and the aquatic environment in New Zealand might be placed within a clear historical context. There is as yet no comprehensive recent history of commercial fishing in New Zealand. However, this topic, together with those associated with the aquatic environment, has been treated, from a variety of perspectives, in academic works, and in official and general publications, many which are listed in the bibliography to this thesis.

Chapter Eight, the final chapter of Part Two, first outlines the history of what most interested parties, with the possible exception of corporate industry and its bureaucratic backers, see as the world fisheries crisis. It then examines the fisheries policy, economics and management that some observers consider to have contributed to the crisis, and the effectiveness of ocean governance in addressing it. Chapter Eight also examines the phenomenon of fisheries conflicts, one of the chief
characteristics of the politics of fishing. The chapter concludes with an analysis of fisheries policy in New Zealand as planned to the year 2010 and proffers a green alternative.

Part Three, Demonstration of Outcomes, consists of a set of case studies that test the argument as to the appropriateness and effectiveness of policies pertaining to fisheries and the aquatic environment, and argues the hypothetical outcomes of green alternatives. These case studies cover a representative range of fisheries, including the largest and most economically important. In addition, separate case studies examine the incidental by-catch of marine mammals and seabirds, marine protected areas (MPAs), and the aquatic environment.

Of Part Three’s five chapters, Chapter Nine examines the inshore fishery, particularly the snapper fishery of the Hauraki Gulf. Ineffective policy and inappropriate legislation are shown to have brought this incalculably rich resource, whether measured in economic or cultural terms, close to extinction.

Chapter Ten examines the midwater and deepwater fisheries. The midwater hoki fishery although apparently economically sustainable is shown to be ecologically unsustainable owing to its significant by-catch of non-target fish species and marine mammals. Present policy and legislation allows this situation to continue largely unchecked. The deepwater orange roughy fishery is shown to be in potentially irreversible decline as a result of a policy of high discount rates and target species replacement.

Chapter Eleven examines MPAs. It demonstrates that present policy and legislation fails both to provide sufficient numbers and range of reserves and to ensure appropriate utilization and effective protection.

Chapter Twelve tests present policy and legislation in the matter of marine mammal and seabird by-catch and the maintenance of biodiversity. It finds that New
Zealand fails to meet its international obligations in this area. It also finds New Zealand to be lacking in resolve and consistency in its membership of the International Whaling Commission (IWC).

Chapter Thirteen tests the results of policy and legislation in the aquatic environment, with particular regard to the RMA. This chapter demonstrates the historically detrimental effects of policy and legislation upon the aquatic environment and its biota in general, and tests results in specific freshwater fisheries.

Part Four, which consists of Chapter Fourteen, summarizes the principle arguments developed and advanced in the thesis, and provides a conclusion which proffers a choice of scenarios for the future of fisheries and the aquatic environment in New Zealand.

It is concluded that, policies pertaining to fisheries and the aquatic environment in New Zealand have so far clearly failed to meet Goodin’s criteria for the successful maintenance of natural resources in accordance with policy derived from a green political agenda arising from the green theory of value. They have instead been defined within a narrowly economistic worldview that has hastened their destruction. However, the opportunity and potential for success in terms of achieving a reversal or drastic modification of existing policy is also clearly at hand. This opportunity and potential is represented by The Greens, an example of Goodin’s third force over and above the traditional parties of the Left and Right. It remains for The Greens to persuade Parliament and the electorate as to the desirability of policies based upon a green political agenda arising out of a philosophy similar to that expressed in Goodin’s green theory of value. Failure to so persuade is likely to cause the continued degradation of New Zealand’s fisheries and aquatic environment to the ultimate detriment of the commonweal.
PART I

Conception and Exposition
Chapter One

Toward a Green Political Agenda

A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.

Aldo Leopold

It is very necessary these days to apologize for being concerned with philosophy in any form whatever....In my opinion, the greatest scandal of philosophy is that, while all around us the world of nature perishes – and not the world of nature alone – philosophers continue to talk, sometimes cleverly and sometimes not, about the question of whether this world exists.

Karl R Popper

People are more likely to turn to psychologists for guidance on how to live and to economists for guidance on how to organize society than to philosophers.

Arran Gare

Anyone who believes exponential growth can go on forever in a finite world is either a madman or an economist.

Kenneth Boulding

As was established in the Introduction, this thesis argues that, in order to provide adequate protection for New Zealand's fisheries and aquatic environment, a radical change of policy is urgently required. It argues that such policy change can only come about as a result of political change arising out of the creation of a credible third force over and above the traditional parties of the Left and Right. Such a third force might materialize as a result of significant support attaching to a green party with a political agenda based, ideally, upon Robert Goodin's green theory of value. This chapter will


3Arran Gare, 'Macleintyre, Narratives, and Environmental Ethics', Environmental Ethics, 20, 1, 1998, p. 3.

argue both the elegance and utility of Goodin’s theory and the practicality of the political agenda to which it gives rise. It will be further argued that such a political agenda is largely being followed by The Greens, who arguably have the potential to become Goodin’s third force. First, however, Goodin’s green theory of value should be set within the context of environmental philosophy, political theory, and debate, the better to understand its argument.

Scientific discoveries of the 20th Century have made at least some people aware that all Nature, including humankind, occurs as a complicated web of relations between the various parts of a unified whole. It consists of interconnections rather than “things”. Such understanding has inevitably led to the conclusion, at least among philosopher-scientists, that humankind can no longer continue to adhere to the worldview arising from Newtonian mechanistic science and the Judeo-Christian tradition and consider itself to be somehow separate from the rest of Nature, and, moreover, superior to it. Such an arguably arrogant worldview can also be argued to have wrought the current global environmental crisis, the existence of which transcends argument.

Environmental philosopher-scientists have laboured long to provide humankind with a scientific approach to existence based upon “process metaphysics”, with a creative Nature and with humans both a part of and participants within this creative Nature. At a more practical level, environmental philosophers have signalled their approval of Aldo Leopold’s beautifully simple “land ethic”, quoted above, that can be readily understood and utilized to restore harmony between humankind and the rest of

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5 Short of an environmental epiphany on the part of the traditional parties of the Left and Right, the implementation of a practical green political agenda is shown to require the prior existence of such a third force, that is, The Greens, as agents of a green theory of value. There is otherwise little point in drawing attention to a failure to meet Goodin’s criteria for environmental salvation if there is no means available to do so.


Nature. However, ordinary people pay little heed to philosophers, whose ideas are not seen as relevant in day-to-day human affairs. Environmental philosophers such as Arran Gare argue that, unfortunately, the bulk of humanity is subsumed within the dominant grand narrative stream of economic development. Gare sees ethics in its present form focused upon individuals in abstraction from their engagement in society, which precludes their understanding the relationship between individuals and the huge difficulties confronting humanity. Consequently, Leopold’s “land ethic” will be found not to loom large in determining environmental policy.

The dichotomy between what might be termed the inclusive and separatist worldviews of existence outlined above and their application to green political theory can be illustrated in a number of ways. The philosopher-biologist Edward O. Wilson proffers a somewhat whimsical approach that nonetheless accurately reflects this dichotomy. Wilson suggests current environmental debate springs from the conflict between two factions, representing what has become two distinct species, holding opposing human self-images. First is the naturalistic self-image, represented by the old Homo sapiens, “wise man”, who wants to preserve or recreate the peculiar physical and biotic environment in which his species was cradled. In this respect, he is conforming to a basic principle of organic evolution, called “habitat selection”, in which all species prefer and seek out the environment in which their genes were assembled. He is beginning to regret the loss of Nature and other species. In stark contrast, the opposing self-image, the exemptionalist view held by a new species, Homo proteus, “shapecchanger man”, sees its species as being apart from the natural world, and holding dominion over it. Unsurprisingly, Homo proteus, by reason of his special status, is exempt from the rigid laws of ecology that confine other species, and he acknowledges few limits on human expansion that cannot be easily overcome by his ingenuity. He considers the loss of Nature and other species the price of progress and of little import to his future.

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10 Gare, p. 4.

Robyn Eckersley’s approach is more conventional, in that it employs what might be called the language of mainstream environmental philosophy. After first characterizing green political theory as striving “to reconcile the claims of participatory democracy and human survival through a more encompassing theme of ecological emancipation”, she then divides green political theory into an “anthropocentric stream and an ecocentric stream”. Eckersley further proffers significant gradations within the anthropocentric/ecocentric spectrum, which she refers to as the major streams of environmentalism. It will be shown that, whilst Goodin eschews the umbrella of ecological emancipation in his green theory of value, he plainly belongs philosophically with Eckersley in the ecocentric stream. Eckersley’s gradations range from unrestrained economic development at the anthropocentric pole through the stops along the way to the opposite, ecocentric, pole.

The first “major stop” away from the anthropocentric pole of unrestrained natural resource exploitation is represented by resource conservation. Whilst the idea of resource conservation can be traced back to Plato, the historical roots of the modern conservation doctrine are found in 19th Century North America. There, Gifford Pinchot, first chief of the U.S. Forest Service, fought to eliminate waste from the development of natural resources. With Pinchot, the key term is development, that is, exploitation, of natural resources, and the non-human world is valued only in instrumental terms.

12 See Robyn Eckersley, Environmentalism and Political Theory. Toward an Ecocentric Approach. State University of New York Press, Albany, 1992, p. 3. Environmental philosophers generally divide the separatist and inclusive worldviews into the two “ecological orientations” of anthropocentrism and eco-centrism. As noted earlier, the former describes a view of the world that is organised to suit humanity, while the latter points to a shift of human thought from humans to the network of interrelations between humans and nature. The volume of literature on the topic is vast. See, for example, the extensive discussion in Environmental Ethics: An Interdisciplinary Journal Dedicated to the Philosophical Aspects of Environmental Problems, published quarterly by Environmental Philosophy, Inc., University of North Texas, Denton, Texas, USA.

13 Plato (c. 429-347 B.C.) is not usually considered in this context. His Dialogues comprise the most influential body of philosophy of the Western World. Written in the form of debates, the Dialogues are filled with philosophy’s continual search for truth and the moving drama of intellectual conflict. See Great Dialogues of Plato, translated by W.H.D. Rouse, Mentor, New York, 1956. However, in a recent reappraisal from an environmental ethics viewpoint, it has been argued that, “Plato’s nonanthropocentric notion of teleology encourages rather than hinders human concern for the environment”. See Gabriela Roxana Carone, ‘Plato and the Environment’, Environmental Ethics, 20, 2, 1998, p. 133.

Eckersley calls the next major stop “human welfare ecology”. The human welfare ecology stream can be traced back to the environmental degradation wrought by the Industrial Revolution as described by Frederick Engels in his classic 1845 critique, *The Condition of the Working Class in England*. However, the connection between human welfare ecology and recognition of the global environmental crisis as perceived in the 1960s and 1970s is found in the work of, for example, Barry Commoner. Human welfare ecology appeals to the enlightened self-interest of the community for the maintenance of the natural world for humanity’s sake alone and is therefore basically anthropocentric. However, whilst mounting its case upon the findings of ecological science, human welfare ecology is severely critical of the idea that science and technology alone can deliver the world from the ecological crisis. Finally, Eckersley observes that human welfare ecology “has been the strongest current of environmentalism in Green politics in the most heavily industrialized and domesticated regions of the West, most notably Europe”.

When lighting upon the next major stop along the anthropocentric/ecocentric spectrum, namely, preservationism, Eckersley suggests that,

If the essence of the resource conservation stream is the “wise use” of natural resources, and the essence of the human welfare ecology stream is the pursuit of environmental quality, then the essence of the early preservationist stream may be described as reverence, in the sense of the aesthetic and spiritual appreciation of wilderness.

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16 Eckersley, pp. 36-38.

Eckersley points out that the archetypical example of the differences between resource conservation and preservation is the conflict between Pinchot and John Muir.\(^{18}\) Whereas Pinchot’s aim was to *conserve* Nature *for* development, Muir’s concern was to *preserve* Nature *from* development. Preservation pure and simple is criticised from a number of viewpoints. For example, it “enshrines the bifurcation between humanity and nature”, and discourages the idea of a dynamic and symbiotic approach to land management. Also, it is self-defeating, from an ecological point of view, to set aside pockets of pristine wilderness while at the same time failing to address problems of overpopulation and pollution that will ultimately impact upon the set aside areas. However, the preservation and protection of large areas of representative ecosystems is still recognized as the best means of “conserving species diversity and enabling ongoing speciation”. Whilst there are at least nine kinds of argument for preserving the nonhuman world for instrumental reasons, the preservationist stream of environmentalism may nevertheless be seen as the “harbinger of ecocentrism”, because it allows Nature to be valued for its own sake.\(^{19}\)

For Eckersley, the penultimate major stop on the anthropocentric/ecocentric spectrum, before reaching the ecocentric pole is represented by the animal liberation stream. The popular case for the protection of the rights of animals is probably best represented in the works of Peter Singer, who argues in favour of the moral principle of equal consideration, as distinct from equal treatment, of the interests of all sentient beings regardless of species.\(^{20}\) Entering the arena of animal liberation is, in the assessment of this thesis, akin to walking or sailing into an uncharted minefield. However, Singer’s espousal of the rights of animals is in fact a relatively straightforward revival of the arguments of the modern utilitarian school of moral philosophy founded by Jeremy Bentham in the 18\textsuperscript{th} Century. When addressing the question of whether non-human beings were worthy of moral consideration, Bentham


\(^{19}\) Eckersley, pp. 38-42.

asked, “not, can they reason? nor, Can they talk? but, Can they suffer?” The minefield lies in deciding, for example, the cut off point for species that feel pain. Singer makes the somewhat whimsical and arguably arbitrary conclusion that “somewhere between a shrimp and an oyster seems as good a place to draw the line as any”. The minefield extends into absurdity when the prevention of pain involves the conversion of non-human carnivores into vegetarians. This brings into question the idea that it is morally defensible to exclude non-sentient beings from consideration. However, absurdities and anomalies aside, Eckersley concludes that animal liberation challenges anthropocentrism in pointing to its many inconsistencies. This thesis suggests that one of these might be the exclusion from moral consideration of humans’ very close relatives among the primates.

At the ultimate stop, the ecocentric pole, Eckersley sees ecocentric environmentalism as “a more wide-ranging and more ecologically informed variation of preservationism that builds on the other streams of environmentalism thus far considered”. Ecocentrism is based on an “ecologically informed philosophy” of internal relatedness, according to which living things are not merely interrelated with their environment but also “constituted” by those relationships. Eckersley quotes Charles Birch and John Cobb, who, in accord with the ideas of existence posited at the beginning of this chapter, state that it is more accurate to think of the world in terms of “events” or “societies of events” rather than “substances”. In a world so envisaged,

Events are primary, and substantial objects are to be viewed as enduring patterns among changing events.... The ecological model is a model of internal relations. No event first occurs and

23 Eckersley, pp. 42-45.
24 Ibid., p. 42.
25 Ibid., pp. 45-47.
then relates to its world. The event is a synthesis of relations to other events.²⁷

In the ecocentric view of reality, the world is an interconnected web of relations in which "there are no absolutely discrete entities and no absolute dividing lines between the living and the non-living, the animate and the inanimate, or the human and the nonhuman". In this world, there is no "rigid, absolute dividing line" between humans and nonhumans.²⁸ Humans are merely a part of the greater whole, and it is essentially, in the assessment of this thesis, Goodin’s acknowledgement of that idea that qualifies him for a place in Eckersley’s ecocentric environmental stream.²⁹ Finally, Eckersley also confirms a contention of this chapter that the idea of ecological and subatomic reality has eroded many of the assumptions of the Newtonian worldview. For Eckersley, as for all those who subscribe to the ecocentric view of reality,

The most pervasive of these [assumptions of the Newtonian worldview] are technological optimism— the confident belief that with further scientific research we can rationally manage (i.e., predict, manipulate, and control) all the negative unintended consequences of large-scale human interventions in nature; atomism— the idea that nature is made up of discrete building blocks and that the observer is therefore completely separate from the observed; and anthropocentrism— the belief that there is a clear and morally relevant dividing line between humankind and the rest of nature, that humankind is the only or principal source of value and meaning in the world, and that nonhuman nature has therefore no other purpose but to serve humankind.³⁰

Utilizing basically the same ecologically informed philosophy as outlined by Eckersley, Goodin offers a rather hard-nosed political strategy for environmentalists

²⁷ Ibid.
²⁸ Eckersley, pp. 49-50.
²⁹ Goodin, pp. 44-45.
³⁰ Eckersley, p. 51.
to embrace. It tackles the economists, arguably the chief protagonists of the exemptionalist camp, on their own ground and in their own language. Goodin posits that green political theory consists of two quite separate principal components. These are a "green theory of value" and a "green theory of agency". Conjoined with these two components is a third, which contains personal lifestyle recommendations, "of an essentially non-political sort - which is actually separate, yet again, from either of the two more specifically political strands in green thought". A green theory of value represents the core of green political theory's public policy. It provides the "unified moral vision" in the political programme, and tells people what things are of value and why. A green theory of agency advises on how to go about pursuing those values. With regard to personal lifestyle recommendations, Goodin argues that these imply, but are not implied by, green policy recommendations. He insists that a person cannot consistently be a "principled green" in their personal lifestyle without being a principled green in their policy recommendations. However, they can consistently be a principled green in their policy recommendations, basing them upon a green theory of value, without necessarily adopting a green personal lifestyle. This thesis finds such an argument, whilst perhaps somewhat startling at first glance, to be nevertheless perfectly consistent with, for example, the deep ecologist Arne Naess' tolerant attitude toward diversity in human behaviour.

According to Goodin, a theory of value is a theory of the Good. Philosophers say that morality is a theory both of the Right and the Good, and then, inevitably, proceed interminably to examine the Right in terms of the Good and the Good in terms of the Right. Goodin avoids taking sides and settles for an investigation of a theory of the Good. However, for their part, mainstream economists apparently "feel more comfortable" with arguments couched in terms of a theory of value than a theory of the Good, and, as Goodin points out, "connecting with the discourse of economists is

32 Ibid, p. 80.
33 Zimmerman, p. 340.
crucial in environmental contexts". He reminds the reader that, intellectually, economists are the most direct targets of green political movements. This thesis will in due course confirm the dominance of what Goodin describes as “a particular and peculiar theory of value which leads humankind to overvalue material prosperity and to undervalue all that is sacrificed in pursuit of it”. Accordingly, Goodin reckons it to be more fruitful to meet the “dominant practitioners of the pernicious art” on their own chosen ground because economists do not like to tangle with philosophers on the philosophers’ chosen ground. Economists claim that, whereas their theory of value is “positive”, the philosophers’ theory of value is “normative”. They argue that the economic theory of value “is no more than a predictive device in positive economics”, its function being merely “to allow us to explain and predict the rate at which various things will exchange for one another”. They contrast this with the philosophers’ normative theory of value, which instructs in “values, not just prices”. It tells people how much things are really worth, not simply how much they cost.34

Unsurprisingly, the economists’ argument simply does not hold water. Goodin shows that, in practice, economists emphatically do not distinguish between positive and normative theories of value in their “ordinary discourse”. Their “choice of normatively loaded terminology gives their game away”. Goodin quotes a whole raft of neoclassical economists, including Milton Friedman and Rose Friedman,35 who “in their candid moments”, clearly consider consumer satisfaction “both as the analytical source of market prices and as the moral justification for allocating resources through the mechanism of markets that rely upon such price signals”.36 What it comes down to is that a theory of value means exactly the same for economists as it does for philosophers, namely, anything that “is and ought to be of value”. The demonstrable slipperiness of economists notwithstanding, Goodin finds it “doubly propitious” to present the ethical arguments of the greens in terms of a green theory of value. Not only does the formulation best encompass the basic concerns of greens themselves but

34 Goodin, pp. 20-21.
36 Goodin, p. 22.
also allows green theories to "engage directly, in ways that cannot decently be evaded, with the arguments of economists that have been responsible for so much of the environmental despoilation (sic) that greens bemoan".37

Accordingly, Goodin, in approaching the problem of the Good from a "vaguely economistic angle", grounds a theory of value upon three distinct bases. These are consumer satisfaction, labour inputs, and natural resource inputs, and correspond, respectively, to a "capitalist" theory of value, a "Marxist" or "labour" theory of value, and a "green" theory of value. However, Goodin points out that these options are not mutually exclusive. Ultimately, people may be forced by circumstance to come up with some mixed theory of value based upon all three, together with any others than might appear along the philosophical way. In any case, as the neo-Marxist social theorist Claus Offe has pointed out to Goodin, most people probably already subscribe to each theory of value in their every day lives. For example, as consumers striving to maximize self-satisfaction, people subscribe to the "capitalist" theory of value; as producers, they subscribe to the "labour" theory of value; and, as denizens of the natural world, those people capable of responding emotionally and aesthetically to it subscribe to the "green" theory of value.38 This every day inclusiveness aside, Goodin thinks it important to have a clear understanding of the distinctive character of the three options.

The "capitalist" or "neoclassical welfare economic" theory of value is essentially a consumer based theory that traces the value of things to values "which people derive in the course of partaking of them". Goodin points to the inevitably myriad variations to this basic definition. For example, some thinkers link value to subjective mental states, like happiness. Others link it to "subjectively held desires", where there is no assumption that "want satisfaction equates necessarily to happiness", as in the case of having successfully completed a distasteful duty. Still others link it to "the capacity of something to satisfy desires that are or will be or otherwise would be subjectively

37 Ibid.
38 Ibid., Footnote 8.
felt", like eating before one becomes hungry which preemptively satisfies one's desires.\textsuperscript{39} Goodin concludes that, despite the important differences between each of these alternatives, they are all essentially consumer-based theories of value.\textsuperscript{40}

The "Marxist" or "Ricardian" theory of value is a producer-based theory that traces the value of things to "values that people impart to them in the course of producing those things". In principle, the producer-based theory of value might derive from a wide range of producer characteristics or productive activities. However, Goodin believes that this type of theory usually amounts to a labour theory of value, whether in its Marxian or in its "more general Ricardian-cum-Lockean forms".\textsuperscript{41} Out of the endless variations that invariably attend such philosophical discussions, the basic idea that emerges is that the value of an object corresponds to the "amount of labour time invested in producing it". Whilst dissectors of the theory might differentiate between such matters as unskilled and skilled labour time, and all manner of peculiarities associated with production,\textsuperscript{42} the fact remains that all producer based theories of value condense into a basic labour theory of value.\textsuperscript{43}

The "green" theory of value is a natural resource based theory of value. Goodin uses the phrase "natural resource" to comply with the "standard economistic way of partitioning inputs into the production process". Accordingly, whilst use of the term "resource" indicates instrumentality, Goodin foregoes technically more correct ways to describe the green theory of value, such as "natural attribute based" or "nature based", for the "imprecise shorthand" of the economistic-conforming natural resource based theory of value. As with the other two theories, there are a host of variations on the basic theme of the green theory of value. However, upon examination, these appear to relate to arguments centering upon the consumer-based theory of value.


\textsuperscript{40} Goodin, p. 23.

\textsuperscript{41} Ibid., p. 24.


\textsuperscript{43} Goodin, p. 24.
Goodin cites the example of the naturally occurring properties of objects that is said to give them value, like the hardness of diamonds. Clearly, such a naturally occurring property is valuable only in relation to human purposes and by virtue of human requirements, that is, it is consumer based. Equally consumer based, if on a grander scale, is the claim of the physiocrats that land alone has the capacity for producing value.

In contrast, the green theory of value, unlike a consumer based value, insists that value-imparting properties are inherent in the objects themselves, that is, they have intrinsic value, rather than in "any mental states (actual or hypothetical, now or later) of those who partake of those objects". The same reasoning applies when differentiating the green theory of value from a producer based theory, that is, the former insists that value-imparting properties are natural, "rather than being somehow artefacts of human activities."

Both the consumer and producer based theories of value plainly require human intervention upon objects before they achieve value. Marxists emphasise that natural resources are of no use until they have been "shaped by human hands to human purposes". Neoclassical economists concede that, whilst both greens and Marxists might be right about why they separately value objects, "what it is for a thing to have value is intimately connected with the consumption act..." In contrast, Goodin's green theory of value seems to require human intervention only to the extent that the theory needs human consciousness in order to impart value. However, this still means that the Good of Nature can only be realized through the existence of humans, because, of course, the idea of the Good is a purely human concept. Goodin does not subscribe to the idea that obtains at the shallowest, economistic, end of ecology, namely, that "values are all in people’s heads", thereby reducing the value of Nature wholly to human values. Neither is he enamoured of what he sees as "the deep

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45 Goodin, pp. 24-25.

46 Ibid., p. 25.
ecologist’s reduction of the value of nature wholly to natural values”. This is as close as he comes to acknowledging the opposite poles of anthropocentrism and ecocentrism in the ecological philosophical spectrum. On Goodin’s analysis, natural objects have certain value-imparting characteristics. They create value only when in the presence of human consciousness. However, among those characteristics that are crucial in imparting value “is the characteristic of something being part of something larger than our selves”. That characteristic, by definition, “must necessarily be separate from and independent of humanity”. It follows that those value-imparting properties, if not the values themselves, exist independently of humanity.47

The reader is led, inevitably, to the question of the place of humanity in Nature. Goodin’s green theory of value attaches special value to those parts of natural “creation” that have been relatively untouched by human hands.48 The argument for this special value derives, paradoxically, from humanity’s need to be a part of something that they have not yet already irrevocably modified or destroyed. In the first place, people yearn to see some sense and pattern to their lives. This means that their lives must be set in some larger context, one that human society alone cannot provide. “The products of natural processes”, that is, undisturbed Nature, provides precisely that desired context.49 However, no place on planet Earth remains undisturbed or unmodified by humans, who are in any case, although not indisputably, part of Nature. Goodin’s green theory of value does not make the now impossible demand that Nature be literally untouched by human hands. Subscribers to the green theory of value need demand “merely that it have been touched only lightly, - or if you prefer, lovingly – by them.”50 Here, there can be no room for the convenient if spurious argument that, because humans are a part of Nature, anything humans do to the environment is natural too. Of course, Edward Wilson’s anthropocentric exemptionalist shapechanger man needs no such licence to inflict wanton destruction.

48 Ibid., pp. 30-41.
49 Ibid., p. 37.
50 Ibid., p. 53.
He is, it will be remembered, above and apart from Nature and, moreover, perfectly able to control it and turn it to his own ends.

Goodin notes what he calls "green corollaries" or "broadly friendly amendments" to the green theory of value.\(^{51}\) The first of these is post-materialism, first hypothesized by Ronald Inglehart in 1971,\(^{52}\) subsequently developed in his 1977 work *The Silent Revolution*,\(^{53}\) and ultimately analysed by "dozens of investigators using field work carried out in the United States, Canada, Australia, Japan and 15 West European nations".\(^{54}\) The term describes the shift in the basic value priorities of Western publics from a materialist emphasis on physical sustenance and safety toward a post-materialist one that emphasised "belonging, self-expression, and the quality of life".\(^{55}\)

As Goodin observes, one way of characterizing green politics is that they are "a manifestation of postmaterial values". This is true to the extent that a green theory of value can only appear after concern over the quality of life has succeeded the anxiety of sustaining life itself. However, there are many other things to occupy the post-material mind in terms of "belonging, self-expression and quality of life" besides green values. Goodin points out that, although green values can be described as post-material, so too can much else that has nothing to do with green values. These include, for example, any values that affect indifference to the more materialistic side of politics, like issues of economic management. For this reason it seems better to regard Post-Materialism as a corollary of green political theory than the other way around. For Goodin, being green provides a sociological explanation why people are post-materialists, and makes an ethical explanation why they should be. On the other hand,

\(^{51}\) Ibid., pp. 54-55.


\(^{55}\) Ibid.
merely being post-materialist to the extent of having achieved material security cannot explain, “either sociologically or still less morally, why people should adopt green values”.  

Perhaps the best way for this thesis to test these “chicken or the egg” hypotheses is to recall the history of green parties. First, their emergence, from the early 1970s, in the wake of post-war economic prosperity clearly demonstrates the fact that, at least in Western-type industrial societies, green values appear only after concerns for quality of life has replaced anxiety over the mere sustaining of life. What is generally acknowledged to be the world’s first national green party, the New Zealand Values Party, precursor to The Greens: The Green Party of Aotearoa-New Zealand, was formed in May 1972. The British Ecology Party started in 1973, and Die Grunen, the German Green Party, was established in March 1979. Analysis of these and other green parties does not indicate origins other than those earlier noted, that is, they arose from philosophers like Ame Naess, or among Robyn Eckersley’s “humanistic intellectuals”, who had formulated and embraced green values. These ecological pioneers were joined, briefly in most instances, apart from the singular case of Die Grunen, by some among a middle class blessed with sufficient material comfort and security to begin a quest for “belonging, self-expression, and quality of life”. For others, the bulk of so-called post-materialists, this quest did indeed include a green component, like the maintenance of a conservation estate, which they perceived as contributing to their quality of life. However, in the event, the perception of what constitutes quality of life appears to require massive economic growth and the maintenance of an insatiably consumerist society to enable the acquisition of other,

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56 Goodin, pp. 56-57.
non-green, but even more desirable components, like holiday homes, sport-utility vehicles and jet-skis. The anomaly of materialist economic growth aside, many of these people doubtless otherwise adhere to almost the whole gamut of post-materialist values posited by Inglehart and others. Whilst being green like Arne Naess obviously does provide a moral explanation for a whole range post-materialist values, from participatory democracy to tolerance of human diversity, post-materialism can quite readily ignore or discard any ecological component and proceed without benefit of Goodin’s green values.

Claus Offe ascribes Die Grunen’s initial electoral success in 1983 to the logic of a particular vision of political rationality based on “avoiding irreparable and irreversible catastrophes”, chief among which, during the period of the Cold War, was the spectre of nuclear holocaust. Globally, Goodin notes that “The environmental ethic quite generally is characterized as a rule requiring, first and foremost, the protection and preservation of irreplaceable assets”, and makes “irreplaceability” another of his green corollaries. Unsurprisingly, there are a number of ways of thinking about irreplaceable resources. For example, some philosophers insist that irreplaceable resources should not be destroyed, whereas economists maintain that such destruction merely entails the loss of an “option value” necessarily lodged in those assets. Other philosophers agree with economists that something like oil, which some people might consider irreplaceable, will prove to be much less so with the advent of advanced technologies. However, some economists regard the whole idea of irreplaceability as “fetishistic”. In their view, particular goods or particular services are mere means to and end. The ultimate goal should be couched in terms of the impact of policies on “people’s utility”, or “preference satisfaction or well being or whatever formulation you prefer”. This leads to the idea that there is no longer any need to provide functional equivalents for what is being replaced. “The solvent of utility” allows everything to substitute for everything else, and “the common measuring rod of money” allows everything to trade for everything else. Goodin shows how this simple

61 See Spretnak and Capra, p. 15.

logic applies to the world at large. For example, at the personal level, cash compensation provides, in utility terms, replacement for a widow’s dead spouse; at a societal level, the benefits from cheap hydroelectricity compensates for, and replaces, “the glorious canyon that was flooded by the building of the dam”.63

This thesis will in due course demonstrate how the conclusions reached by economists over the matter of irreplaceability are applied to commercial fishing. Essentially, by time the most preferred species reach the point of commercial extinction, it has been replaced in the market by the next most preferred species, the alleged attractiveness of which has been assiduously touted well in advance of its predecessor’s demise. Goodin’s advice to environmentalists wishing to rescue the notion of irreplaceability is for them to deny the economist’s proposition that two things allegedly yielding equal utility and human satisfaction can substitute for one another, whatever their differences. This task can be enabled by use of the economist’s own logic. Utility is subjective, but people, not economists, should define happiness and decide utility. Goodin notes that experience show that in fact most people do not regard all goods as interchangeable for one another. It is also a matter of common sense, and it is an economist, Nicholas Georgescu-Roegen, who confirms this fact by making the simple observation that “bread cannot save someone from dying of thirst”, and “living in a luxurious palace does not constitute a substitute for food”.64 Thus, it is quite plain that “not everything is substitutable for everything else through the medium of utility”. So, some things are irreplaceable. Goodin reminds economists of the disparity between the “ransom value” of things and their “insurance value” by using the simple and well-proven example of family photographs. People will risk their lives to save the family photos from fire, but will not insure against their loss. The reason for this phenomenon is obvious: the photos are irreplaceable, and mere money is no substitute.

63 Goodin, pp. 57-59.

Wider examination would doubtless find many things that people consider irreplaceable and of the greatest value by reason of their irreplaceability alone. Goodin follows the logic of the economist to suggest that whether or not something is irreplaceable is a “matter of subjective taste”, or “purely an artefact of quirks of people’s preferences”. This is where the green theory of value shows its usefulness, by explaining why some things, and especially “products of natural processes”, should be regarded as irreplaceable. The green theory of value “traces the peculiar value of naturally occurring properties of things to the history of their creation by processes outside ourselves”. Neither the history of the “thing” nor the process of its creation can be reproduced by “intentional human interventions”. Goodin illustrates this fact by pointing out that although “very talented hydraulic engineers” might be capable of duplicating the Grand Canyon, the man-made object would have the wrong history for people to value as they do the real thing, as something created by forces outside their control. The bottom line is that humanity cannot create new things to substitute for “bits of nature” that have been destroyed. However, Goodin’s green theory of value does not deny that “there might be some already existing bits of nature that can substitute for one another, when any one of them has been destroyed”.65

Goodin is here thinking of “bits of nature” in terms of individuals within a species, and points out that this is why protection of an endangered species is so much more important to greens, in his view, than the protection of particular specimens.66 He suggests that, for the purposes of setting people’s lives in some larger context, what is crucial is that there be some blue whales, not that there be any particular number of them. Any blue whale can substitute for another that has been lost through, for example, clandestine Japanese whaling. Goodin points out that it is only when the toll

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65 Goodin, pp. 60-61.
66 One needs to proceed carefully with this argument, which is a particular favourite of the “quarriers” of natural resources, whose motives, based upon their past performance, can only be regarded as highly suspect. For example, Timberlands’ late operations manager and environmental spokesman Kit Richards claims that this SOE “thinks in terms of the welfare of forests, not individual trees”. However, whatever the superficial aesthetic improvement wrought by selective logging practices over clear felling, the removal of individual trees irrevocably degrades and modifies the forest. In any case, to believe that Timberlands’ concern is for the welfare of forests rather than for the maximum extraction that the political climate will allow, and greatest short-term profit, is arguably to dwell in a world of fantasy. TVNZ TV1, “One Network News”, 3 March 1997. It should also be noted that, particularly in New Zealand, with its unenviable record for extinctions, it is frequently the case that a few specimens is all that remain of an entire species. There is also the matter of the biological requirement for genetic diversity, which a reduced gene pool obviously cannot provide.
has been so great that the species as a whole is threatened that people fear something "truly irreplaceable" is about to be lost. In a world operating within the economistic grand narrative, it can only be agreed with Goodin that the advantages of seeing environmental concerns his way, that is, in the context of a larger green theory of value, is the appropriate way to make sense of such attitudes toward irreplaceability. Goodin’s green theory of value does indeed provide a reason why people should regard Nature as irreplaceable, and, at the same time, why “not all elements of the natural order need be so regarded”. Given that Goodin’s overall aim is to “operate with a stylized account of a composite green political programme” to show what positions he considers greens should take, it must be agreed that “Merely treating irreplaceability as a primitive value in an environmental ethic would leave all those things woefully unanalysed”.

Greens such as Andrew Dobson place at the core of green values the need for modes of existence that are sustainable. However, Goodin insists that those who would make sustainability “a fundamental axiom rather than a mere corollary” must explain, in a way that he feels Dobson does not, why sustainability ought to be valued other than in instrumental terms. The imperative for steady-state policies that are sustainable arose in the 1960s from the idea of the Earth as a closed system into which additional resources could not be imported and from which unwanted wastes could not be expelled. This idea was resurrected in 1987 by the World Commission on Environment and Development (WCED), which coined the term “sustainable development”, subsequently fastened onto by governments, with varying degrees of insincerity. Whatever the inherent fatuousness inevitably associated with sustainability and development as envisioned by the current economic grand narrative stream, Goodin begins by considering the idea of sustainability as an independent

67 Goodin, p. vii.
68 Ibid., p. 61.
value an “open question”. However, he soon concludes otherwise. Quite reasonably, Goodin equates sustainability with stability in people’s lives. He argues that, whereas people will respond to sustainability requirements in the short term because they want stability in their daily lives, such is not the case “over the long time horizons that ecologists seem to have in view”. Something more than the idea of mere day to day stability is needed to set people’s lives in a greater context, and this is where the green theory of value comes to the rescue. In so far as the argument for the sustainability of “particular processes” renounces substitution, the case for sustainability pivots on arguments concerning the previously examined irreplacebility. Finally, in so far as the argument for sustainability is an argument for adopting “longer time horizons”, the case for sustainability rests on the argument over futurity. Both irreplaceability and futurity, to be examined next, are best seen, according to Goodin as “mere corollaries of the green theory of value”.71 This thesis finds Goodin’s argument entirely persuasive.

Die Grünen’s 1983 manifesto, which provides the model for green parties globally, takes a stand for “an economic system geared to the vital needs of human beings and future generations, to the preservation of nature and a careful management of natural resources”.72 Whilst it is readily apparent why greens would be buying a fight with economists over the matter of “vital needs”, which the former equate with a healthy frugalism and the latter insist simply means catering to the legitimate demands of consumers, the question of futurity is much more complex. However, what is simple is the fact that greens and economists occupy opposite philosophical poles on futurity as on all else. Essentially, standard economic practice discounts the future, whereas greens set great store by their moral obligation to future generations.

Goodin reminds the reader that economists advise people to “weigh future pay-offs (costs or benefits) less heavily – indeed disproportionately less heavily – the further in the future they come”. In technical terms, economists “discount future income streams

according to a discount function that is exponential in form". What this means is that the present value of $1 million decreases in appearance in current accounts to about a third of that value in twenty years and to less than a thousandth after a century. Goodin notes that discounting in such a manner is "commended, virtually as a hallmark of rationality itself, in just about every economics text and development manual in print". However, he questions the rationality of ignoring almost completely the consequences of present actions beyond "a few generations", which is a very short time indeed in terms of human history, let alone in geological terms. Such facts notwithstanding, economistic calculations of present values allow consequences mere centuries away to be disdained.

Goodin examines some of the several ways used by environmental philosophers to counter the rational conclusions of the economists. The most common ploy is to "concede the low ground of pragmatics to economists, while claiming for oneself the high moral ground". This means acknowledging the economic efficiency of "shortchanging the future", and at the same time insisting that such behaviour constitutes unjust treatment of future generations. Inevitably, the philosophers must then provide a sound theory of intergenerational justice. This theory is based upon the argument that justice must be blind to "facts about people that are truly arbitrary from a moral point of view", like which century they happen to have been born in. It follows that justice requires that the interests of all generations be weighed equally in present decisions. In practice, this means that the high morality with regard to futurity sought by philosophers requires the application of a "zero discount rate", as opposed to the economists' "positive rate of time discounting".

It would be imprudent to rest content with the philosophers' moral argument and move on. This thesis will show that the New Zealand Fishing Industry Association (NZFIA) avoided questions of intergenerational justice and fought against the

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74 Goodin, p. 67.
inclusion of futurity in the provisions of the Fisheries Bill 1994. The matter of futurity requires further examination.

Goodin points out that the philosophers’ form of rejoinder has conceded some important ground to the economists. The philosophers now find themselves in the business of making futurity trade-offs with the economists. Goodin advises environmentalists to look for some better way to resist the economists’ “devil-may-care” conclusions about the further future. He suggests meeting the economists on their own ground, and undermining their case for discounting from within. Goodin finds that there is indeed a range of flaws in the justifications that economists offer for discounting. The most significant of these turns out not to be a true justification at all, but merely an appeal to “nothing more than people’s blind prejudice in favour of the present over the future”. Economists call this “pure time discounting”, and while some among their number do reject the notion as ethically indefensible, others argue strongly that it is the duty of democratic governments to reflect the will of individuals bent upon discounting the future. Goodin concludes that, aside from several bad economistic arguments that “turn on just plain sloppY thinking”, there is one good argument that environmentalists and friends of the future in general should address. This one good argument treats discounting “as a form of compound interest in reverse”. Under compound interest, a modest sum deposited in the bank at five percent per year becomes a very substantial amount after a century. Accordingly, money, or anything that can be traded using money, ought to be discounted at a rate that is equal to the long-term interest rate. Environmental costs and benefits are dealt with in this way, and “the standard resource-economic advice is to exhaust exhaustible resources up to the point at which their increase in scarcity value equals the market interest rate”.

Goodin’s counter-argument is two-pronged. First, long-term interest rates must necessarily be based upon guesswork. There is thus no reliable way of knowing what

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75 Ibid., pp. 67-68 and Footnote 125.
76 Ibid., p. 69 and Footnote 127.
discount rates to use. Second, the argument for discounting applies primarily to money and things that can be bought and sold for money. Here Goodin gives the example of a sum of money. It can be used by a person to buy a house today or instead can be deposited on compound interest at five percent and used to buy exactly the same house at the end of twenty years with the greater sum accrued during that time. In contrast, the economistic argument does not work for things that cannot be bought or sold, like human lives, although these do have “monetary equivalents” in matters such as life insurance and compensation. However, Goodin maintains that even if it were possible to produce a monetary equivalent of non-tradeable commodities, “it would be fallacious” to use those sums in any scheme of discounting justified as in the matter of the house.

Nevertheless, Goodin shows he is attacking no mere “straw man”. For example, health economists insist “The reason for discounting future life years is precisely that they are being valued relative to dollars, and since a dollar in the future is discounted relative to a present dollar, so must a life in the future be discounted relative to a present dollar”. In order to illustrate the incompatibility of the economistic argument with human life, Goodin modifies the house example. Here, a man suffering from a potentially terminal but slow-growing tumour that will kill him in twenty years time has a number of options regarding the disposition of a sum of money. According to economistic theory, the man should be indifferent as to which option he chooses. He can use the money to remove the tumour or he can buy a house, or he can deposit the money on compound interest at five percent and own a large sum of money on the day he dies. The point is that the man cannot “buy off the grim reaper” after twenty years, in the way that the person in the earlier example could buy exactly the same house.

It is apparent that what makes discounting “rationally mandatory”, with things like houses that can genuinely be bought and sold, is that a sum put on compound interest

78 Goodin, p. 71.
can purchase exactly the same things at a later date. Irrationality would reside in distinguishing between things that are indistinguishable, that is, by "categorically refusing the offer of a smaller sum now which would yield exactly the same goods later". Such is not the case with things that cannot be bought and sold. Goodin has shown that here money invested on compound interest will not buy exactly the same thing later. It will, perhaps, buy something that could be termed "equivalent" or "as good", but it is an inescapable fact that what it buys will be something different. Therefore, as a general rule, it is not irrational to reject discounting for non-tradable commodities. This means that discounting is not necessarily rational in the case of things that cannot be bought or sold. However, Goodin is at pains to point out that this is not to say that discounting is necessarily not rational. The argument turns on just how close is the "equivalence" between what a person would be getting and what they would be losing if they "discounted the present value of future losses of non-tradable commodities".79

Goodin rounds off the argument at this point by linking up his case against economistic discounting of the further future with previous discussions of irreplaceability. What has just been established is that people may rightly refuse losses of things "for which there are no good substitutes or equivalents". At the same time, if something is replaceable, there is no reason "in principle" not to discount the prospect of its future loss. It is, therefore, only the irreplaceable "whose future is potentially immune to the solvent of compound interest calculations". Thus, what is required is a theory of irreplaceability with which to counter what Goodin has shown to be the economists' strongest argument for discounting the future. Goodin's green theory of value has indeed provided such a theory of irreplaceability, by allowing people to propose that some things produced by Nature are irreplaceable. These things are irreplaceable "precisely" because they have a history of being produced by natural forces. Even should it become possible for them to be replicated artificially, their history cannot be replicated.80

79 Ibid., pp. 71-72.
80 Ibid., p. 72.
It will be recalled that Goodin’s green theory of value proceeds on the premise that at least some people want to see their lives as being set in some larger context. The concern of those, like Goodin, who value Nature for its general order, is with “natural types rather than with mere tokens”. Goodin’s folk do not much care about the deaths of individuals, but do care “powerfully” about the loss of whole species. This viewpoint allows for “a certain limited discounting of future streams of resources”. Of course, the rate at which such discounting takes place must match the pattern of growth of the resource. Goodin makes it plain that discounting justified in resourcespecific ways “cannot display the marked unconcern for the future that geometric discounting implies”. However, if people are trying to preserve “distinct natural types” into the indefinite future, “Then we may cream off only as much of the resource flow as is consistent with leaving enough to reproduce at least as much in the future”. Unfortunately, as this thesis will show, this is not the way discounting actually operates. For example, a major recent study of global fish catches over the past 45 years concludes that, “humans are inexorably fishing down marine food webs as larger and more commercially valuable species disappear”. As noted, this thesis will also show that the NZFIA fought fiercely against the inclusion of any futurity provisions in the Fisheries Bill 1994 and consistently argues against reduced total allowable catches (TACs). Nevertheless, Goodin has undoubtedly produced a sound and highly practical argument on behalf of irreplaceability and futurity for use by green parties and environmental groups in their campaigns. However, the fact remains that the economistic argument, whether based upon rationality or compound-interest-in-reverse, prevails, and shows every indication of continuing to do so.

Goodin observes that, “Green rhetoric is replete with the language of ‘liberation’”, that is, Eckersley’s ecological emancipation. It is a theme strongly connected with

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81 Ibid.

82 Ibid., pp. 72-73.

83 Study by the University of British Colombia and International Centre for Living Aquatic Resources, reported in Science, 279, 1998, p. 860.
what Goodin refers to as "those famous forms of hyphenated environmentalism – 'eco-socialism' and 'eco-feminism' – both of which equate the liberation of Nature from domination by humans with the liberation of oppressed humans from domination by others". In addition, he notes that greens also talk of animal liberation and the liberation of oppressed peoples of the Third World from environmental degradation forced upon them by overconsumption in developed countries. Because of the wide range of agents and mechanisms involved in the processes of domination, Goodin feels that it is not credible that one and the same argument can be used against these disparate forms of domination. Thus, instead of one single general argument, there are, depending on the context, many different arguments in favour of liberation. The meaning and moral importance "depends crucially on what it is that is being liberated from what". Goodin's "boast" on behalf of his green theory of value is that it "provides a credible account of the environmentalist part of this larger story".

For Goodin, there is no disadvantage in its providing only the environmentalist part of the story. He feels that, whilst different arguments will be required to prove the moral importance of liberation for different parts of the story, so far as the environmental part is concerned the green theory of value "provides a good explanation of why humanity's domination of nature is wrong and why living in harmony with nature is good". The essence of Goodin's case is that, because there is no standing argument that will justify liberation in all its forms, there is nothing to be gained by "subsuming environmentalism under a broader liberationist banner". To the extent that liberation is thereby surplus to the requirements of his green theory of value, Goodin is probably justified in declaring liberation to be a green corollary.

Before proceeding to Goodin's explanation of his green theory of agency, several significant points remain to be addressed the first of which concerns the matter of lifestyle recommendations. Goodin sees the error of supposing that greens are required to endorse all forms of "greenery" as being "vastly important" in practical political

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84 Goodin, pp. 73-76.
terms. In his view, there are many people who, whilst attracted to the green political message and “willing to bear the very considerable sacrifices that green public policies might entail”, baulk at the apparent requirement not only to endorse sensible policies but also to simultaneously embrace what they see as “silly beliefs about homeopathic medicine or tree spirits”. This thesis would have to agree with the proposition that, politically, people in general would deny their votes to the greens unless “green public policies and green personal lifestyle recommendations can be shown to be separable items on the larger green menu.” It is also agreed that it is “perfectly defensible” for them to be so promoted.  

However, this thesis will show that, certainly within the New Zealand context, people are by no means willing to sacrifice economic growth in exchange for sensible green policies. At the same time, neither are they much concerned about the matter of “silly beliefs” and the more nonsensical pronouncements of New Age prophets, the silliest of which undoubtedly helped speed the British Green Party towards oblivion.  

New Zealanders have generally treated greens with condescending amusement, until such time as the latter are perceived as a threat to economic growth, when they assume, at best, pariah status. Coincidentally, with regard to the matter of “tree spirits”, it can be argued that animism is no more of a silly belief than is Christianity, a cult to which most New Zealanders nominally subscribe.  

However, in New Zealand the prospect of

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85 Ibid., p. 83.  
87 It can also be argued that animism, which attributes a soul to natural objects and phenomena, is, in the light of aforementioned scientific discoveries, more ecologically relevant than is the Judeo-Christian tradition. Warwick Fox suggests that the new scientific “world picture” is heading toward what can plausibly be called “a kind of scientifically formulated animism”. See Warwick Fox, Toward a Transpersonal Ecology: Developing New Foundations for Environmentalism, Shambhala Publications, Boston, 1990, p. 46. Conversely, Christianity has been undeniably less environmentally friendly than has animism. For example, Mexico City provides the perfect model for the terrible impact of the Western Judeo-Christian tradition upon another culture and its environment. The former Aztec capital Tenochtitlan, with its stunningly beautiful urban garden ecosystems, is now the site of the world’s largest and possibly most irreversibly polluted city. See Arran Gare, Nihilism Incorporated: European Civilization and Environmental Destruction, Eco-Logical Press, Bungendore, 1993, p. 1. Whilst J. Baird Callicott finds the Judeo-Christian stewardship environmental ethic “especially commendable”, the stewardship idea inevitably places humanity “above” the rest of Nature, thereby perpetuating the distortion that has wrought such destruction upon the natural world to date. See J. Baird Callicott, Earth’s Insight: A Survey of Ecological Ethics from the Mediterranean Basin to the Australian Outback, University of California Press, Berkeley, 1994, p. 21. Its respected thinkers apart, the Judeo-Christian mainstream appears to carry with it an unreflective simple-mindedness, in the guise of faith or belief, that bodes ill for the acceptance of, from its point of view, new, ecologically compatible ideas. This phenomenon is particularly apparent in the US, the standard-bearer of the consumerist society, creationism and the religious Right. For example, incredibly, most Americans (81% in a Time/CNN poll) apparently believe in a physical Heaven. Many, including emeritus evangelist Billy Graham, subscribe to the notions of a hereafter first imagined in the Victorian Age, in which the materialism of its extremely antropocentric worldview was actually carried over to furnish Heaven with all the creature comforts and the fruits of industrialism. Graham’s household inventory of Paradise includes, quite naturally, card

See David van Bienia, ‘Does Heaven Exist?’, Time, 24 March 1997, pp. 45-52. The state-funded New Zealand Values survey
embracing green lifestyles and any attached silly beliefs, whilst completely unlikely, is certainly not the *almost* insurmountable stumbling block to the adoption of sensible green policies that the perceived threat to economic growth most emphatically is.

Another point concerns what Goodin calls “the unity of the green programme”. Green parties are not, as critics might claim, single-issue parties. At the same time, and unlike the more established parties, neither are they catch-all parties. Whereas the alliances of “disparate factions and disparate interests” that constitute established parties prevents them from “offering programmes displaying any particular moral vision”, the green theory of value underlies and unifies the entire green programme. Green parties are, and could, theoretically, form functioning stand-alone national governments. However, their more likely role in government is that of minority coalition partner of Left or Centre-Left parties, as in the case of the Federal Republic of Germany.

Goodin’s claim that his green theory of value underlies and unifies the entire green programme and thereby gives logical cohesion to the green agenda is an eminently reasonable argument. Equally reasonable is its extension that, conversely, this same cohesiveness renders the half-hearted attempts of the established parties to selectively pick and choose bits off that agenda “illogical and inconsistent”. However, in order to

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indicates that about 50% of New Zealanders believe in the existence of some form of Heaven. *Listener*, 9 October 1999, p.7. It is also disconcerting in the extreme to observe the limitations of the Judeo-Christian mindset, at least at the highest political representative level, displayed on TV. For example: Ronald Reagan, playing to the prejudices of the religious Right and 100 million creationists, reassuring the nation that evolution “is only a theory”; George Bush, lost in admiration, seeing his pilots off on yet another mission against Saddam Hussein with the words, “There they go, doing the Lord’s work”; and Bill Clinton, endlessly reinforcing the idea of America’s, not to mention his own, personal God, and one who, apparently, through His uninterrupted bestowal of blessings, thoroughly approves of what ecologists see as Americans’ environmentally ruinous material achievements. See Robert Withnow, *After Heaven: Spirituality in America Since the 1950s*, University of California Press, Berkeley, 1998. Lynn White, Jr. has long argued the pernicious affects upon the environment that have resulted from the (mainly) American Judeo-Christian mindset. See Lynn White, Jr., *The Historical Roots of Our Ecological Crisis*, *Science*, 155, 3767, 10 March 1967, pp. 1203-1207. White would subsequently note that, “today almost all Americans [are] still saturated with ideas historically dominant in Christianity”. Rather than rejecting White’s thesis, other Christian thinkers tend to also stress the baleful affects of other religions, and technological and cultural influences. See: Lynn White, Jr., *Continuing the Conversation*, in Ian G. Barbour, ed., *Western Man and Environmental Ethics: Attitudes towards Nature and Technology*, Addison-Wesley, Reading, 1973, p. 63; Lewis W. Munro, *The Cultural Basis of our Environmental Crisis*, in Barbour, ed., pp. 31-42; Rene Dubos, *A Theology of the Earth* in Barbour, ed., pp. 43-54. Finally, Christian creationism in New Zealand poses a growing threat to both the teaching of the natural sciences and the adoption of an environmentally friendly ecocentrism. See *God’s Classroom: Signs that Creationism is Creeping back into the Supposedly Secular State Curriculum have the Evolutionists Worried*, *Listener*, 22 April 2000, pp. 16-21.

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88 Goodin, pp. 84-87.
make good his claim, Goodin offers a “stylized green party programme”, based upon the aforementioned 1983 manifesto of Die Grunen. The main points include an ecological policy, of which “The supreme commandment must be the smallest change in natural processes”. For example, for fisheries, greens recommend a policy based upon the “immediate reduction of catch quotas of endangered species to allow stocks to recover”, and “an immediate ban on catching and hunting of any species of whale” in particular. With regard to technology, the policy is not to eschew modern technologies altogether but to choose in a discriminating way between them. As for the economy, greens say that, “A radical reorganization of our short-sighted economic rationality is essential”, economic priorities must be shifted away from consumption and toward conservation. Traces of the green theory of value do indeed clearly run through all of these proposals.

Goodin’s purpose in demonstrating the “peculiar cohesion of the green political agenda” is to show the green movement is much more than a single interest group and green parties should be treated seriously as potential stand-alone parties. On his analysis, all the major planks in the green political programme can reasonably be said to have their origins in a common green theory of value. That being the case, then, according to Goodin, “there is something prima facie wrong [that is, wrong at first sight] with the standard political strategy of embracing some green demands while ignoring others”. The wrongness derives from the “logic of consistency”, in that it is obviously wrong to embrace any theory of value for some purposes while avoiding it in others. The “truth status” of value theories cannot be switched on and off to suit the whim of their subscribers. Thus, if it is proposed to do green things for green reasons on some occasions, there is a “prima facie obligation of consistency” to do green things on every occasion upon which green reasons obtain.

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89 See Green 2000, p. 3.
90 Die Grunen , 1983 Manifesto; Goodin, pp. 181-203.
Goodin sees grave implications for mainstream political parties trying to “steal the green political thunder” by indulging in the selective borrowing of “a few of the less demanding planks of the green agenda”. Goodin’s point is that the tightly unified green political agenda derived from the green theory of value permits no piecemeal borrowing, such a ploy being “logically inconsistent as well as politically unacceptable”. However, he proceeds to suggest that piecemeal borrowing may not be inappropriate in the case of a “more ordinary interest group or catch-all party”, whereas, in the case of the greens, “it really does have to be a matter of all or nothing”.91 This thesis agrees that, in accordance with Goodin’s general argument in support of his green theory of value, green parties must be uncompromising in adherence to the core of their agenda, and that piecemeal borrowing by mainstream political parties is logically inconsistent. However, it cannot agree that the latter is politically unacceptable, at least to the electorate. In New Zealand, both Labour and to a much lesser extent National have successfully coopted green ideas ever since Values produced their 1972 election manifesto and put on such a surprisingly good show at the polls in that year.92 In the event, Goodin’s grave implications for mainstream parties would seem merely to consist of their being condemned in the eyes of those relative few who might understand just why the trickery being perpetrated by the mainstream parties is so politically unacceptable.

Goodin next explains why the strategy of borrowing piecemeal from the greens is only prima facie wrong. It is because there are ways in which mainstream parties can avoid altogether the charge of inconsistency and political unacceptability, by the use of a pair of ploys that Goodin calls “brown evasions”. One of these involves mimicry, while the other uses a swamping technique. Mimicking green values consists of endorsing green conclusions for brown reasons. Typical of this method is to endorse the internalizing of the external costs of pollution, not for the green reason of protecting the planet from such scourges as acid rain, but merely to ensure for as long as possible the maintenance of present, polluting, lifestyles. The technique of

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91 Ibid., pp. 92-93.
92 Rainbow, Green Politics, p. ix.
swamping green values involves the earnest declaration on the part of mainstream parties that, alas, green values, being only a part of the “larger, composite theory of the Good that they embrace”, must frequently give way to the greater Good. Typical of this technique was the refusal of the late Right Wing government in New Zealand to shut down or modify catching methods in commercial fisheries that cause significant seabird and marine mammal by-catch, on the grounds of the greater Good in terms of export receipts and employment.

For the reason that the matter subsequently assumes great significance in the thesis in relation to the arguments employed by industry, this is an appropriate point at which to discuss what Goodin calls “the moral weight of countervailing values”. Two values appear to conflict with green values. One is economic growth or “material prosperity”. Perusal of Hansard or the National Business Review (NBR) will quickly find examples of the highly emotive and luridly colourful claims made by growth-fixated politicians and corporate champions. Goodin condenses these to the notion that respecting green values above all else inevitably “retards economic growth and development, impoverishes the community and creates substantial human misery in consequence”. The other conflicting value is property rights. In this case it is said, particularly by groups such as Federated Farmers and land developers, that respecting green values above all else inevitably interferes with “the rights of property owners to do what they will with what is by rights their own”. Goodin sees these two challenges to green values as being representative of two broader styles of challenge. The first is utilitarian, focusing on human happiness. The second is libertarian, focusing on people’s rights and liberties. Under these broader headings, the particular challenges posed by economic development and property rights are but two of many. However, Goodin feels that if these two challenges can be “repelled”, it is reasonable to suppose that green values “might be relatively impervious to the whole style of challenge that each of those more particular challenges represents”.

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93 Goodin, pp. 93-98.
94 Ibid., p. 98.
95 Ibid., pp. 98-99.
Standard economic compilation methods provide the apparently “veritable analytic truth” that whatever reduces corporate profit reduces a country’s gross national profit (GDP). However, what is being discussed here is the countervailing value represented by economic growth in terms of national economic prosperity. GDP is merely one indicator of that. None of the standard indicators is perfect, and GDP is less perfect than most. Because GDP does not recognize vital elements of people’s economic well-being, policies, like those of New Zealand, that maximize GDP will necessarily diverge from policies that maximize national economic prosperity. Corporations maximize their profits by externalizing costs, by means of low wages and cheap, ecologically destructive production methods. Corporate profit maximization combines the measure of how much wealth producers have made for their managers, stockholders and customers, and how badly off they have made those who have been forced to bear the external costs of production. It is vitally important to be able to distinguish between these two measurements if it is desired to maximize people’s prosperity, preference satisfaction, or material well being. However, as Goodin points out, “In terms of GDP calculations, though, these two very different sources of profits are indistinguishable”.

The goal of the corporations is the maximization of profit, and they are assisted and encouraged toward the achievement of this goal by governments, particularly, as will be demonstrated in due course, in the case of New Zealand. However, the real goal for governments is surely not to further the interests of corporations, which include only the welfare, in rapidly descending order of priority, of corporate managers, shareholders and customers, but rather overall national well-being. Unfortunately, the indicators used to measure growth do not by any means take into account “all the factors that are genuinely relevant to people’s sense of prosperity or

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"OK, it's a slavery-based economy with no regard for ecological or humanitarian values. Anything else to recommend it?"
well-being". Standard economic indicators note, for example, that people are earning more money and from this “say that people are unambiguously better off”. This is patently wrong. However, although standard economic indicators are wrong in their assessment of overall well being their error can only be demonstrated by somehow factoring in the vital “social” indicators, a task that has still to be mastered after more than three decades of effort.

Meanwhile, corporations and their supporters in government ostensibly promote the moral weight of the countervailing value of national economic prosperity over green values. Instead, as has been shown, what is actually being promoted is profit maximization in the guise of GDP, which cannot be said to carry any moral weight at all. In New Zealand, no case can be found where, as a result of respecting green values above all else, economic growth and development has been retarded, communities have been impoverished and human misery created. Certainly, no environmental policy change proposed by The Greens could approach the scale that wholesale “restructuring” has done in the alleged interests of ultimate national economic prosperity.

With regard to the moral weight of property rights over green values, libertarians insist that governments have “taken” people’s property for public purposes whenever legislation, for example, the RMA tends to restrict or to temporarily inhibit what people can do with their property. Frequently, what libertarians such as Federated Farmers are contesting is the removal of the right to destroy something, such as a wetland or a “bush” remnant and to replace it with pasture or exotic plantation forest. However, according to the standard lists of the components of property rights, which acknowledge a legal tradition reaching back to Blackstone, the right to destroy is

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98 For example, during the height of their economic prosperity the Japanese people still found themselves beset by the most extremely stressful environmental conditions. This situation prompted the French Prime Minister, Edith Cresson, when asked in 1993 why France was not emulating Japan to respond simply, albeit with suitable hauteur, “Who wants to live like the Japanese?”. CNN, 21 April 1993.


nowhere to be found. Instead, the “standard catalogue” recognizes three basic rights, namely: the right to use; the right to use exclusively; and the right to transfer. The supposed right to destroy “appears only incidentally and very much in passing on the far longer and less systematic lists sometimes produced by lawyers.”

In further search of the philosophical implications of property ownership with regard to the right to destroy, Goodin scans the range from John Locke to Robert Nozick, without lighting upon such a right. The nearest equivalent he can produce is the right to use up something, like food or firewood, which can only be used by using it up. However, even that right to use up “would be consistent with a quasi-preservationist duty”, such as duty to replace what was used by planting seeds or saplings. This thesis can but agree with Goodin’s findings, and must therefore conclude that property rights, as commonly represented today as the right to destroy fisheries and forests, simply do not carry any moral weight of countervailing value over green values.

Goodin has shown that his green public policy positions have all flown from one and the same green theory of value. This theory of value, like any other theory of value or any theory of the Good, tells people “which outcomes are desirable and why”. However, as is the case with all theories of value, the green theory of value is not “self implementing”. Instead, it serves to provide moral agents with a guide when making their deliberate policy choices and actions. Consequently, any theory of value or theory of the Good needs to be paired with a theory of agency, “analysing the nature of the mechanisms by which its recommendations are to be given practical meaning”. In other words, a green theory of agency is a theory about how to go about pursuing green values. But before proceeding further, Goodin feels that it might be argued that what is happening here is an acknowledgment that there is a need to conjoin a theory of the Right with his theory of the Good. A standard definition of a

101 Goodin, p. 106.
104 Goodin, p. 106.
theory of the Good is that it is a theory of value, to be used in assessing outcomes and consequences. In contrast, a standard definition of a theory of the Right is that it is a largely independent theory of right action, to be used in assessing people’s actions and choices regardless of their consequences. However, whereas a theory of the Right specifies right actions, a theory of agency “requires an analysis of the nature of the actors who are supposed to be performing those actions”. Thus, a theory of the Right also needs a theory of agency, which is simply further confirmation that theories of value and theories of agency are “really rather different sorts of theories”.105

Goodin notes that theories of agency operate primarily at the level of individual agents. There are also “properly constituted” groups of people in such organisations as movements and parties that possess all the properties that would entitle them to be counted as moral agents. However, “logically as well as causally”, human individual agency comes first. The standard assumptions about “human action and intention, powers and purposes” that apply to individual human agency106 apply also to the green theory of individual agency. In other words, there is “nothing special – or anyway nothing peculiar - about the green theory of individual human agency”. Any contradictions that might be incorporated in the green theory of agency are merely part of the received wisdom on the general theory. Goodin feels that it is in the more “value-laden” areas of its analysis of individual agency that the green theory shows its distinctive character, and it is on these that he focuses attention. Specifically, he discusses the paramountcy that the green theory of agency attaches to democratic participation “in the life of one’s society”. Goodin regards this principle as arguably the “central plank” in the whole green theory of agency. Also of great importance to Goodin is nonviolent action.107

105 Ibid., p. 115.
107 Goodin, p. 124.
Goodin's green theory treats individual human beings as agents "who naturally are, and morally ought to be, autonomous and self-governing entities". In political terms, this directly implies Goodin's main theme of the green political theory of agency namely the importance attached to people's full, free, active participation in "democratically shaping their personal and social circumstances". This importance is stressed and reiterated in Die Grunen's 1983 manifesto.¹⁰⁸ In New Zealand, the ability for "ordinary" people to shape their personal and social circumstances can be argued to have latterly been largely illusory. Whilst there are no legal barriers to participation in national and local politics at least in so far as the right to vote is concerned, there are sociological factors, like socioeconomic status, education, and group ties that limit participation in policy making to a small elite. Proposals from a variety of sources including The Greens for such things as decentralization and workplace democracy have tended to fall on stony ground in the land of the Local Government Amendment Act (LGAA) and the Employment Contracts Act (ECA). Goodin's green theory of agency and the importance of its central theme of democratic political participation is therefore of particular relevance to New Zealand, where this thesis will demonstrate the phenomenon of industry's almost unhindered usurpation of the "people's right of fishery" in the absence of such democratic political participation.

A second principle that green theory commends to individual agents is nonviolence. However, Goodin points out that harm inflicted in defence of Nature "conforms to the classical canons of measured retaliation in a just war". Thus, whereas violent action could be construed to be in contravention of the green theory of agency, the latter must here, as generally, take a subsidiary role in the larger green political theory. This means that the green theory of value applies in cases where it conflicts with the green theory of agency.¹⁰⁹ This point could have particular relevance to future protest action on the part of environmental groups in New Zealand if the exploiters of natural resources continue upon their arguably destructive path. However, action to date in

¹⁰⁸ Die Grunen, 1983 Election Manifesto, Section 1, p. 8.
¹⁰⁹ Goodin, pp. 131-138.
defence of natural resources including those of fisheries and the aquatic environment has tended to place only the protesters in harm’s way.

Goodin’s remaining principles of the green theory of agency encompass green party organisation and green political structures. As noted at the beginning of this section, the green theory of agency applies to artificially created collective agents as well as to natural human agents. One such artificially created agent is the green political party, while another is the community as a whole. Theories of collective agencies are based on theories of individual-level agency. Artificial agents are made by natural individuals working under principles governed by Goodin’s theory of agency. These artificial collective entities cause the individuals within them to act in a manner other than what they would have done had these artificial agencies not existed or existed in a different form. Goodin feels that any politically applicable theory of agency should be able to state both how these artificial agencies conduct their affairs and how they should conduct their affairs. Unsurprisingly, the green theory of agency passes the test, by offering principles to be used in analysing and moulding green political parties and communities. These prescriptions arise from the need to respond to green concern for democratic participation. As applied to party organization, this concern translated into a pair of powerful injunctions on the party, namely, to practice “grassroots democracy” by means of regular and meaningful consultation with local party units, and to avoid creating a remote political elite.\textsuperscript{110} In New Zealand, The Greens claim to operate in just such a manner.\textsuperscript{111}

Finally, if, as Goodin argues, the green theory of agency cannot be derived from the green theory of value, then how can people be sure that “an agency thereby created would actually serve the values the other half of the green theory specifies?” This “conundrum” is best seen in the aforementioned matter of green support for grassroots democracy. Advocacy of democracy means advocacy of procedures, whereas advocacy of environmentalism means advocacy of substantive outcomes. What

\textsuperscript{110} Ibid., pp. 138-139.

guarantee then is there that the former procedures will yield the latter sorts of outcomes, and, in a more general application, how can it be guaranteed that “localized, or nonviolent, action will always best protect the global environment?”.

Goodin thinks greens feel intuitively that both dimensions, that is, process and substance, must surely matter, but he concludes that much more remains to be done to show that those two dimensions “reinforce rather than cut across one another”. Meanwhile, until such time as some such necessary linkage is demonstrated, it must be concluded that the “green theory of agency is a separate issue from the green theory of value that truly lies at the core of the green political agenda”.

Goodin completes his critical reconstruction of green political theory by briefly contemplating the fate of green politics and the fate of the Earth. Apropos the latter, he considers that greens “have the potential to reshape politics as we know it” by, for example, facilitating global coordination of environmental policies through a “Green International” of sister parties. He proffers some short term scenarios for the meantime. These include greens practicing their politics “through the more established routines of politics-as-usual”. This will inevitably mean making compromises and forming coalitions. Compromises made in the interests of coalition stability would be logically incoherent, because they would go against the intellectual core of the original green policies, but the blame for such incoherence would lie with the catch-all party coalition partner. Compromises on the part of greens are morally defensible to the extent that these achieve at least a degree of the Good. Goodin’s green theory of value takes precedence over satisfying the demands of the green theory of agency, and, as he notes, “There is simply no place for moral preciousness and keeping one’s green credentials clean when the fate of the earth hangs in the balance”. The fate of green parties not prepared to play politics-as-usual will be to “remain an amusing parliamentary sideshow, but little more”.

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112 Goodin, p. 168.
113 Ibid., p. 177.
114 Ibid., pp. 169-171.
In electoral terms, Goodin sees the issue as twofold. First, he asks whether greens can find enough supporters to constitute a credible "third force" over and above the traditional parties of the Left and of the Right. Second, he questions whether, having crossed the threshold, they can find some adequate basis for an electoral alliance with one of the other major parties that will carry them to power.\textsuperscript{115}

This thesis will answer both questions in terms of the experience, and future outlook for, The Greens in New Zealand. In 1990, The Greens won 6.9\% of the vote in the general election. However, because of the first-past-the-post electoral system (FPP), they gained no parliamentary representation. The Greens then joined four other minor "third parties" to form a Left Wing group, The Alliance.\textsuperscript{116} The 1993 general election, conducted under the same electoral system, saw the election of two Alliance MPs, neither being members of The Greens. However, the 1996 election was conducted under the trial mixed member proportional system (MMP), and resulted in The Alliance gaining eleven parliamentary seats, three of which were occupied by members of The Greens. Two other green parties, operating outside The Alliance, the economistic Progressive Greens and the deep ecology-oriented Green Society, also contested the election, but gained a minuscule percentage of the vote. Subsequently, in 1997, two of The Greens' MPs quitted The Alliance in pursuit of a uniquely green presence in New Zealand politics. However, The Greens retained a good working relationship with The Alliance, and a reasonable one with Labour, which appears to answer Goodin's second question of finding an adequate basis for an electoral alliance. Goodin's first question, that is, whether greens can find enough supporters to constitute a credible "third force" over and above the traditional parties of the Left and of the Right, appears to have been answered in the outcome of the 1999 general election. The Greens gained the seat of Coromandel and 5.1\% of the party vote, thereby securing seven seats in Parliament. They have also consolidated an adequate basis for an electoral alliance by promising support for the Labour-Alliance coalition in matters of confidence and supply, and a congenial working relationship.

\textsuperscript{115} Ibid., p. 171.

\textsuperscript{116} Rainbow, \textit{Green Politics}, p. x.
However, several points, including some aspects of the 1999 general election, should be considered when assessing the likely prospects for The Greens in even the short term. Firstly, with regard to the election, apart from the question of genetic engineering, comprehensive green issues were almost entirely lacking from the campaign. Arguably, a significant segment of “middle New Zealand”, disillusioned with both Labour and National, and uncomfortable with the idea of supporting the stridently New Right Association of Consumers and Taxpayers (ACT) or The Alliance, instead voted for The Greens as an attractive and apparently innocuous alternative, rather than out of green conviction. Finally, not only did The Greens conduct a highly comprehensive and effective campaign, both domestically and among the large expatriate communities in Australia and in London, but their efforts were probably assisted in no small degree by National’s inept, inaccurate and arguably illegal efforts to discredit them. To this extent, the result could be termed artificial.

Secondly, senior National MP Simon Upton posits The Greens in Parliament goading the not entirely ideologically dissimilar Alliance into making demands upon their Labour coalition partners that the latter, bent upon steering a course appropriate to the prevailing economistic milieu, will be unable or unwilling to meet. Consequently, the minority Labour-Alliance coalition will collapse and the Right Wing “natural party of government”, that is, National, supported by ACT, resume its rightful place in power. Labour and The Alliance will be banished once more to the opposition benches, and The Greens will be consigned to oblivion.

Such a scenario makes the assumption, among others, that The Greens will stubbornly maintain their green credentials and not be prepared to play politics-as-usual. In other words, they will fail to give the green theory of value precedence over the green theory of agency. However, such is the determination of the Labour-Alliance coalition to succeed, and so arguably eminently practical are The Greens, that

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117 The opposition parties’ policy to end logging of indigenous forests directly affected only the West Coast electorate.

the outcome of the 1999 general election probably represents the best chance to date for the reshaping of “politics as we know it”. It yet remains for The Greens to persuade, first the Labour-Alliance coalition, then, in 2002, the electorate, to adopt the most urgent aspects of their environmental policy.

This chapter has argued and established the green credentials of Goodin’s green theory of value. It has also argued its utility as the basis for the political agenda of a stand-alone political party. Much of its political agenda is in fact that of Die Grunen, a stand-alone party whose manifesto provides the universal model for green parties, including The Greens in New Zealand. Such a manifesto could provide effective policy for the protection for fisheries and the aquatic environment that this thesis will argue is so far lacking in New Zealand’s environmental policy. Its next task is to argue and demonstrate the nature of the policymaking environment in which the agenda of The Greens will be pursued and the degree to which this environment is an obstacle.
Chapter Two

The Policy Arena in New Zealand

No wonder government is distorted. The country seems to be run by uneducated philistines who live in forts.

Brian Easton

The concept of decency – even of morality – has no place in the ‘real’ world of the market economy.

Tim Hazledine

Chapter One placed Goodin’s green theory of value in philosophical context, then argued its validity as a moral green value and its suitability as the basis for the political agenda of a green party. In New Zealand, such a party is represented by The Greens. The aim of Chapter Two is to argue the nature of the milieu in which The Greens, assisted by the environmental groups, must presently promote their political agenda. It will also provide some initial insights as to how and why policies pertaining to natural resources are so much at variance with those derived from a political agenda arising from Goodin’s green theory of value. To achieve its aim, the chapter will, first, briefly examine the ideas of economics, public policy and public management that, since 1984, have underpinned the policymaking processes in New Zealand, and argue their suitability in a climate of environmental crisis. The chapter will then examine how government actually operates in New Zealand and discuss its degree of democracy. Finally, this chapter will determine the nature of policy advice, its range of sources, and the manner of its provision. It will set the scene for an examination of environmental policy in Chapter Three.

Economics, Public Policy, and Public Management

The serious limitations of the economists’ worldview were examined in Chapter One. The historical record shows mainstream economists of whatever stripe have been myopic in their disregard for the

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vironment. However, the nature of neoclassical economics, which remains at the cutting edge of economic theory, is particularly insular. Lacking a foundation in psychology and biology, its conclusions often describe abstract worlds that do no exist. Not only does neoclassical economics fail to incorporate the environment in its conclusions its most influential practitioners make recommendations as if the environment does not exist. Such intellectual limitations notwithstanding, in New Zealand, US trained neoclassical economists in Treasury, of a type dubbed by Brian Easton radical monetarists, have long held sway over economics, public management, and public policy.

Using the opportunity provided by a lack of constitutional safeguards unique among Western democracies, together with economic stagnation and a change of government in 1984, these officials set about successfully establishing a market economy and dismantling and privatizing the public sector in a manner equally unique among Western democracies. They would be greatly assisted in this task by ideologically compatible members of the Fourth Labour Government, including the Minister of Finance, and a business community represented by the Business Roundtable (BRT). Given the pervasive nature of the prevailing economistic narrative stream, together with the inherently anthropocentric character of New Right ideology, it is axiomatic that those conducting this exercise belonged, to a man, to Wilson’s hypothetical new species, shapechanger man.

The public sector “reforms” largely consisted of a four pronged radical attack on the existing structure of a career public service. Of these four prongs, the first two belong to an extreme laissez faire ideological tradition of minimal state involvement in the public sector and no involvement in the private sector. The first prong is public choice theory, which assumes that humans are little more than self-interested economic beings and sets about countering the situation in the bureaucracy. It avoids the alleged “empire building” among bureaucrats by separating the tendering of policy advice and implementing of policy, and by ensuring maximum private sector participation in both these and in service provision, in the latter via contestability. Critics of public choice theory, a cornerstone of public policy in New Zealand, insist that humans are not merely self-interested economic beings and are

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4 See Brian Easton, In Stormy Seas: The Post-War New Zealand Economy, Chapter Two.

capable of altruism. Failure to recognize this fact can be argued to have led to the virtual destruction of the old career public service, with its breadth and depth of institutional memory in Departments of State such as the former Ministry of Agriculture and Fisheries (MAF). It can also be reasonably argued that the public service has been largely replaced by the avowedly self-interested economic beings of the private sector, like those in the corporate membership of the BRT and the Seafood Industry Council (SeaFIC).

The second prong of the attack, agency theory, holds the same dim view of humanity, albeit a more selective one, when in public sector employ. It assumes the probity of principals, whose task is to ensure the honouring of contracts made with inherently wayward agents. Inevitably, application of agency theory to the public sector, as to the private, results in a plethora of transaction workers, monitoring a corresponding dearth of transformation workers. For example, in the case of the Ministry of Fisheries (MFish) and the Department of Conservation (DoC), large numbers of managers, concentrated in Wellington, supervise a corresponding lack of fisheries inspectors and field officers respectively.

The third prong, transaction-cost economics (TCE), concerns itself with the contract for labour and the exchange of services. It postulates that some transactions are compatible with market-type arrangements, whereas others are best handled within hierarchies or rule-governed organisations, such as public bureaucracies. External contracting is deemed to be best when behavioural uncertainty is low and arrangements are simple and straightforward, for example, rubbish collecting. In-house transactions are preferred in situations where the opposite conditions obtain, for example, in policing, diplomacy, and national defence. However, and paradoxically, in New Zealand, in situations where behavioural uncertainty will be shown to be extremely high, such as, in matters pertaining to fisheries and the aquatic environment, the provision of services, research and compliance, external contracting is

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6 Ibid.

7 In defence of its decision to continue the practice, common since the 1984 reforms, of seeking highly expensive private sector policy advice, the Labour-Alliance coalition Government justifies its action on the grounds that the public service has become "seriously dumbed-down". RNZ "RNZ News" and "Checkpoint", 5 February 2000; TVNZ TV1 "One News", 5 February 2000.

8 Boston, et al., Part One.

9 See Hazledine, p. 203 and Chapter 12.

10 Boston, et al., Part One.
The fourth prong, new public management (NPM) derives from the theory of the generic manager and the idea that government agencies can be seen as businesses. In New Zealand, the influence of NPM upon the public sector has been pervasive. However, the historical record since 1984 clearly indicates that many government agencies, for example, the public health service, cannot be successfully run as businesses if success is measured in customer satisfaction rather than profit for the business owner. In addition, the serious charge against NPM that it is a vehicle for particularistic advantage amongst its practitioners has been many times proven in highly publicised cases. In relation to fisheries and the aquatic environment, the influence of NPM can be observed, as will be demonstrated, in the constitutional illiteracy of MFish officials and in their abysmal lack of sensitivity and understanding in dealing with non-commercial institutions like the environmental groups. In sum, it will be argued that the public sector reforms have done as little to benefit fisheries and the aquatic environment, apart from enriching its corporate exploiters, as they have been seen to enhance the commonweal. Finally, whilst a public sector reformed along purely economistic lines bodes ill for wholehearted cooperation with The Greens on the part of bureaucrats, such a situation, whilst unfortunate, is not insurmountable. Bureaucrats can ultimately be brought to heel or replaced if they baulk at policies deemed to represent the public Good.

How Government Operates in New Zealand

New Zealand operates under a modified Westminster system of government, in that it has functioned since 1951 under a unicameral system, but is otherwise superficially similar to that of the

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11 Ibid.

12 It is noteworthy that, when asked on Radio New Zealand's National Programme, in the wake of yet another series of disclosures concerning excessively large terminal payments to sacked senior public service executives, to comment upon any positive outcomes of the public sector reforms, Jonathan Boston, the acknowledged academic expert on the topic, was extremely circumspect, indeed, taciturn, in his response. For whatever reason, the invariably even-handed Boston felt constrained to cite only the fact that it was now possible to obtain a passport in short order, whereas in pre-reform times it had taken weeks. This elicited the reasonable rejoinder that such a bureaucratic efficiency now better enabled citizens, disillusioned with the results of the reforms, to flee this unhappy little land. Yet here had been an opportunity without par to inform an increasingly outraged public of a range of positive outcomes had these actually transpired. It might therefore be reasonably concluded that there were in fact none to speak of beyond the aforementioned celerity of passport processing. "Morning Report", RNZ National Programme, 4 July 1999.

13 Such has certainly been the case with the Labour-Alliance coalition Government since assuming office in November 1999 in its dealings with bureaucrats in Timberlands and Television New Zealand.
parent British system. Parliament in formal session consists of the Governor-General (G-G) and the House of Representatives. In day-to-day operation, without the formal presence of the G-G, whilst the correct term is the House of Representatives, it is commonly referred to as “Parliament” or the “House”. New Zealand’s constitutional structure derives from four principal sources: the Treaty of Waitangi, parliamentary statutes, the common law, and constitutional conventions. A parliamentary statute, the Constitution Act 1986, organises the governmental structure in New Zealand into four parts: the Sovereign, the executive, the legislature, and the judiciary. New Zealand is a constitutional monarchy, with the powers of the Sovereign exercised by the G-G, who is appointed by the Sovereign upon the recommendation of Cabinet. The G-G is little more than a ceremonial head of state proxy for the Queen and cannot interfere with legislation, no matter how bad.

At least until the advent of the loose Labour-Alliance coalition, the executive has reigned supreme. Experience between 1996 and 1999 has shown that, even in an MMP environment, the executive dominates the legislature, albeit sometimes with the degree of difficulty imposed by a slim majority and occasionally wayward “coalition” partners. Within the executive, the Prime Minister (PM), aided by loyal ministerial lieutenants, has ruled firmly over Cabinet and Cabinet committees. Arguably, it is in Cabinet committees that real power in the New Zealand political system has resided. Under FPP the PM and his ministerial confidants dominated their party caucus, which, it is argued, operated as “an anti-Parliament system” and reduced policy debate in Parliament to a “meaningless ritual”. Policy analysts had hoped that MMP would bring change by forcing governments into consultation with other parties. However, as predicted by Colin James, post-MMP polar alignments have ensured little change from the FPP environment.

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19 Boston, et al., pp. 51-52.
The convention of collective responsibility has compelled ministers and ministers outside Cabinet to support “Cabinet” decisions. However, indications of a change to the convention regarding Cabinet responsibility have been signalled.21 Whilst individual ministerial responsibility has never been a New Zealand tradition, the advent of State Owned Enterprises (SOEs) and Crown entities allowed a separation of ministers from the actions of their departments. The result has been that, “power and responsibility for the actions of the state is diffused and distanced from ministers”.22 However, it will be shown that, incredibly, even within MFish, a traditional-type ministry, it was intended that all ministerial responsibilities should ultimately be devolved not to ministerial officials but to industry as envisioned under the Fisheries Amendment Bill (No. 2) 1998.

As is the case with Cabinet committees, there are also standing officials’ committees. In addition, ad hoc Cabinet or officials’ committees may be established as occasion arises. The role of officials’ committees is to coordinate officials’ advice and to ensure officials “look beyond the concerns of their own departments”. Officials’ committees are said to “encourage compromises and pragmatic recommendations to ministers.” Boston and others point out that the other side of this apparently reasonable outcome is that options considered and rejected by officials’ committees do not get presented to ministers. Officials’ committees thus “play a powerful and important gatekeeper role”.23 This thesis will show that, in the fisheries legislation reform process, officials from DoC, MfE and TPK were deliberately barred from participation in the officials committee’s deliberations.

The functions of the legislature are to enact laws and to scrutinise the actions of the executive. However, in practice, the House is a battleground in which parties compete for public favour at the triennial elections.24 The conduct of the House is such that it provides a decidedly less than ideal environment for the production of sound legislation. Typically, legislation is introduced and subsequently passed after having been formulated in the caucuses of the party or parties that in combination command a majority in the House. Bills introduced by the Opposition, or private

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22 Boston, et al., p. 46.

23 Ibid.

member’s bills at odds with the majority party or parties’ ideological bent, are almost invariably defeated. The parliamentary caucus system has the effect of downgrading policy debate, already demeaned and trivialised by ideological squabbling,\(^{25}\) to the aforementioned meaningless ritual culminating in a Bill’s third reading. Examination of the genesis of the Fisheries Act 1996 will tend to confirm this assessment of the legislative process.

Select committees, which scrutinise all legislation other than money bills or bills introduced under urgency, act to ensure that bills better achieve their stated objectives. Their function is not to decide whether a bill’s objective is good or bad.\(^{26}\) Thus, members of the public or representatives of interest groups at odds with government policy will invariably be disappointed after troubling to present their case before a select committee. It will be shown that this was certainly the experience for non-industry interest groups appearing before the Primary Production Committee (PPC) in the matter of the Fisheries Bill 1994.

The New Zealand judiciary is independent, but conservative. In addition to the hierarchy of the civil and criminal courts there are also specialist courts such as the Planning Tribunal, now the Environment Court.\(^ {27}\) As will be shown, the Planning Tribunal established a particularly conservative tradition that the Environment Court appears likely to maintain. New Zealanders do have the unique opportunity afforded by a court of last resort entirely separated from their country’s politics, the Privy Council (PC), residing in Britain.

Aside from this small bonus, it can reasonably be argued that the people have been at the mercy of a uniquely powerful executive, and one that was from 1984 to 1999 thoroughly steeped in New Right ideology. There is no history, and probably little prospect, at least in the short term, of the executive falling into the hands of philosopher kings or polymaths. However, there is reason to hope that, in view of the outcome of the 1999 general election, the executive will no longer be dominated, if not

\(^{25}\) Former PM Geoffrey Palmer’s comment that “The New Zealand House of Representatives is a bearpit of ill-mannered and vituperative political debate to the exclusion of everything else” continues to apply, as even the briefest monitoring of the Concert Programme’s coverage of the House in session will confirm. See Palmer, p. 110.

\(^{26}\) Boston, et al., p. 51.

populated, by what some would consider Philistines. Yet the Labour-Alliance coalition, under the watchful eye of The Greens, will be severely constrained within a business/bureaucratic milieu dominated by New Right beliefs. Such constraints notwithstanding, the immediate task of The Greens is to promote their green political agenda among their Labour-Alliance parliamentary colleagues. At the same time The Greens must actively persuade the electorate of their agenda’s relevance to the public Good, particularly, in the matter latterly under discussion, its promotion of a healthy democracy hitherto demonstrably absent from Government.

The Nature of Policy Advice and the Manner of its Provision

Boston and others note that the provision of advice to Government is “intensely political”, that is, ministers want advice that serves their political purposes. This is the crux of the matter. Theoretically, New Zealand governments obtain policy advice from a “wide range of sources”. These include policy advisers and analysts employed within government departments and agencies, Royal Commissions, committees of enquiry, taskforces, expert advisory panels, political advisers, caucus committees, select committees, academics, party members, lobby groups, and members of the public. However, this thesis will reduce its focus chiefly to two sources of policy advice, namely, advice provided by the public sector, and advice offered by the private sector.

Policy analysts working within the core public sector are either employed on open-ended contracts or are engaged on short fixed-term appointments. Whilst these departmental advisers “are generally not permitted to go beyond their designated domain or to offer services to ministers other than their own”, some domains are obviously all-embracing, for example, MfE and Treasury. However, whereas MfE has little mana and wields no political clout, no matter its ability “to comment on a wide range of issues”, Treasury is the dominant force in the public policy community. Of course, such power in a “normal” bureaucracy should be little cause for concern. After all, the “vital and abiding importance of fiscal policy”, over which finance ministries are the watchdogs, means that Treasury should quite

30 Boston, et al., p.122.
properly comment on all matters with economic or financial implications, that is, everything.\textsuperscript{31} However, New Zealand’s bureaucracy is unusual and Treasury, alas for some, is patently not a treasury usually associated with the workings of a Western democracy.

Arguably, New Zealand’s bureaucracy is unique by Western standards, by reason of its having been almost totally reformed according to an unswervingly New Right ideological model resulting in a small and powerful managerial elite enjoying particularistic advantage. So too has Treasury’s intrinsic power been strengthened to afford it a position equally unique among Western democracies. Boston and others list the factors that contributed to this overwhelming power base as follows:

\begin{itemize}
  \item[a.] the relative robustness of its philosophical framework rooted in neo-classical economics and organisational economics, the absence of a widely accepted alternative framework, and the conscious decision to apply its framework to policy matters that had not previously been seen to fall within the Treasury’s immediate area of responsibility (e.g., the organisation and administration of education, health care, scientific research, etc.);
  \item[a.] its close relationship with a series of powerful and determined finance ministers;
  \item[b.] the gradual removal or downgrading of institutional rivals (such as the Ministry of Works and Development), and the absence of a large and powerful Prime Minister’s Department;
  \item[c.] its capacity to recruit and retain a large team of generally highly trained policy analysts (mainly economists);
  \item[d.] the support of key individuals in other influential departments, sectoral groups, and the financial community; and
  \item[e.] the boldness with which it has advanced its policy prescriptions (which included the publication of book-length treatises in 1984 and 1987 setting out its blueprint for the liberalisation of the New Zealand economy and the reform of the public sector).\textsuperscript{32}
\end{itemize}

Unsurprisingly, Treasury’s ability to produce huge amounts of advice has been greatly assisted by a level of funding that is enormous by comparison with other policy ministries. Boston and others note that, in 1994-95, Treasury was allocated some $50 million to provide policy advice, an amount one sixth of the total appropriated by Parliament for policy advice, and more than twice as much as was

\textsuperscript{31}Ibid., pp. 124-125.
\textsuperscript{32} Ibid., p. 125.
allocated to any other department for the same purpose. Although Treasury is already well stocked with policy analysts, much of this largesse is spent on private consultants, many of whom are former Treasury officials. However, Treasury is by no means alone in its reliance upon advice from the private sector. For example, between late 1990 and mid 1993, the Ministry of Health spent no less than $11 million on a total of 377 private consultants. Boston and others point out that, unsurprisingly, "the main direct beneficiaries of this growing reliance on consultants have been in accounting and stockbroking firms", and Treasury’s contacts among the "burgeoning number of policy-oriented consultancy firms".

Growing public concern over this peculiar state of affairs prompted the Audit Office to investigate the matter in 1994. The Controller and Auditor General found that, whilst the hiring of consultants was sometimes appropriate and legitimate, the manner in which this was carried out was inappropriate and untidy in the extreme. Of particular concern was the failure of departments to review or evaluate the work undertaken by consultants, resulting in an inability to "show that they had achieved a cost-effective result and learned lessons for the future". The Audit Office hastened to provide a detailed checklist of good management practices to which departments should adhere when engaging consultants. That such woeful shortcomings as those demonstrated by Treasury and others should obtain after almost a decade of Treasury-led reform allegedly designed to bring good governance to the public sector, says little for the reforms' effectiveness.

The dominance of Treasury in policy making cannot be overemphasised. Particularly germane to this thesis is the fact that Treasury advice dominates in matters relating to the environment, conservation, and to scientific research. Such dominance would be all to the good if the advice were appropriate and constructive. However, Brian Easton’s *The Commercialisation of New Zealand* shows conclusively that Treasury lacks the intellectual wherewithal, both in-house and from among its many consultants, to provide appropriate advice on almost anything relating to the realities of existence, let alone those falling within the immediate ambit of economics. In a deeply disturbing chapter entitled "The

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33 Ibid., pp. 125-126.
Treasury: Philosopher Kings for Commercialisation”, Easton shows just how Treasury came to be in this sorry state, from which it nevertheless continues to dominate policy.

Until at least the mid 1970s Treasury had operated according to the traditional bureaucratic mode which relied on precedent. The system subsequently underwent a breakdown the details of which are unknown even to a specialist like Easton. However, it is known that by the 1980s many senior staff had left, and with them too went the institutional memory upon which the precedents were based. However, the young newcomers, fresh from graduate school in America, were not interested in precedents, which involve history. Neither their generation of economists nor their successors studied history or the liberal arts. Easton points out that economists have no interest in the past, hence the phenomenon of Treasury’s turning down the opportunity to commission a history of itself. Consequently, rather than checking their policy decisions against a collective memory, these young officials enthusiastically checked them against an analytical framework with which they were entirely familiar, one based upon the most extreme version of New Right economics. Theirs would be the methodology of Chicago and non-Chicago economists with their “tight prior” definition of Pareto optimality, but with the Chicago school’s further assumption that the world is in a nearly Pareto-optimal state, or would be if only governments were to do the minimum of intervention. Easton points to the fact, frightening in the case of an all-powerful organ such as Treasury, that, methodologically, a tight prior is a theory almost invulnerable to challenge by empirical evidence. The tight prior remains inviolate even under challenge, because “auxiliary hypotheses are added to the core of the theory to protect it from any anomalies or inconsistencies”.

Given its loss of institutional memory, its proven propensity for consultants, and the patently narrow education of its officials, it is safe to agree with Easton that Treasury “literally lacks intelligence”. Aside from consultants, whose background in any case is mainly identical to that of its own officials,

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37 "The tight prior equilibrium is rooted in the hypothesis that decision makers allocate the resources under their control that there is no alternative allocation such as that any one decision maker could have his utility increased without a reduction occurring in the expected utility of at least one other maker." See Melvin Reder, ‘Chicago Economics: Permanence and Change’, Journal of Economic Literature, 20, 1982, p.22. Vilfredo Pareto, was an Italian social scientist who postulated that a change improves welfare if someone is better off, and nobody is worse off. Pareto incrementalism is “the strategy that a policy initiative should not make anyone worse off”. See Easton, The Commercialisation of New Zealand, p. 46.
38 Easton, The Commercialisation of New Zealand, p. 93.
MADAM, YOUR SON CAN NEVER LEAD A NORMAL LIFE. HE HAS ABSOLUTELY NO GRASP ON REALITY...

YOU DON'T MEAN?...

YES I'M AFRAID SO. THERE'S NOTHING FOR IT. HE'LL HAVE TO BECOME A TREASURY ECONOMIST...
Treasury depends for its intelligence upon "the collecting of information from other departments and from other sources such as newspapers and financial market commentators". The inevitable result is that Treasury officials often give advice on matters with which they are personally unfamiliar. Anecdote is served in place of practical experience. Easton postulates that whilst Treasury probably recognized its intelligence problem, its tendency to continue to tolerate the lack stemmed from "the university training most economists get, which typically involves academics as isolated from the practicalities of the economy as their students". Whatever the case, by the time the intelligence problem was recognised, Treasury was "totally committed to the Chicago school approach which emphasised theoretical rigour, at the cost of less attention to empirical facts because they may conflict with the model".39

Treasury, however ill equipped, is the chief source of advice to Government. Other departments, decimated as a result of the reform process, and now in any case imbued with the same ideology as that which drives their colleagues in Treasury, are equally of little value in tendering good advice, either to Treasury or to Government. Boston and his colleagues point to a dearth of expertise in "some policy fields", and note that the "quality of advice from certain departments is a continuing source of concern to the central agencies and various ministries". It is a matter of record that, in some key areas, there is an absence of good data, insufficient policy-oriented research, and little in the way of systematic policy evaluation. The constant "restructuring" of departments, with the inevitable attendant loss of morale, institutional memory and experience militated against their tendering good advice. Boston and others suggested in 1996 that "a period of relative institutional stability would thus not go amiss". Such stability obtains to the extent that the dictates of the "hegemony of the market-liberal paradigm" have largely been met within the departments. However, this thesis will show that the loss of a range of experienced personnel in both DoC and MFish leaves them incapable of providing broad-based policy advice.

One example illustrates the almost incredibly narrow thinking at the core of policy advice. In 1994, the State Services Commission (SSC) introduced the concept of strategic result areas (SRAs), which

39 Ibid., p. 91.

40 Boston, et al., p. 140.
were designed to provide a focus upon items condensed from Government’s 1993 document, *Path to 2010*.41 The SRAs set out the contribution that the public sector was to make toward achieving Government’s strategic vision for New Zealand.42 Public servants concerned with a policy development would be required to check to see whether a proposal came within the area covered by one of the SRAs. The SRAs were linked to the operations of departments through key result areas (KRAs), which were developed from and took account of the SRAs for the public service as a whole.43 The SSC and Treasury are the two “control ministries”.44 Whilst the SSC’s policy preferences during the immediate post 1984 period differed at times from those of Treasury, being somewhat less extreme than Treasury’s goal of total state abandonment of responsibilities to the market,45 its similar dearth of intellect and vision is apparent in the appallingly narrow range and depth of the SRA topics. On the face of it, there is demonstrated here little hope for the future recovery of the natural world, because the dominant, narrow-focused narrative stream of economic development simply does not allow for the required change of thinking. The nine SRAs, which reflect this state of affairs, are as follows:

1. Maintaining and accelerating economic growth
2. Enterprise and innovation
3. External linkages
4. Education and training
5. Community security
6. Social assistance
7. Health and disability services
8. Treaty claims settlement
9. Protecting and enhancing the environment46

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41 Ibid., p. 282.
44 Which, together with the Department of Prime Minister and Cabinet (DPMC), comprise the three "central agencies" of government. See Boston, *et al.*, p. 12.
Easton’s examination of the content of items four and nine confirms the contention stated above. According to the myopic, economy-oriented mind set of the SSC, education and training is to consist of “Progress towards higher and more appropriate skill development to support the achievement of stronger employment and income growth”. It can only be concluded from this SRA that the public education system is to focus on job training, with no regard for the main purpose of an education in a civilized society, namely, the instilling and nurturing of an ongoing process for the living of a full and productive life in a world fit for all its inhabitants, both human and nonhuman. Of course, in the matter of tertiary education, such a narrowing allows education to be defined as a private Good, with the burden of funding increasingly shifted from the state to the student. Protecting and enhancing the environment, presented in the inevitable language of the “market newspeak” noted by Jane Kelsey, is to consist of “Protecting and enhancing our environment in a manner consistent with maintaining environmental values in a growing market economy. Environmental outcomes will be achieved through means that impose least cost on the economy and the environment”. It requires little imagination to calculate the effect upon the environment of people trained only to support the achievement of stronger employment and economic growth.

Present and future generations of students are apparently to receive an education in the form of job training, with no emphasis on life skills and the notions that are associated with good citizenship. Where does the public sector, which has provided such an appallingly inappropriate educational SRA, stand in the matter of ethics? Boston and others note that the public service has, in accordance with Parliament’s wishes, “self-consciously distanced itself” from the culture of the “old” public service. This new public service, they observe is dominated by the paradigm of neo-classical economics, and the “technocrats” who operate strictly within its parameters. This dominance “has seemed to place a discount on the contribution that can be made by other approaches to public policy and management”. With exquisite circumspection when touching upon a subject that has engendered such widespread and

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47 Easton, Listener, 1 June 1996, p. 58.


49 Ibid., pp. 335-336.

50 Easton, Listener, 1 June 1996, p. 58.

51 Kelsey, Chapter 3.
sustained public outrage, Boston and others note that “such major policy initiatives as the reform of the health sector have demonstrated an unwillingness to appreciate the ethical questions involved in such a large implementation exercise”.52

State Services Commissioner Don Hunn, in what Boston and others deem to be “a somewhat Delphic remark”, observes that “there isn’t any doubt there is a cost for [improved management in the public sector] and the price is the old ethic”.53 The public sector, in modelling itself upon the private sector, has also, inevitably, adopted the private sector’s ethical stance,54 which is based upon the latter’s interpretation of how the market economy works. Unfortunately, as noted by Tim Hazledine at the head of this chapter, “The concept of decency – even of morality – has no place in the ‘real’ world of the market economy”. A system of public management that assumes people to be opportunistic merely encourages people to act accordingly. The public sector, like the private sector, has little place in it for Tim Hazledine’s “virtue ethics”, that is, “good people behaving well”.55 However, the SSC’s The Senior Public Servant does at least address the question of ethics, covering the subject with laudable economy, and concluding with the pronouncement that “ethics is concerned with what ought to be done in a given situation, both at an individual and at an organisational level”.56 This definition should find comfortable accommodation in a public sector operating in accordance with an ideology that provides such blissful certitude about what ought to be done.

It remains to examine the private sector as a source of policy advice. This requires some understanding of the nature of the relationship between interest groups and government, as viewed within the context of the theories of Neo-Pluralism and Corporatism. Whilst the theory of Neo-Pluralism retains the significance attributed to competition among interest groups assumed by Pluralism, for example, SeaFIC and the environmental organisation ECO, Neo-Pluralism explicitly

52 Boston, et al., p. 331.
53 Quoted in Ibid., p. 332.
54 Which, if the proceedings of the Winebox Inquiry are anything to go by, proceeds on the premise that there should be no ethical standards. The argument offered on behalf of the financial institutions was that, while their actions were not ethical, neither were they illegal. Unethical behaviour was regarded as normal business practice. See Jesson, p. 126.
55 Hazledine, Chapter 20.
acknowledges that, within civil society, some groups are more powerful than others. Business, as represented by the seafood industry, New Zealand's fourth-largest export earner, is more powerful than an environmental group like ECO whose only income derives from public subscription. Governments, in their single-minded pursuit of economic growth, must maintain business confidence, and, in order to do so, must pay special heed to the demands of the business community. In a capitalist society like New Zealand, whilst the public sector is controlled by Government, the private sector is controlled by business. Because private sector investment behaviour determines most employment and associated social and economic activity, and ultimately, through taxes, allows Government to administer the public sector, the private sector is entitled to a privileged position relative to other groups.57

As for Corporatism, corporatist theory posits that public policy is shaped by the interaction between the state and the interest group(s) recognized by the state. "Interaction among groups is institutionalized within and mediated by the state".58 Public policy is made through negotiation, brokered by government. However, Corporatism is found by this thesis not to describe New Zealand processes in a vital area. Whether negotiation takes place plainly depends upon something more than the "recognition" of interest groups by the state. Crucial to entry into negotiation is the nature of the groups involved and the degree of intimacy of their relationship with the state, in accordance with the theory of Neo-pluralism. As will be shown in the case of commercial fisheries, whereas negotiation does indeed take place between industry and Government, environmental and recreational interest groups are merely consulted. However, Corporatism does apply to the New Zealand case to the extent that, "The state is not seen as a monolith, but as an organisation with internal fissures that affect its action".59 Hence the virtual exclusion alluded to earlier, by the SSC, of both MfE and DoC from the fisheries legislation reform process later examined.

Whilst the state in a capitalist society has always recognized the business community as its most important source of private sector policy advice, and none more so than in a society captured by New Right ideology, New Zealand's case is especially unique. According to Don Brash, governor of the

58 Ibid., p. 37.
59 Ibid.
Reserve Bank, a "small but strategically influential team" of "quite remarkable people" got together in 1984 and "understood clearly what needed to be done and was committed to seeing it through".60 Included among their number, as was earlier noted, was a significant group of businessmen. It is not germane to the topic of this thesis to explore beyond comment the fact that these remarkable people of the public and private domains saw fit to open New Zealand's tiny economy, without reservation or safeguard, to the global marketplace. This is something even the US, with its enormous domestic economy, does with extreme selectivity and self-interest. It is, however, of great significance to this thesis that the resulting devastation of the productive economy and the subsequent high unemployment and social disintegration was the outcome of control of the policy making mechanism being seized by those of a narrowly economistic bent.

The businessmen among Don Brash's team of quite remarkable people belonged, largely, to the BRT.61 The BRT originated in the late 1970s when a group of powerful Chief Executive Officers (CEOs) met to support the Employers' Federation in a bid to disempower the unions, and was subsequently formalised in 1980 and given the title of Roundtable.62 The BRT's executive director, Roger Kerr, states that the organisation in its present form came into being as a response to the 1984 Economic Summit convened by the incoming Labour Government. In 1986 the BRT established a permanent office and began to employ staff.63 Kerr was recruited from Treasury, where he had been a principal author of the transformation publication Economic Management: Post Election Briefing to the Incoming Government, 1984.64 Kerr's recruiter was Ron Trotter, managing director of Fletcher Challenge and chair of the BRT. Bruce Jesson's claim that the membership of the BRT is indiscriminate in its taste in political parties but single-minded in its ideology, and will fund any party that will further their New Right agenda, is confirmed in the historical record. The BRT supported successive New Right ministers of finance and their separate parties, namely, Roger Douglas and the

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60 Donald T. Brash, 'New Zealand's Remarkable Reforms', an address to the Institute of Economic Affairs (Fifth Annual Hayek Memorial Lecture), London, 4 June 1996, p. 13.


62 Harris and Twiname, p. 17


Labour Party, and Ruth Richardson of the National Party.  

Unsurprisingly, the BRT is excoriated by its critics, who claim that its political activities are, to all but the most naïve, or to the most ardent of its admirers, nothing but an undisguised self-serving programme of a self-interested elite. However, Kerr is apparently quite convinced that this is emphatically not the case. In the world as perceived by “this driven man”, the pre-1984 business environment allowed vested interests to unduly influence policy makers for their own selfish ends, whereas the BRT is committed to the national interest. The BRT knows it is committed to the national interest for the reason that it is also committed to ideas. These ideas, based upon the works of Hayek, and his disciples who offer themselves as individual experts and as distinguished members of institutions and New Right think tanks, tell the BRT that it is committed to the national interest. This is, of course, in perfect accord with the idea that the private Good meets the public Good, but just how the BRT achieves this happy result, whereas the pre-1984 business environment did not, is not explained. However, the reason why the BRT proceeds in such a serene state of certitude is readily apparent. The historical record plainly shows that, in order to make sure that its received ideas are proceeding along the right track, the BRT take great care in commissioning studies only from “overseas academics who belong to an international New Right circuit”. That is, it seeks answers to policy questions from sources that accord strictly with its own ideology. This thesis can but agree with Jesson’s remark that such shallow behaviour “makes a statement about the intellectual depth of the New Right in New Zealand”.

Jesson points out that the reason the BRT is demonised by a large section of the public is that its

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67 See Harris and Twiname, Chapters 2 and 3.
69 Harris and Twiname, Chapters 2, 3, and 4. See also Jane Clifton, ‘Dining at the top table’, Sunday Star Times, 14 July 1996, Section B1. In matters environmental, the BRT has since the very outset of the global warming scientific debate brought in overseas academics from among the ever-diminishing band of global warming deniers. The latest import openly admits to being in the employ of the US coal industry. “Assignment”, TVNZ TV1, 20 April 2000.
power is political, and not intellectual, as demonstrated above. Arguably, the BRT is the political expression of the will of the business community, with a few notable exceptions such as Hugh Fletcher and Dick Hubbard. It certainly represents "the major corporations in the land", as a quick perusal of the list provided by Harris and Twiname will confirm. A number of members are CEOs from the US on short-term contracts who have little knowledge of New Zealand's political, social or natural history, and who dwell within the certitude that what is good for the US is good for the rest of the world. It is noted that SeaFIC, formerly the NZFIA, has been ably represented in the BRT by Brierley Investments Ltd (BIL), parent of Sealord.70 The BRT produces a huge amount of literature,71 and Kerr "assiduously presents its point of view to organisations that wield power and influence". He speaks to select committees, local government councils, and to other business organizations, and, as sagely observed by Jesson, "is taken seriously more because of who he is than for what he says". Kerr's articles appear regularly in the business and daily papers.

It is, according to Jesson, "a case of power talking to power", but, importantly, he also believes that, "It would require considerable naivety or considerable conceit to believe that it was a case of minds meeting minds". Jesson further believes that even greater conceit would be required to believe some intellectual battle had been won in New Zealand by the BRT and the rest of Don Brash's team of quite remarkable people. Jesson articulates a widespread public perception, namely, that the total public policy change in accordance with New Right ideology was imposed on New Zealanders against their will and by stealth, by successive governments and their mainly Treasury and BRT advisers. Jesson points out that no one convinced a majority of New Zealanders of the need for such a transformation. Nor ever, he concludes, was a moral battle won by the reformers. Neither Jesson nor Harris and Twiname believe that most people subscribe to the BRT's "brave new world of the market".72 Even Don Brash concedes, with his customary academic detachment, that, "New Zealanders remain ambivalent about, and even in some respects hostile to, the upheaval of the last twelve years".73

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70 See Harris and Twiname, pp. 24-26.
71 Ibid., Bibliography, Part B and Part C.
73 Brash, Hayek Memorial Lecture.
Since its major role in the post-1984 reforms, the BRT has continued to portray itself as representing the national interest. Its position in society is unquestionably unique. BRT members had a pivotal role in social policy and in the privatization of state assets. Harris and Twiname’s exhaustive study concludes that the BRT “has been well organized and active for over a decade and during that time it has not only been able to exert influence on our national development but it has also refined and focused its vision of a society that it wishes to see implemented”. No other business organization, such as the Manufacturers Association or Federated Farmers, can be so described. The economist Len Baylis believes that the BRT “has influenced economic policy in a way that other employers’ groups such as the New Zealand Employers’ Federation can only envy”, and worries that, “The effective functioning of a parliamentary democracy must be at risk when a small group can wield disproportionate influence over the political process”.

Academic analysts, together with political opponents, agree upon the continuing effectiveness of the BRT in attaining its policy goals, at least until the defeat of the Centre-Right government in 1999. In that government’s latter stages, when most of the reforms in which BRT members publicly and officially participated were in place, BRT policy goals were achieved in an indirect manner. Typically, the BRT would promote an arguably draconian piece of legislation which its allies in Treasury, Cabinet, and business organisations such as the Manufacturers’ Federation would subsequently produce in an apparently less extreme fashion and form. The influence of the BRT upon environmental policy, also pivotal, will be examined in the next chapter, as will the role of environmental groups.

It remains to look at the role of the public, that is, the electorate, in policy making. Every three years people have the opportunity to vote in elections for central and local government, and these occasions, apart from referenda, which are not binding on central government, ostensibly constitute opportunities for the public to influence policy. However, experience post-1984 indicates that parties elected to

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74 See Kelsey, Chapter 3.
75 Harris and Twiname, p. 214.
77 Harris and Twiname, pp. 184-186.
power do not necessarily behave as might reasonably be expected by the electorate. Subsequently, if sufficiently riled or otherwise motivated, people can participate in lawful demonstrations to protest against unacceptable government behaviour. At least theoretically, people have further opportunity to influence policy via interest group and individual lobbying of ministers and MPs, and via submissions before commissions of enquiry. For reasons already discussed, select committees provide extremely limited scope for public influence upon the legislative process.

Jesson observes that most New Zealanders “have been excluded from political influence other than in their roles as self-seeking investors and consumers”. This thesis suggests that it is the people as self-interested investors and consumers who have largely rejected the society and environment-oriented “Red/Green” political philosophy of The Alliance. Instead, they have tended to adhere to the selfish “individualism” of the New Right, which guaranteed their privileges as investors and consumers who did not want to pay high taxes, even as they deplored the post reform loss or degradation of tax-financed public amenities such as the health system.

Arguably, the public in New Zealand is singularly ill informed, in politics as in all else. Jesson laments that, whilst “New Zealand’s business and bureaucratic culture is saturated with the amoral attitudes of the New Right”, there is not a single “leftish-liberal” newspaper in any major city, and the Listener is the only such magazine. There is no national newspaper; the only organ affecting such pretensions is the New Zealand Herald, an Auckland-oriented daily with a pronounced lean toward the Right. Jesson is grateful that, “At least when we get to national radio we get an alternative to the pervasive media presence of the New Right”. The electronic media, that is, television (TV) and radio,

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78 Jesson, p. 221.

79 The Alliance garnered 11% of the vote in 1996 and only 7% in 1999; as earlier noted The Greens gained 5.1% of the vote in 1999.

80 John Ralston Saul, in discussing democracy, argues that real individualism has nothing to do with capitalism or the marketplace. Democracy does not arise out of capitalism. Inclusive economics is not possible in a world of interest groups as perceived by the New Right. Self-interest has become the only way of doing things in the current climate, whereas real society is driven by the public Good. John Ralston Saul, "From Naked Ape to Super Species, presented by Paul Suzuki, RNZ National Programme, 2 April 2000.

81 Electoral Behaviour is, of course, an extremely complex phenomenon, upon which this thesis has little space to dwell. See Martin Holland, ed., Electoral Behaviour in New Zealand, OUP, Auckland, 1992, for a wide range of hypotheses that attempt to account for voting behaviour.

82 Ibid., p. 16.

83 Ibid.
are otherwise equally lacking in the quality of their general content. University of Auckland political scientist Joe Atkinson charts the transformation, between 1987 and 1990, of New Zealand’s two-channel TV system “from a fairly staid, state-controlled, public service-oriented setup, into a highly competitive three-channel, market-driven system”.\(^4\) The result, predictable is a “dumbed down” service.\(^5\) Political commentator Tom Frewen describes New Zealand television as “the worst not just in the world but in the universe”.\(^6\)

It is not simply a question of media influence upon “the public mood” during or between election campaigns.\(^7\) Rather is it a matter of whether the public is sufficiently well informed in a general sense to exercise its vote wisely. In his serious, albeit amusing work, Bad Or, The Dumbing of America,\(^8\) the distinguished US historian Paul Fussell offers a list of “BADs”, including “BAD television”, contributing to an ongoing and readily observable phenomenon. The environmental philosopher-geneticist David Suzuki and other respected academics explain that the much vaunted information age is simply not delivering on its promise.\(^9\) It is axiomatic that only an educated\(^0\) and informed public can provide the nation with a Parliament capable of delivering good government.

To summarize, this chapter, after first noting that mainstream economists of whatever stripe have demonstrated a myopic disregard for the environment, demonstrated how, post-1984, US-trained neoclassical economists in Treasury captured economic policy, public policy and public management in New Zealand. Consequently, from 1984 to the 1999 general election, policy advice to government arose from narrow, economicistic sources.

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9 Suzuki and others point out that educative information is simply not being made available. News consists of “crime, happy thoughts, sports and disasters”. Information has become a commodity that “has nothing to do with us”. Furthermore, “habituation” of nerve responses in TV viewers requires, for example, the provision of “green spectacles” to elicit even a fleeting interest in matters environmental. David Suzuki, “From Naked Ape to Supers Species”, RNZ National Programme, 12 March 2000.
10 It should be noted that neither history nor civics is part of New Zealand’s secondary education core curriculum.
This chapter also demonstrated that the system of government obtaining in New Zealand allowed a powerful executive to act upon such advice with minimum impediment or oversight as a result of arguably limited democratic safeguards both within and outside Parliament. However, even a democratically functioning Parliament can only deliver good government if it receives good policy advice. Advice from the public sector, has, since 1984, largely been channelled through Treasury. Because Treasury is steeped in New Right ideology, its advice is invariably in accordance with this creed. In addition, by reason of its generous budget allocation for such matters, Treasury employs the bulk of consultants, largely from among former colleagues and the like-minded in the financial sector. With the exception of Treasury, DPMC, and the SSC, most other ministries and departments lack both the resources and the clout to tender meaningful advice. From 1984, and especially during the initial period of public sector reform, private sector advice came largely from the members of the BRT. Latterly, BRT advice tended to be tendered indirectly.

Theoretically, public participation in the policymaking process via a variety of avenues is enabled through membership in interest groups or as concerned individuals. However, this thesis will demonstrate the difficulties encountered by non-commercial interest groups and individuals when attempting to protect New Zealand's natural resources from what they see as the depredations of powerful commercial interests.

Every three years the electorate certainly does have the opportunity to determine the composition of Parliament and local government and to this extent chooses the policy decision-makers. However, it was argued the New Zealand public has lacked the wherewithal in terms of education and balanced media information to consistently choose parties and parliaments genuinely committed to the public Good discussed by Goodin.

If a green policy agenda similar to that arising from Goodin's green theory of value is to be adopted, The Greens must overcome the difficulties outlined and analysed in this chapter. They must persuade Government to scorn the arguably myopic economic policy advice that has emanated from both the

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91 Treasury's briefing document to the incoming Labour-Alliance coalition, although an obvious attempt to address the issues that concern the public, still carries much of the old thoroughly discredited New Right baggage. See: The Treasury, Towards Higher Standards for New Zealanders: Briefing for the Incoming Government, 1999. The Treasury, Wellington, 1999; Brian Easton, 'Six Pack: A brief review of Treasury's briefing', Listener, 12 February 2000, p. 56. See also Bruce Ansley, 'Human Values: The new economic thinking, from the government to the Treasury and Reserve Bank, puts great emphasis on "social cohesion" — the idea being that only a secure society will produce a vibrant economy. This is the opposite of past
public and the private sector since 1984. Ultimately, The Greens must educate and persuade the electorate to enable The Greens to supplant or at least end the dominance of the traditional parties of the Left and Right which for so long sought and acted upon such environmentally and socially damaging advice.

Next, Chapter Three will complete the tasks of Part One of this thesis as outlined in the Introduction. Its aim is to conduct an examination and analysis of environmental policy in New Zealand and to argue that such policy runs counter to Goodin’s criteria for the successful maintenance of natural resources as established in his green theory of value.
Chapter Three

Environmental Policy in New Zealand

Ours is a world inhabited by human beings, so we must take an anthropocentric view of environmental management. We cannot avoid that intrinsic values have a more limited place in the scheme of things.

Simon Upton

Chapter Two established that, alone among so-called Western democracies, New Zealand policymakers have, since 1984, made an almost total commitment to the ideology of the New Right. This has resulted in the institution of an open market economy, a much reduced public sector modelled on the New Right’s interpretation of the private sector, the arguable abandonment of ethics, the partial dismantling of the welfare state and with it a disintegration of social cohesion and sense of nationhood. New Zealand’s system of government has enabled the executive to pass its New Right policies into law with minimum impediment, post 1996 MMP parliamentary environment notwithstanding. Public sector policy advice has been largely filtered through a Treasury thoroughly steeped in New Right ideology. During the initial stages of the post 1984 “reform” process, advice from the private sector was dominated by members of the BRT which constituted the leadership of the then business community. Latterly, with the reforms largely in place, the BRT has arguably become the political expression of the will of the business and international finance establishment. Its policy advice, invariably market-driven, is tendered to government indirectly through business, departmental or ministerial intermediaries. Public participation in policymaking consists of “consultation”, via such institutions as select committees. The electorate has the right and opportunity every three years to determine the colour and shape of Parliament and of local government. Whilst the resulting governments have demonstrably not reflected the wishes of the majority in terms of social policy the pursuit of unhindered economic growth has met general approval.

Arguably, the outcome of this situation is that New Zealand has operated, with decreasing impediment, as a self-regulating market, Karl Polanyi’s “stark utopia”, in which real things such as

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land, labour and money have become fictitious commodities. The self-regulating market, in which the policy makers of the New Right have absolute faith, operates according to commercial considerations. These considerations have nothing to do with, for example, land, that is, the environment, but when they are imposed upon it, they cause great harm. Furthermore, commerce is now dominated by the finance market, which consists of transactions. These transactions are the result of thought, that is, products of the mind, nowadays transmitted electronically and almost instantaneously around the world. By a simple process, in the minds of finance market operatives, the already fictionalized commodity of the environment itself becomes a product of the mind. As Bruce Jesson observes, “Reality has become ethereal”. It was earlier observed that economists, of whatever school, see the economy as essentially independent of the environment. As the late Professor Julian Simon, who was, according to Fortune magazine, “one of the 150 great minds of the 1990s”, put it, “In the end, copper and oil come out of our minds”.

It is against the surreal setting outlined above that this thesis will define the environmental policy status quo in New Zealand that The Greens must confront. It will begin by examining four central themes of environmental policy development. These are the need for anticipatory policymaking, the need for changing “our” ways, the need for institutional reform to enhance environmental policy performance, and the need for more integrated or comprehensive environmental policy development.

The innovators of modern technology have some excuse for the dearth of anticipatory policy, based upon lack of historical precedent, profound ignorance, lack of imagination, or anthropocentric arrogance. Such is emphatically not the case in New Zealand, where policymakers, while plainly equal to their overseas counterparts in ignorance, arrogance and unimaginativeness, have at least had both the time and the opportunity to learn from the mistakes of other countries. Whilst some “policy learning” in this regard has taken place, at least two factors have prevented the production of effective anticipatory policy. First, domestic demands and vested interests have taken precedence over the need

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3 Jesson, p. 35.
5 Quoted in John M. Gowdy, ‘Progress and Environmental Sustainability’, Environmental Ethics, 16, 1, 1994, p. 49.
7 Ibid., p. 6.
to anticipate as yet non-existent problems. Second, New Zealand’s media-manufactured “clean and green” image makes for a lethally smug sense of environmental invulnerability. It also removes the need to change “our” ways. These factors ensure that anticipatory policy fails to qualify for a place on the environmental policy agenda on several grounds. One of these is the ability of an issue to be exemplified by a particular occurrence or event. Problems like global warming or ozone depletion can be largely dismissed as being outside New Zealand’s control, while others can be totally disregarded as having no relevance in a country strangely exempt, and in denial, by virtue of its spurious clean and green image. Anticipatory policy also fails to find a place on the environmental agenda because it does not “fit in and correspond to prevailing and dominant values”, as interpreted within the “private political world” of the “executive departments of state”. This thesis has already established that the prevailing and dominant values of New Zealand policymakers are those of the New Right, which has an “ethereal” attitude towards the environment that militates against the anticipation of problems.

Unsurprisingly, therefore, the RMA is effects-based rather than anticipatory. Nevertheless, its existence, together with the provisions of the Local Government Amendment Act (LGAA), enable a previously absent integrated approach that could be useful to those with a genuinely green agenda. However, other aspects of the post-1984 reforms of which they were a part, specifically reliance upon the market in the allocation and management of resources, and the previously noted aspects of public service reform, are counterproductive.

The purpose of the RMA is the “sustainable management of natural and physical resources”. As noted in Chapter One, the concept of sustainable management is derived from “sustainable development”, coined in 1987 by the WCED. The RMA’s approach differs from that of previous

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8 Ibid.
10 Buhrs and Bartlett, p. 10.
11 See RMA, Section 5.
12 As discussed, the case for sustainability depends upon arguments over irreplaceability and futurity. However, in practice, sustainability almost invariably involves the highest degree of utility the user can get away with without falling foul of the law. See, for example, Stan Godlovitch, “Things Change: So Whither Sustainability?”, Environmental Ethics, 20, 3, 1998, pp. 291-304. The effects-based approach, as currently applied under the RMA, is merely an update of the old environmental impact assessment, which John Livingstone describes as “a grandiloquent fraud, a hoax, and a con” because it gives the appearance of being for the benefit of the environment while it actually serves the developer. Ecology is thus used as a tool to permit developers to continue to do what they have always done. The only difference is that “environmental impact is to be minimized to an acceptable level”. See John Livingstone, The Fallacy of Wildlife Conservation, McClelland & Stewart, Toronto, 1981, p. 24, quoted in Neil
legislation by concentrating on the environmental effects of human activities, rather than on the activities themselves. Environmental effects become the determining factor as to whether an activity is permitted in any particular location. If the activity can meet a community’s environmental standards, the business is permitted to operate. The rationale for concentrating on environmental outcomes includes the idea that resource users will thereby be provided with the incentive to achieve good environmental results. However, it requires little imagination to conclude just how the system might actually operate in an anthropocentric society under the illusion that it can both have its environmental cake and eat it too.

Central government’s responsibilities are defined as addressing “resource issues of national importance”. It is charged, through DoC, with producing a New Zealand Coastal Policy Statement and it has the option of producing National Environmental Standards and National Policy Statements. The LGAA 1987 rationalized local government and instituted regional councils, and territorial authorities and unitary authorities consisting of city and district councils. Under the RMA, regional councils are responsible for “soil, water, air, pollution and coast” within their areas. They are obliged to produce Regional Coastal Plans and have the option to produce Regional Plans. For their part, district and city councils are responsible for the production of District Plans. Regional and district councils are responsible for Resource Consents and Permits, covering “water, coast, discharge, land and subdivision”. Unfortunately, only some five percent of resource applications are made public. District Courts rule upon matters of “land, subdivision, and noise”. Finally, central government is tasked with integrating “land, air and water Regional Policy Statements”.

The concept of sustainable development was redefined at the UNCED, the second “Earth Summit”, held in Rio de Janeiro in 1992. Under the watchful eye of its own environmental non-governmental organisations (ENGOs), the New Zealand Government had little option other than to endorse the resultant conventions and agreements. UNCED defined sustainable development as “development...
that meets the needs of the present without compromising the ability of future generations to meet their needs”. Whilst the nebulous nature of “sustainability” has already been remarked, and could, therefore, be used by industry in an argument for flexibility in this area, the matter of allowing for the needs of future generations is clear. However, it will be shown that industry has used every opportunity to fight against the inclusion of this principle in fisheries legislation. Likewise will be shown that biodiversity and intrinsic value, both of which are enshrined in the CBD, and which New Zealand ratified on 29 December 1993, are airily dismissed by industry as “the religious bits” of fisheries legislation.

Sustainable development is acknowledged by the MfE to be a “widely embracing concept, requiring environmental sustainability as well as economic viability and social justice”. However, the RMA leaves the pursuit of economic and social goals to other mechanisms, “while recognising that there are social and economic consequences from the use of the resources”. As will be shown, the RMA has tended to function at best as a major irritant to the proponents of “development” and economic growth, rather than as the protector of the environment. Such ineffectiveness notwithstanding, the RMA has been under sustained attack and abuse by the proponents of economic development since its passage in 1991. In 1997, Government would be persuaded by the BRT and other development minded interest groups to commission a report on the RMA by Owen McShane. This resulted in radical proposals for an RMA Amendment Bill that would partially privatize and seriously limit the statutory powers of the Act. All evidence to the contrary, the Minister for the Environment, Simon Upton, would claim that such changes “did not gut the Act or downgrade the environment as the Government’s critics had claimed”. These “reforms” were introduced to the House under urgency in July 1999 as the RMA Amendment Bill, amid outrage on the part of environmental groups and a degree of satisfaction

15 Ibid., 4.23.
16 Ibid., 4.10.
17 New Zealand Herald, 22 August 1994, p. 15.
among farmers, developers, and those of a generally entrepreneurial bent. However, as both Labour and the Alliance, together with The Greens, voted against the introduction of this legislation, its shelving can at least be guaranteed until such time as a majority Centre-Right government should regain power.

An assessment of the RMA from a perspective considerably at odds with that of the BRT and McShane had earlier been made by Julie Frieder of the U.S. Environmental Protection Agency (EPA). Frieder’s 1997 review bluntly challenged New Zealanders’ self-perception as a nation of environmentalists, and commented that, “while this perception could be harnessed to protect the environment, instead it seems to perpetuate denial about the very existence of environmental problems and the need for environmental protection”. Since the 1980s, environmental policy has operated in a mythical climate of ecological well being, generated by a false “clean and green” image. This image, shamelessly promoted by governments, primary producers and exporters, and the tourist trade, has been generally accepted as fact in New Zealand, and, more forgivably, by those members of the international community aware of this country’s existence. The myth can be easily maintained in the age of mass tourism with its increasingly superficial savvy of the natural world and ever shortening environmental attention span. Apart from populated areas, the place generally looks clean, and, except in times of drought, the countryside generally appears green in hue.

Buhrs and Bartlett attribute the origins of the clean and green image to the perception gained from five factors. These include a low overall density of population, a relatively low level of pollution, the existence of large, “protected” areas of scenic splendour, the predominance of primary products in the

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21 Ibid.

22 New Zealanders tend to have a distorted and inflated image of their place upon the world stage and an unreasonable assessment of their significance or even relevance for other people to the fact of their existence. They would surely profit from reflecting upon Brian Easton’s tart observation that, “On the wall maps of the world, New Zealand is behind the filing cabinet”, and upon the notion that if the filing cabinet were removed to reveal nothing but blue sea where New Zealand had once been, only New Zealanders stranded overseas, and perhaps some natural and social scientists, might be concerned over its disappearance. See Easton, *In Stormy Seas*, p. 1, pp. 12-13.

23 This apparent cleanliness is achieved at terrible environmental cost. Most “rubbish” disappears into hundreds of landfills, “the cheap option”, only one of which meets international standards of containment. The inevitable result is leachate contamination of waterways and estuaries. Only an unmeasurable fraction of refuse is recycled in NZ. The only contribution made by the Minister for the Environment, Simon Upton, to addressing the burgeoning problem was his lame insistence that landfills be managed on a user pays principle. “Assignment”, TVNZ TV1, 27 May 1999. It should be noted that these refuse landfills are a separate issue from the problem presented by the more than 7,800 known toxic waste sites, none of which has been addressed owing to a dispute between central government and local authorities over which has responsibility for their disposal. *The State Of New Zealand’s Environment*, 8.62.

24 A greenness acquired at the cost of waterways robbed of their biota through nitrogen enrichment from artificial fertilizers in addition to animal waste, and poisons from pesticides. New Zealand’s apparently properly managed countryside consists, in fact, of an artificially sustained livestock pasture and a monocultural horticulture and silviculture, both environments largely hostile to life other than the stock unit i.e., animal or the cultivated plant/tree species.
economy, and New Zealand’s touted record in recognizing or preventing environmental problems.25 However, on all five counts, reality differs greatly from perception. There is a fast-growing and environmentally uncoordinated concentration of people into urban areas with already inadequate or decaying infrastructures, particularly in the Auckland region, which contains about a third of the total population of 3.6 million. Sewage and heavy metals, the latter deposited by vehicles on a sealed surface area greater in percentage than that of Sydney26 and carried in stormwater runoff, have dramatically affected the biota of the waters adjacent to the Auckland isthmus, namely, the Manukau and Waitemata Harbours and the inner Hauraki Gulf.27 The extent of industrial pollution is largely unknown on a nationwide basis, but is in places significant, serious, and on some sites impossible to redress with existing technology. Most protected natural areas have been established on forestlands already cut over, or in places that were considered unsuitable or too inaccessible for the attentions of the quarry. Once “protected”, these areas have historically been subjected to total neglect, and their biota has consequently suffered terrible and in many cases irreversible damage, largely as the result of the deliberate or “accidental” introduction of exotic species. Remedial action, as in the case of possum control, has almost invariably been incidental to the need to protect primary industries. The exploitation of natural resources has inflicted large-scale destruction or damage on ecosystems and the quality of resources, notably land, rivers, streams, lakes and wetlands, harbours, estuarine and coastal waters, and the continental shelf.28

New Zealand’s record in recognizing or preventing environmental problems can be shown upon analysis to be abysmal. Until relatively recently, Government had a direct role in the development of natural resources, and one that was invariably oblivious to, or uncaring toward, environmental consequences. The high degree of concentration of power in the executive, and the ability of Government to change the law at will, already noted, allowed for no effective opposition on the part of the pioneering “first wave” of conservationists, like Forest & Bird, to destructive, wasteful and careless resource development. On the other hand, those interest groups enthusiastic for resource development

26 In the wake of a visit by an internationally renowned and thoroughly shocked Danish urban environmentalist, North Shore City now bears the damning sobriquet of “Turtle City” on account of its predominantly paved over surface area. NSTA. 10 February 2000.
28 See The State of New Zealand’s Environment; Buhrs and Bartlett, Chapter 2.
unhindered by environmental constraints, such as farmers, quarriers, and the energy industries, have all been given a privileged position in the policy process. In the post-reform era, environmental policies that are perceived to threaten a perpetually ailing economy, or policies that are considered to “distort” the workings of the market mechanism, do not proceed. Whilst environmental groups have achieved a degree of success in gaining public support for halting some of the more visible exercises in ecological vandalism like clearfelling, by securing media coverage of the destruction, such coverage tends to be sensationalist, superficial, and fleeting. As already noted, there are no national newspapers, city newspapers are mainly monopolies of a Right Wing bent, and only one electronic media channel, the ever-threatened Radio New Zealand National Programme, “putting problems on the political agenda”.

Buhrs and Bartlett contemplate the prospects for the “Greening of New Zealand”, and weigh the possibilities for “a change towards a new social paradigm”. They note the “new wave of environmentalism” experienced “since the late 1980s” in New Zealand and in other Western countries. Growing support for environmental issues had manifested itself in a number of ways that included support for environmental organisations. There was also an ambivalent, confused, but mainly friendly public attitude, established in a number of surveys, toward environmental issues. An interest developed in green consumerism, that is, a rising preference for allegedly environmentally friendly products. Unsurprisingly, there was also a display of interest in environmental matters by corporations. There was a revival of a green party in the guise of The Greens, with a resulting “bandwagon effect” amongst the catch-all parties. Such a rise in support for environmental issues and values might have been seen by the optimistic as endorsement for the thesis that a shift toward a new social paradigm was both needed and under way. The relative “upsurge” in environmental awareness could have been interpreted as a recognition that Government had failed to acknowledge and adequately address environmental problems, and that radical changes, in policies and lifestyles, were required.

However, a more careful examination of the various manifestations of the rise of environmental support at that time does not support such a thesis. “Overwhelmingly”, New Zealanders continue to cling to materialist values and are not ready for a radical change in their lifestyles and values. In part,

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Buhrs and Bartlett, Chapter 2.

Buhrs and Bartlett, Chapter 3.
this situation can be explained on the basis of Inglehart’s thesis, which, it will be recalled, posits a relation between economic prosperity and security, and support for postmaterialist values. However, such an explanation of paradigm change is incomplete, for the reason that paradigmatic change encompasses not only a change of value, but also of “behaviour and institutions”. Institutions place significant constraints on values and behaviour, and may explain curtailment of moves towards environmental values and behaviour.31

In consideration of the State as an institution that places constraints on values and behaviour, Buhrs and Bartlett observe that, prior to 1984, the New Zealand State had accumulated a dismal record in managing the environment. The State as energy developer and forest manager was directly responsible for much environmental degradation, a phenomenon known as “State vandalism”. The general withdrawal of government from “business” as a result of the post-1984 institutional reforms, allowed prospects for change, by way of improvement, or maintenance of the environmental status quo in a “market-led” environment. Unsurprisingly, the drive to get government out of business has led to a reduction of direct State vandalism.32 However, this, as Buhrs and Bartlett anticipated, has been succeeded by State sponsored vandalism, through the promotion of policies “which blindly promote economic growth and resource use”, an inevitable outcome in a political climate where “New Right and monetarist policies still dominate efforts to restore economic growth”. However, these policies can have mixed results for the environment, as in the use or non-use of economic instruments, such as charges and subsidies. On the one hand, use of charges, like those associated with commercial fishing, lead inevitably down the path from “user pays, user says”, that is, commercial user control, to potential commercial user destruction of what is, property rights notwithstanding, a public fisheries resource. On the other hand, the aversion of post-1984 Governments to subsidise the farming and forestry industries

31 Ibid.

32 However, state vandalism is still to be found on a significant scale. A shocking example is that perpetrated in 1999 by the state agency Transit New Zealand in the construction of the Orewa to Puhoi motorway, involving the largest earthmoving exercise in the country’s history. Resource consents were readily obtained for the project from both Auckland Regional Council and the notoriously dysfunctional and subsequently disbanded Rodney District Council. However, no environmental experts were consulted and Government had chosen the cheapest construction option rather than one involving minimal environmental degradation. The result has been the needless destruction of a range of unique ecosystems, including those of the West Hoe River where rare and endangered indigenous fish species are now cut off from their spawning areas. See Wendy Pond, “A Saga of Ecological Mismanagement: Transit New Zealand at the West Hoe River”, Pacific World, 56, April 2000, pp. 34-39. Both Transit New Zealand and, incredibly, DoC account for a significant portion of the 3,300 tonnes of pesticide, including 2,4-D, sprayed annually in NZ. Weekly Hansard 6, 15 March 2000, p. 1088.
has at least temporarily slowed down the process of the destruction of indigenous flora and fauna on so-called marginal lands.\textsuperscript{33}

The State’s general disengagement from commercial activity has not, in itself, created a shift toward a more positive approach in environmental policy. Instead, it has “opened the door more widely for environmental vandalism by others, notably in the private sector”. That being the case, it next becomes necessary toascertain whether any sort of safeguards have been set in place to counter this threat. Such a search involves raising the vital question of how environmental decision making outside central government, that is, in local government and in the private sector, is to proceed. It is important to establish whether a framework “for the future development of sound and effective environment policy” is to be found in the following areas: the reorganisation of national environmental administration; the reform of local government; and the introduction of new environmental legislation, in particular the RMA.\textsuperscript{34}

In 1992 it was too early in the implementation phase of the reforms for Buhrs and Bartlett to be able to assemble much evidence of “concrete outcomes”. This thesis has already demonstrated that, in the intervening eight years, such outcomes cannot be so assembled, as \textit{The State of New Zealand’s Environment} so graphically attests.\textsuperscript{35} However, environmentally undesirable developments and trends abound. These include the massive attacks upon the RMA and the continuing irrelevance of the MfE as the RMA’s advocate\textsuperscript{36} together with the insipid responses of its late Minister Simon Upton in promoting and enabling the implementation of the stated purposes of the RMA.\textsuperscript{37} The ongoing process of the commercialization of DoC is of major concern to greens.\textsuperscript{38}

\textsuperscript{33} Buhrs and Bartlett, Chapter Four.
\textsuperscript{34} Ibid.
\textsuperscript{35} See ‘Death of the Delusion’, ECOLINK, October 1997, p. 5.
The environmental reforms, like all policy reforms, arose out of politics, and their end effect on environmental quality is mediated by politics. They were incorporated within the post-1984 “sweeping reform effort”, which was prosecuted with unswerving consistency. Thus, although the ideas of the organised environmental groups can be detected in the substance and character of some portions of the legislation, the environmental reforms were all “cast, shaped, and limited so as to be consistent with the theoretical and ideological underpinnings of the overall reform programme”, first that of the Labour Government, and finally that of their National successors. Whilst the linkage of local government reform with resource management reform was not a Treasury initiative, both the reforms and their linkage accorded well with Treasury’s and the “Robergnomes” views on rationalization and on the inhibiting nature of existing resource statutes. However, in the case of a MfE that would combine all the major conservation responsibilities and fulfil a planning and regulatory role, as envisaged by the environmental groups, Treasury used the bogey of potential capture of the policy process to ensure MfE’s ultimate role as a toothless “environmental policy advising ministry”, with DoC and the Parliamentary Commissioner for the Environment (PCE or CfE) as operational and auditing appendages respectively.

Although the prospect of a comprehensive RMA was anathema to such generally unreflecting groups as the fishing industry, Federated Farmers, and the “developer” fraternity, the project did not otherwise excite great controversy. Treasury, and any other agency which understood the implications for something that was to be “a framework rather than a blueprint”, were content to see an RMA in such form pass into law. The environmental groups, aware that they were not about to secure anything more substantial, maintained a “lukewarm support”. Overall, the project enjoyed “wide appeal” because of its emphasis on public consultation in the review process, and because the proposed legislation was written in such a way as to leave many issues undecided. Although the RMA’s single stated purpose is “to promote the sustainable management of natural and physical resources”, fisheries were omitted and mining exempted from the principles of sustained management, decisions which returned the two associated extraction industries to a state of calm. Thus, although the Labour Government failed to secure passage of the legislation, largely as a result of controversy and debate

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39 E.g., Section 7 of the RMA includes the requirement for particular regard to “Intrinsic values of ecosystems”, carried over from the Environment Act 1986.

40 Buhrs and Bartlett, pp. 114-121.
over the few stated specifics, before their ouster in the 1990 general election, their National successors were happy to allow its passage in July 1991.41

The post-1984 policy changes, including privatization, corporatization, commercialization, reform of the public service, economic incentives instead of direct regulation, and the rationalization of local government, applied to environmental policy as to all else. In addition, the environmental policy system was further changed by the reorganization of national environmental administration and the recasting, through the RMA, of “environmental policy structures, processes, rules, opportunities, responsibilities, roles, duties, resources, interests, powers, and language”. However, there would be little discernible improvement in environmental policy arising out of such massive change. Whilst the pre-reform bureaucracy contained precious few environmental advocates or even “friendly ears”, and some of the more powerful bureaucratic opponents of environmental values, like the Ministry of Works, have disappeared, certain features of the old political system remain firmly in place. The most significant of these is the already examined “relatively unfettered policy dominance of the Cabinet over the national legislature and executive”, MMP environment notwithstanding. Whilst the MfE, CfE and DoC do enjoy “a degree of bureaucratic autonomy and a potential for policy influence that was not possible under the previous system”,42 their potential can only be realized in a sympathetic policymaking climate.

One prerequisite for change resides in the matter of funding for environmental advocacy, which was consistently resisted by the late Centre-Right government.43 Such funding could be administered by the CfE, who in 1996 confirmed that the public had no access to meaningful participation in matters affecting the environment.44 W.C. Clark, emeritus professor of zoology at the University of Canturbury, states unequivocally that “Government funding for environmental advocacy is not a luxury, it is a necessity”. In an incisive article in the *New Zealand Herald*, Professor Clark reminds his readers that neither DoC nor MfE, but, rather, public environmental advocacy holds the hope for an

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41 Ibid., p. 124.
42 Ibid., p. 128.
ecologically sustainable future. Whilst the Conservation Act established the main duty of DoC as protecting the environment for present and future generations, Clark observes that: “The department is poorly resourced. For example, the Canterbury conservancy business plan provides $2,000 yearly for statutory advocacy – about enough to allow one to say ‘Hello, nice day’ to a lawyer.” Having fairly disposed of DoC, Professor Clark then puts the MfE into correct if stark perspective in terms of environmental advocacy.45

At regional level, the public sector reforms have created whole new authorities with primary responsibility for environmental quality and resource management. Local authorities are obliged to address environmental values as part of their duties, and it is now possible to define environmental concerns as policy problems and to get them onto policy agendas. Writing in the spirit of hopefulness that the 1992 perspective allows, Buhrs and Bartlett see the changed nature of citizen action and the character of organized environmentalism under the RMA as offering many opportunities to force action and policy innovation and to generate publicity. They see many more opportunities for individuals to directly influence environmental policy, through election to, and employment in, local government, and through involvement in the various new policy and decision processes. However, the number of people elected to local government under a continually rationalizing system is extremely limited, as is the number employed by local government. Also, with notification of resource applications being made in only 5% of cases, public participation in policy and decision processes is minimal. Buhrs and Bartlett do at least also note that “this multiplication of opportunities for policy influence has a price”. The developers theoretically have the same access as do those who care foremost for environmental quality and environmental values. In fact, they have much more, and, having gained access, the unified consent system established under the RMA, which was always intended to “improve economic efficiency by reducing the time and costs to developers”, makes their way exceeding smooth.46

45 “If the department does not speak for the environment, who will? The MfE is not for anything. It administers the RMA as best it can within the limitations of inadequate laws and unwilling politicians. The Ministry has no role in advocacy.” Such advocacy was vital for a society in which generally “ an ecologically sustainable future appears an abstract and a less attractive notion than hard cash now. The environment does not vote”. W.C. Clark, ‘Public weaponless in defence of environment: Judgements and councils’ tactics erode RMA intentions’, New Zealand Herald, 11 March 1996, p. 6.

46 Buhrs and Bartlett, p. 129.
With clear foresight, Buhrs and Bartlett warn environmentalists that, in spite of the injunctions and directives of the RMA with respect to sustainability, intrinsic value, and the avoidance of adverse effects, they should not be surprised to find local government "only marginally sympathetic to policy arguments anchored in broad claims about the public interest, nature preservation, future generations, or green lifestyles". Business has a generally favoured place in politics, and this is particularly the case at the local government level. Local politics is chiefly concerned with land use and economic development, and is dominated by "informal networks of local builders, developers, bankers, lawyers, retail merchants, and politicians". Environmental values are almost invariably seen as standing in the way of local development and economic growth. The relatively few "ordinary people" who bother to participate in local body elections, tend to favour candidates who promise jobs. Ordinary people also lack the education in environmental values and natural history that might help them to participate in informed environmental debate. Only if environmental values are perceived as potential generators of wealth for vested interests in the short term, or if they clearly do not inhibit entrepreneurial activity, do they receive favourable consideration. The RMA accords business an even more privileged position than did previous legislation, and favours the developer in a host of obvious ways. For example, the Act presupposes the favouring of individual property rights by permitting all land use unless prohibited in accordance with the local plan or unless a consent is required. The procedures for granting consents are designed to assist private development.

The business-and-developer-favouring effects-based approach has already been remarked. In 1992, Buhrs and Bartlett offer the hope that such comprehensive bias might be counterbalanced by the "active, assertive involvement of central government". However, in the intervening years, such active, assertive involvement has been lacking. The Minister certainly used his "significant powers" under the RMA to issue national environmental statements and set national environmental standards, but he failed to fulfil his responsibility to monitor implementation of environmental standards by local

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47 In accordance with MfE’s national strategy for environmental education entitled Learning to Care for Our Environment, the Ministry of Education was producing Guidelines for Environmental Education in Schools, scheduled to be sent to schools in late 1999. See Questions for Written Answer Lodged 26 April to 28 May 1999, Hansard Supplement 13, Parliamentary Debates, p. 1010. Any environmental educational benefit accruing from this exercise will obviously not become apparent in the local body community in the immediate future, and will have to compete with the dominant all-pervading New Right ideology.

48 Buhrs and Bartlett, p. 130.

49 Ibid.
authorities. He made no apparent move to increase his significant powers by including those of enforcement, embodied in a MfE that contains an environmental protection agency with teeth. What he certainly did was to set about further favouring business and the developers by making the RMA still more user friendly to them and even more inhibiting for the environmental groups. In short, the Minister was toeing the economistic line. It remains to be seen what sort of a fist his Labour successor Marian Hobbs is able to make of the portfolio in the prevailing New Right milieu.

The MfE is emphatically not an environmental protection agency. Yet neither does it offer, within the constraints of its stated aim of promoting sustainable management of natural resources, more than scant attention to the urban environment where most New Zealanders live, let alone any at all to the social dimension of environmental policy. It is agreed with Buhrs and Bartlett that the RMA is but an "extension and continuation of the reform of government generally as influenced by New Right thinking". As such, it delegates authority for environmental protection to local government and leaves the latter to get on with it. At the same time, it typically provides little vision and lacks any substantive goals for society. Buhrs and Bartlett conclude, in 1992, that its efficacy as environmental policy "will depend on how the opportunities it provides are exploited by local and regional governments and also, especially, on how the policy gaps and ambiguities it leaves are filled by central government in the 1990s". Subsequent experience shows how central governments have failed to provide effective environmental policy, and local governments have failed to effectively implement it. Effectiveness should be measured in terms of environmental protection and enhancement, rather, than as has almost invariably been the case, as a means of preventing environmental considerations from hindering economic development. Such an outcome should not surprise, given that the single stated purpose of the Act is to promote the sustainable development of natural resources. Just as the MfE is emphatically not an environmental protection agency, so is the RMA not the expression of an adequate overall environmental policy. The philosophy which guides the spirit in which the RMA should be interpreted.


*Buhrs and Bartlett, p. 134.*

*In fairness, it should be acknowledged that local governments who do try to implement effective environmental policies are actively discouraged or severely handled for their pains. For example, Dr Morgan Williams, CIE, insists that local governments that have attempted to plan for a sustainable future have in fact been persistently criticised by government. *New Zealand Herald*, 21 August 1998, p. A11. As for the electorate, in 1998 the ratepayers of the Far North District voted their Council out of office because it had drawn up an environmentally enlightened management plan. A farmer-and-developer-friendly council was voted in, and the management plan scrapped. RNZ News, RNZ National Programme, 22 October 1998.*
is probably best reflected in the words of the outgoing Minister for the Environment, Simon Upton, quoted at the head of this chapter. The Environment Court, like its predecessor the Planning Tribunal, almost invariably bases its decisions, arising out of environmental appeals, inquiries and disputes, upon such pragmatism.\textsuperscript{53}

In the 1980s, Treasury, and their colleagues of the New Right in Cabinet and in business, quite understandably did not obstruct legislation that bowed in the direction of environmentalism and at the same time allowed for business as usual. The RMA fit the bill admirably. As noted, the Act stresses regulation to control effects rather than controlling activities, which is the ideal arrangement when the ultimate goal is unimpeded economic development.\textsuperscript{54} Whilst the RMA’s focus is upon the facilitation of short-term local economic development, a bias patently damaging to the environment, it does provide for Government to issue national environmental policy statements. Unfortunately, these statements carefully conform to Government’s overriding goals for economic development. For example, the MfE’s 1995 \textit{Environment 2010 Strategy} merely complements the Government’s economic growth strategy, released in 1993 as \textit{Path to 2010}, and describes, as the first of the “key conditions” needed to underpin achieving its vision, “a competitive enterprise economy”.\textsuperscript{55} The MfE’s 1997 \textit{The State of the New Zealand Environment} attempts to lend relevance to the \textit{Environment 2010 Strategy} by connecting its provision of “longer term direction and context for environmental policies” to “critical steps in achieving the overall agenda”, typified in the Government’s 1996 Green Package.\textsuperscript{56} The Green Package, touted as highly munificent, consisted of an extremely modest increase in DoC’s funding.\textsuperscript{57} National environmental policy statements, however glossily presented, are generally ignored in equal degree by local bodies and central government. The previously noted Ministry of Education’s

\textsuperscript{53} The RMA Amendment Act No. 4 expanded the five-judge Planning Tribunal, under the leadership of Judge John Treadwell, to the eight-member Environment Court. In addition, Judge Treadwell, who Geoffrey Palmer describes as being “hostile” to the RMA, would continue to serve as “a part-time, alternative planning judge”. Geoffrey Palmer, \textit{Environment: The International Challenge}. Victoria University Press, Wellington, 1995, p. 170; \textit{NBR}, 2 August 1996, p. 58.

\textsuperscript{54} As earlier noted the rationale for concentrating on environmental outcomes includes the idea that resource users will thereby be provided with the incentive to achieve good environmental results. Hence its appeal for environmentalists who subscribe to the idea that communities, as represented by their councils, will require high environmental standards. However, experience shows that this is generally not the case in NZ and that consequently there is little incentive for resource users to bother about good environmental results.


\textsuperscript{56} MfE, \textit{The State of New Zealand’s Environment}, 4.21.

\textsuperscript{57} The Green Package achieved wide notoriety, although not as an example of Government’s parsimony in matters environmental. Instead, it was widely perceived as an extremely unsubtle attempt to counter public outrage over its apparently callous indifference, expressed in extraordinarily inept media utterances, to the loss of 14 young lives in the 1995 Cave Creek tragedy. See \textit{ECOLINK}, June 1996, p. 1.
positive response to the MfE's national strategy for environmental education appears to be a rare and happy exception to this dire assessment.

Economistic ideology has precluded political commitment on the part of Government to integrate environmental values into key policy areas such as economic policy, energy policy, transport policy, agricultural policy, fisheries and aquatic resource policy, either through procedural means or through the development of an overall substantive environmental policy. Whilst the initial Government proposals for the RMA had indeed included establishment of an EPA, this idea was quickly narrowed down to one of a Hazards Control Commission. The outcome would be doubly tragic. Not only would there be no EPA, but also, incredibly, the resulting Hazardous Substances and New Organisms (HSNO) Act 1996 would codify a distinction between hazardous substances and pollution, and deal only with the former. The rationale is that pollution "control" is not considered a primary responsibility of central government because the effects are claimed to be only local or regional in scope or magnitude. Constraints upon the use of hazardous substances in the form of pesticides were hardly welcome to the primary producers and their ardent advocates in Parliament, some of whom were primary producers. However, the prospects of having to deal, on a national scale, with pollution, much of which was itself being generated by those same primary producers, was too horrendous to contemplate. Unsurprisingly, few if any other countries bother to arbitrarily distinguish between hazardous substances and pollution, for the very good reason that hazardous substances are pollutants and pollutants are, ultimately, hazardous substances.

Buhrs and Bartlett posit that, in addition to the efforts of environmentalists, Maori values might exert some influence on the future development of New Zealand's environmental policy. Until the advent of the Waitangi Tribunal, and the subsequent commitment of Government to redress the wrongs of the past by honouring its obligations under the Treaty of Waitangi, Maori views and demands had had minimal influence upon environmental policy. Since 1992 it has become apparent that Maori

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58 For the extent of the pesticide problem, see Merial Watts, The Poisoning of New Zealand, Auckland Institute of Technology Press, Auckland, 1994.
59 Buhrs and Bartlett, pp. 135-155.
61 Buhrs and Bartlett, p. 166.
views and demands largely reflect those of Pakeha.\textsuperscript{62} Whilst traditional Maori philosophy had at its heart the concept of Mauri, a life force which unites all creatures and enables them to flourish,\textsuperscript{63} such a philosophy has been largely subsumed within the entrepreneurial spirit of the developer and the exploiter of natural resources. Mauri also has little relevance to the majority of Maori who form the greater part of the sub-culture of poverty that has become a permanent and growing feature of New Zealand society.\textsuperscript{64} The consequences of greed and need are as apparent among Maori as they are among Pakeha. The tribal elites who constitute the Waitangi Fisheries Commission (WFC), Minister of Conservation Sandra Lee’s “BrownTable”, are shown to be as avid in their pursuit of maximum quota tonnages as are their fellow corporates of the SeaFIC. Maori are also strongly represented in the ranks of fisheries poachers, albeit frequently in the guise of customary fishers.\textsuperscript{65} Maori owners of indigenous forests in Southland under the South Island Landless Natives Act (SILNA), frustrated in their efforts to negotiate cash settlement with Government, opt for short-term gain and bring in the clearfelling contractor.\textsuperscript{66} However, residual Maori values have helped to highlight the ongoing disgrace of the discharge of untreated or minimally treated sewage into waterways, Judge Treadwell’s airy dismissal of such sensibilities notwithstanding.\textsuperscript{67}

This chapter, which completes Part One of the thesis, can now be summarized. Unsurprisingly, environmental policy is a reflection of the larger policy, which is economic policy. This thesis earlier argued and demonstrated that economic policy has dominated and overridden all other policy considerations. Nevertheless, it was recognized by the Fourth Labour Government and its National Successor that, in response to the pressures generated by international and domestic environmental movements, the environmental policies initiated by greens would need to be codified. However, such codification required a form that did not inhibit the overriding priorities of economic development.

\textsuperscript{62} A Maori term of unknown derivation applied to the European settlers and which today is applied to non-Polynesians of European origin. Non-Maori Polynesians are known as Porinai or no nga Moutere.


\textsuperscript{64} For confirmation of this contention, see, for example, the maiden speeches of Maori MPs, representing the full political spectrum, Address in Reply, \textit{Hansard}, First Session, Forty-fifth Parliament, 1997, and First Session, Forty-sixth Parliament, 2000.

\textsuperscript{65} To quote but one example of many, “There is a commercial cray boat in Napier...which has a permit on board signed by a local kaumatua (elder) for 1,000kg of crayfish to be taken as traditional rights. This vessel has jet propulsion, colour sounder, hydraulic powered lifting gear, and steel mesh pots”. See Mike Cluadas, ‘Man’s incessant greed of Nature’s resources’, \textit{Seafood NZ}, December 1997, p. 31.


Hence, environmental policy is embodied in the RMA, which reduces environmental considerations to the so-called sustainable utilization of natural resources and is otherwise demonstrably ineffective in protecting the environment.

Thus, Government, by passing and at least minimally upholding the RMA, has purported to acknowledge the importance of integrated resource management for ecological, economic, and social reasons, but, at the same time, has continued to pursue its economic policy independently of environmental considerations. Furthermore, whilst the RMA’s stated aim is the sustainable utilization of natural resources, the nature of market-based resource allocation is such that sustainability, at least in ecological terms, cannot be achieved. Overall, New Zealand’s environmental policy does not attend to the social or quality of life dimension, let alone give consideration to such altruistic ideas as ecocentrism. As noted, the outgoing Minister for the Environment had himself declared that the official approach must be an anthropocentric one. The virtual loss of mauri among Maori leads to Pakeha behaviour.

Lack of an inclusive environmental policy is most apparent in urban areas, where development, especially in Auckland, has been driven by mainly speculative economic processes, enthusiastically enabled by local bodies through the machinery of the RMA. The result is infill housing and subdivision, tree removal, increased sealed surface, and loss of natural aesthetic amenities. Meanwhile infrastructures such as sewage and stormwater disposal become increasingly inadequate, leading to pollution of waterways and beaches and the destruction of their biota. Land-based economic activity ultimately affects the aquatic environment, from the mountains to beyond the continental shelf.

In the rare cases where market-based resource allocation and economic instruments might have increased the efficiency of resource use and mitigated environmental impact, such environmental gains could be negated by economic growth strategies in the medium to long term unless the RMA is appropriately addressed. At the same time, in New Zealand’s seemingly permanent state of general economic uncertainty, governments will not use instruments, like a carbon tax upon energy producers, or reduced quota tonnages for the fishing industry, that may impose additional financial strain on the economy.
Like Buhrs and Bartlett, this thesis finds no evidence that New Zealanders are prepared to lend greater weight to environmental values than to economic growth. There has been some support for nature conservation, but no radical changes in values, lifestyle, or behaviour. New Zealand remains a highly materialistic and anthropocentric society. Again, notwithstanding such obstacles, it remains the task of The Greens and their environmental group supporters to persuade the electorate to vote for green policies, which includes legislation to provide an ecologically effective RMA, even as the electorate baulks at embracing green lifestyles. However, as Goodin has argued and The Greens acknowledge, endorsing green policies does not necessarily require the immediate and wholesale adoption of green lifestyles.

Overall, Part One of this thesis discussed, in Chapter One, the philosophical origins and nature of the current environmental debate, and the side of the debate from which Goodin’s green theory of value springs. It subjected the green theory of value to analysis and argued its validity and utility as the basis for a green political agenda that was also analysed and its merits argued. It was suggested that, as a result of the 1999 general election, The Greens have the opportunity to persuade the Centre-Left Labour-Alliance coalition to adopt at least some of the most urgent items on such an agenda, like reducing fisheries TACs.

Chapter Two discussed the current political, social, economic and financial policymaking milieu in which The Greens presently find themselves operating. It first established that, whatever the theoretical origins, economic policy to date has largely ignored environmental considerations. It argued that, in New Zealand, policy advice has arisen from narrow, economistic sources, and the system of government that has acted upon such advice is largely undemocratic. It was established that public policy and public management in this country have proceeded, since 1984, in accordance with New Right ideology, and, as such, are almost totally economistic in character, and, from an environmental philosophy perspective, particularistically anthropocentric. It was also established that the role of the state as guardian of the commonweal, including the environment, had been drastically diminished and, arguably, placed in the hands of those who do not necessarily have the interests of the commonweal at heart.

Buhrs and Bartlett., p. 164.
Policy pertaining to natural resources, as reflected in the findings of Chapter Three, is certainly completely at odds with a policy agenda based upon Goodin's green theory of value. Part Two of the thesis will demonstrate how and why policy and legislation affecting fisheries and the aquatic environment do not meet Goodin's criteria for the successful maintenance of such natural resources.
PART TWO

History, Experience and Current Fisheries Policy
Chapter Four

The Pre-European Period, The Licensing Era (1866-1961)

And

The Period of Delicensing and Encouragement (1961-1979)\(^1\)

A policy is a temporary creed liable to be changed, but while it holds good it has to be pursued with apostolic zeal.

*Mahatma Gandhi*\(^2\)

The principal object of scientific administration is to regulate exploitation so that it does not cut too deeply into the reserve that must be maintained to ensure adequate stocks for the future.

*G.C. Godfrey*\(^3\)

To those [two recommendations of the 1961 Parliamentary Select Committee] I would add a third, and that is to get rid of the bogey of conservation.

*Mr Aderman*\(^4\)

[We should] place ourselves under the protection of Japan; then we can make money undisturbed and turn into imbeciles.

*General Helmuth von Moltke*\(^5\)

Part One of this thesis demonstrated that environmental policy in New Zealand does not meet Goodin’s criteria for the successful maintenance of natural resources as explicated in his green theory of value. The aim of Part Two is to illustrate how and why policy pertaining to fisheries and the aquatic environment also fails to meet Goodin’s criteria. The method employed to meet this task is to first review and analyse the history and experience of legislation affecting fisheries

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and the aquatic environment in New Zealand then conduct a critique of present and projected policy. In the process of carrying out its task Part Two also illustrates the cumulatively destructive trend of fisheries related policy and highlights the need for urgent change. The argument for the existence of such a trend is based upon the evidence that the historical record clearly provides. To this end, Chapter Four covers the period from pre-European times to 1979, which culminated in the reduction of New Zealand's once bountiful inshore fisheries to the brink of commercial extinction.

The Pre European Political Economy

Archaeologists generally agree that the Polynesian ancestors of the Maori arrived no earlier than A.D. 1200 on the shores of the group of islands which would ultimately become known as New Zealand. These first settlers, who may have numbered anywhere between 50 and 500 individuals, initiated a hunter-gatherer economy, that is, a palaeolithic political economy, of small, coastal-dwelling, semi-nomadic bands. The hunting component of the economy was based largely upon the unregulated exploitation of an almost unimaginable richness of littoral fisheries, marine mammals and large land birds. Subsequently, the human population expanded rapidly while the most preferred or most accessible prey species became extinct or were greatly depleted in numbers and range. Whilst hunting and gathering would continue long after first European contact, especially in the South Island, the initial palaeolithic political economy was soon largely replaced by a neolithic political economy based upon the kumara (sweet potato) and the more permanent occupation of suitable areas for its cultivation. At the same time, fishing remained highly important, especially for freshwater eels, and, around the North Island and Cook Strait, coastal snapper.

It is also generally agreed that by about A.D. 1600 Maori society had entered into a "classical phase" in which territorial defence and tribal customs for the protection of cherished sites and important food sources became significant. Some sites were rendered tapu (sacred), and some food species were subject to rahui (harvesting bans) or to tikanga maori (harvesting protocols). Such customs or policies, combined with climatic factors and the limitations of non-metal

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6 The State of New Zealand's Environment, 2.7-2.12. See also Brian Easton, In Stormy Seas, p. 41.
technology, made for a more stable relationship between Maori and the environment until the arrival of the European. It could be said that Maori had developed a conservation policy, although one based upon human requirements rather than upon intrinsic or aesthetic value. Possession of such a policy, within the holistic embrace of the previously noted concept of maori, correctly bestows "environmental virtues" upon classical Maori society.

The classical Maori neolithic political economy operated as a series of independent production agencies, based upon the hapu (extended family), which maintained regular inter-regional trade. However, traditional Maori society did not develop a market economy. There was no form of money. Economic exchange and production were regulated by a complex system based upon utu (price, that is, exchange rate between types of goods), koha (donations, gifts), and the previously mentioned rahui, which became a highly effective conservation measure. In sharp contrast to the undoubted ecological tragedy represented by the earlier archaic period, and the subsequent mayhem wrought upon the land-and-seascape and its biota in post-European times, the classic Maori economy appears to have been largely ecologically sustainable.

The Licensing Era (1866-1961)

Aside from the virtual extinction of mainland pinniped (seal and sealion) populations, the richness of the inshore and littoral fisheries of New Zealand had been largely maintained during the greater part of a millennium of usage by a Polynesian population estimated to be between 80,000 and 200,000 in 1769, the year of Cook's first visit. This richness would remain apparent, except for the noticeable disappearance of large cetaceans (whales), around many areas of the coasts even after more than a hundred years of a significant additional human presence in

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7 The State of New Zealand's Environment, 2.11, 2.12.
8 See John Patterson, 'Maori Environmental Virtues', Environmental Ethics, 16, 4, 1994, pp. 397-410.
9 Easton, In Stormy Seas, p. 42.
10 "Cook, who saw only coastal regions, supposed that there were 100,000. A fairer guess might be 200,000, though some estimates are more than twice as high again." Keith Sinclair, A History of New Zealand, OUP, London, 1961, p. 13. See also The State of New Zealand's Environment, 2.13. For an indication of the bounty of the inshore and littoral fisheries in pre-European times, see Anne Salmond, Two Worlds: First Meetings Between Maori and Europeans 1642-1772, Viking, Auckland, 1991.
the shape of the Pakeha. Whilst this European incursion had, by 1950, grown to some 1.9 million, fisheries resources remained generally bountiful. This situation obtained, except in the case of some species which had been grossly over-exploited in certain areas, into the late 1950s. However, serious depletion of some fisheries had inevitably occurred in a few localities quite early in the process of European colonisation.

Subsequent to the arrival of European settlers in ever-increasing numbers from the 1840s, their activities had begun to have a growing impact upon certain local fisheries adjacent to major settlements. This local impact is reflected in the concern expressed as early as the 1860s by some conservation-minded colonial Parliamentarians. Such concern led to the passage of the Oyster Fisheries Act 1866, which ushered in the licensing era. However, the 1866 Act, whilst originally intended to protect oyster fisheries, and the herring (sic) fishery at Picton, would have, in its licensing provisions, at least one unfortunate and apparently unintended effect. From the outset of European visitation and subsequent occupation, Maori had bartered produce and fish for manufactured goods with the Pakeha. Within a very short time Maori became not only ships' provisioners but also international traders providing products such as grain, potatoes, timber, flax, fish, meat and skins. Easton finds extraordinary the ease with which Maori were able to enter into trade with the European. Yet however extraordinary to Pakeha eyes, the tangata whenua (literally, people of the land, that is, the indigenous people), being both highly resourceful and quick to adopt innovations, soon entered the money economy of the European colonists, both in Australia and New Zealand. In the Auckland of the 1840s and 1850s, Maori became the chief suppliers of vegetables and seafood to the settlement. The Fisheries Act 1866 effectively alienated Maori from their traditional and Treaty-guaranteed rights with regard to commercial fishing, and has therefore quite fairly been interpreted by Ranginui Walker as the first step in the expropriation of Maori fisheries.

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14 Easton, p. 42.

As for their overall new-found and thriving post-neolithic political economy disease, war, land alienation, and the loss of rangatiratanga (sovereignty) would soon reduce the tangata whenua to near extinction. Their surviving descendants would subsequently be assigned for the better part of the next century and a half to the margins of Pakeha New Zealand society. This European colonial society has been fairly characterized as an exploitative "mining" or "quarrying" political economy depending upon the depletion of natural resources: whales, seals, timber, kauri gum, gold, other minerals, and, probably most importantly, the precious topsoil of the land.  

Fisheries were largely spared from such wholesale depredations through lack of overseas demand and insoluble problems of supply, but also, most certainly, through a strong conservation policy, quite uncharacteristic of the milieu, and enforced by at least one strong-willed individual. However, the time for rampant exploitation of fisheries would certainly come. The political economy of the quarry would eventually give way, except in the continued felling of indigenous forests, to that of the settlement, based upon allegedly sustainable pastoral farming and the refrigerated export of its products to Britain. However, it will be amply demonstrated that the quarrying mentality remains very much a part of the New Zealand psyche.

Just as today, in order to achieve or to maintain an ideal "European" standard of living the colonial Pakeha needed to import goods from overseas. The economic sustainability of the settler economy therefore required the export of the quarried or farmed product in exchange for imported goods and to pay the interest on the loans provided for the development of the extraction industries and to finance public works. Since those earliest colonial times New Zealand has made itself heavily dependent both upon imported manufactured consumer products

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Wellington, 1988, p. 81. Under an amendment to the Act Maori were permitted to harvest oysters for personal consumption in declared Maori oyster reserves in the vicinity of a native pa or village. If Maori wished to sell oysters they were obliged to obtain a license of 2 shillings and 6 pence, thereby being forced to purchase the privilege of harvesting and selling what was undeniably their own property under the provisions of the Treaty. Subsequent legislation contained cosmetic references to Treaty rights that did, however, prove useful in the long term.

16 See 'Once Were Quarriers', The State of New Zealand's Environment, 3.9.

17 NZ pastoral farming is in fact unsustainable: its generally poor soils required, after the temporary enrichment bestowed by the ash from the pirogiate burning of the forests, continuous and massive applications of phosphates, quarried from guano deposits on Nauru Island. With the exhaustion of the natural phosphate supply, there is now heavy reliance upon artificial fertilizers, particularly in areas not amenable to nitrogen-fixing pasture plants.

18 Easton, In Stormy Seas, p. 43.
and up upon foreign investment, initially in the extraction economy and later in the "sustainable" pastoral and mixed economies. There has always been an alternative, however unlikely, to this dependence, namely, the choice of a simpler lifestyle, like that of the Maori. The latter, while prizing Pakeha products and technology, also cherished their own old way of life, which, in the relative absence of material objects, had a strongly spiritual base. In contrast, Pakeha colonial society, reflecting its Victorian, post-Industrial Revolution, Judeo-Christian origins, was both materialistic and narrowly anthropocentric in outlook.

A simpler lifestyle was, therefore, not the goal of the early colonist, typified by the prominent citizens of the New Zealand Company in Wellington, nor that of their working class compatriots who could only strive for something materially better than that which they had left behind. In the event, control of the Colony's leadership quickly passed from aspiring English gentry to rough-hewn Australian adventurers "moving on from their last quarry". These colourful characters would set the tone for most of the remainder of the 19th Century: politics and society dominated by loose coalitions of entrepreneurs who exported their wealth and themselves, if they were not remittance men, back to Britain. This old oligarchy provided the personnel for the Continuous Ministry but would be succeeded in the 1890s by the leaders of the settlement pastoral political economy in the Liberal Party. These would add one more complication to the quest for economic sustainability, namely, the germ of the welfare state in the guise of the old age pension. Whereas the frugal farmers of the Reform and United Parties would quash its development, glorious revival came with the First Labour Government of 1935, and would be maintained, albeit unwillingly, by that pragmatic offspring of Reform and United, the National Party. The "burden" of the welfare state, coupled with the ever-present, ever-increasing overseas debt, not to mention the growing outcry of those perceiving the need for luxury imported consumer products, would eventually loom large in Government's continuing quest for foreign exchange. This quest would eventually have serious ramifications for New Zealand's fisheries.

Legislation subsequent to the Oyster Fisheries Act 1866 strengthened conservation measures whilst encouraging the modest exploitation of the inshore and littoral fisheries. The Marine Department, which had been set up in 1866, gained responsibility for marine fisheries under the

19 Ibid., p. 44.
Fish Protection Act 1877. In 1899 L.F. (Lake) Ayson was appointed as the first Inspector of Fisheries with the Marine Department. Whilst Government and Departmental policy, formulated in response to the urgings of local fishers, emphasised protection of marine resources, the fishing industry steadily expanded under Ayson's development-oriented aegis.

A raft of conservation-promoting legislation with respect to fisheries culminated in the Fisheries Act 1908. This Act, together with its many amendments down through the years, was destined to remain "the Act" until finally superseded by the Fisheries Act 1983. However, in the interim, two successive changes in philosophy toward fisheries would occur, the latter of which, as exemplified in the Fisheries Amendment Act 1963, would irrevocably alter the character of New Zealand's fisheries. In 1926 A.E. (Alfred) Hefford succeeded Ayson as Chief Inspector of Fisheries. Mr Hefford's tenure, which he held until 1946, was based upon an uncompromising conservation ethics. The new Chief Inspector of Fisheries considered that the existing inshore fisheries were in danger of permanent damage from overexploitation, and his energies were directed toward ensuring that this did not occur during his stewardship.

The restrictive licensing policy initiated under the Industrial Efficiency Act 1936 echoed Hefford's determination, and the 1937-38 Parliamentary Sea Fisheries Investigation Committee further

20 The Statutes of New Zealand. 1877, No. 45, pp. 353-354; Section 8, which was ultimately to be of great significance to Maori reads: "Nothing in this Act contained shall be deemed to repeal, alter, or affect any of the provisions of the Treaty of Waitangi or to take away, annul, or abridge any of the rights of the aboriginal natives to any fishery secured to them thereafter."


26 Hefford was largely successful in this regard. However, the littoral northern rock oyster fishery, which had been harvested for commercial purposes solely by the Marine Department between 1908 and 1927, was largely destroyed by the 1930s, and continued thereafter only as a tiny commercial venture a fraction of its former size. See Nightingale, p. 4. The commercial rock oyster fishery was ultimately succeeded by the farming of the larger and decidedly bland Pacific oyster that had entered NZ waters in ballast water and established itself in warm areas.


endorsed this stance. The fisheries management philosophy pursued so forcefully and tenaciously by Hefford, and quietly continued by his immediate successors would be reflected in Government policy as exemplified by the Fisheries Amendment Act 1945, until a combination of factors led to a complete reversal in 1963.

Until the 1950s the fisheries export industry had consisted chiefly of the sale of surplus seasonal stocks of wetfish to Australia, and whereas Ayson had encouraged the export trade, Hefford decidedly did not. The 1955-56 Caucus Fisheries Committee were more concerned that supplies of fresh and frozen fish should be made available to the New Zealand public at all times, and foresaw a time when, with population increase, "the export of fish from New Zealand may cease altogether". This forecast proved highly inaccurate. Meanwhile, by the 1950s a lucrative export trade in frozen crayfish tails to the US had already become established. Into the early 1960s the crayfish were taken almost exclusively from the grounds of the North, South and Stewart Islands. When these became depleted the main action shifted to the Chatham Islands an orgy of extraction would take place. Betimes, this export trade had wrought a permanent change in the eating habits of many New Zealanders: they no longer ate crayfish. Fishers received the same price whether or not the crayfish were exported. Local prices rose significantly. As the Caucus Committee noted: "There has been a decided drop in New Zealand consumption, but this is brought about by consumer resistance." Resistance remains to this day. Rock lobster, as crayfish is now known, has long maintained its status as an "upmarket" item far outside the gastronomic aspirations of those on modest incomes.

The Committee recommended that a National Fisheries Advisory Committee be set up, and concluded that no substantial progress would be made in the industry until a lead was given by


30 Nightingale, p. 215; Slack, pp. 11-14.


Will our crays rival wool as a dollar-earner?

Half! 'Arf!!

Minhinnick

Crayfish tails exported
Market in America
Shipments of 20 tons
in America

NZ Herald 29/12/1948
Government to organise the industry on a national basis.\textsuperscript{34} Adding impetus to this conclusion, from the late 1950s a number of other sources set Parliamentarians to thinking about fisheries. Marine Department officials were re-evaluating the benefits of restrictive licensing and beginning to worry about foreign intrusion. Professor Richardson of Victoria University was attempting to raise public awareness as to the richness of New Zealand's marine resources. The Japanese, following the initial prospecting cruise of their fisheries research vessel \textit{Umitaka Maru} in 1956, had begun to make their presence felt beyond, and, more than occasionally, inside the breakers of New Zealand's coastal waters.\textsuperscript{35} The licensing era was about to end.

Meanwhile, in a wider context, from the 1940s "an environmental awareness seeped slowly into the nation's consciousness",\textsuperscript{36} aided by the efforts of such interest groups as the Acclimatization Societies and the Forest and Bird Protection Society (Forest & Bird). The first attempt at coordinated environmental management was the Soil Conservation and Rivers Control Act 1941. The Act established local catchment boards to coordinate soil and water conservation across whole water catchments, thereby using natural boundaries as the management unit, rather than those of artificial human construction, represented by several towns, boroughs or counties. This approach was entirely innovative, and reflects credit upon its initiators.\textsuperscript{37} Paradoxically, the supervisory National Water and Soil Conservation Organisation (NWASCO) was serviced by the Soil and Water Division of the Public Works Department (PWD), later Ministry of Works and Development (MWD). In its role as hydro dam constructor to the nation the environmentally lethal PWD/MWD would be responsible for the destruction of a number of natural river systems, and disaster for their biota. The Wildlife Act 1953 extended the provisions of several earlier Acts to cover the protection of most native vertebrates, except for those subjected to commercial harvest, or those perceived as pests or designated as sport hunting species.\textsuperscript{38} The history of such protection would, however, continue to be piecemeal, and largely fail to consider protection for

\textsuperscript{34} Ibid., pp. 11-12.


\textsuperscript{36} \textit{The State of New Zealand's Environment}, 4.3.

\textsuperscript{37} Ibid.

\textsuperscript{38} Ibid., 9.133.
habitat.

The Period of Delicensing and Encouragement (1961-1979)

Evolution of fisheries policy, from maintenance of a modest, conservation-minded, community-based fishery, meeting a mainly domestic market, to promotion of an export-oriented and rationalized major industry, can be seen to have begun with a speech in the House by the National Member for Gisborne, Mrs Tombleson, on 22 August 1961, when she stated that,

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I believe that it should be the job of all of us here to put our best foot forward in order to find some way in which we can increase the income coming into our country, rather than bickering across the floor of the Chamber the whole time. I am serious about that. The first thing that comes to my mind is the fishing industry, about which there has been a lot of publicity lately...

Mrs Tombleson went on to compare the size of the Californian and the New Zealand fishing fleets: whereas the former consisted of 9,387 vessels employing 23,347 fishermen, the latter operated 1,473 vessels employing 2,701 fishermen. Whilst New Zealand was only a small country, so too, was Denmark, which employed 16,000 fishermen: "So you see, we could do it too. People talk about the bogey of unemployment, but heavens! we have plenty of employment if we want to go fishing."

Several observations can be made here. First, the prime concern was export income. Next, forgiving the rather naive and superficial statistical comparison with other countries, is the apparently somewhat gratuitous raising of "the bogey of unemployment" close to a time when it was PM Keith Holyoake's proud but nonetheless truthful boast that he knew the name of every unemployed man in the country. In other words, there was no unemployment to speak of, except for a few well-known "characters" up and down the country. However, emphasising employment opportunity is always an excellent ploy when selling a new policy, whether in hard times or good, and one which invariably clinches the "people first" argument in an anthropocentric

40 Ibid.
society. Finally, the existing New Zealand fishing industry was indeed a modest commercial enterprise. There were, as can be seen, less than twice as many fishers as there were boats, indicating a large number of one-man operations. In fact, the commercial fishery lay firmly, and, furthermore, happily, within a strict conservation regime that protected both the fish and the fisher.

Mrs Tombleson said it was quite evident New Zealand's waters were "grossly underfished", and spoke of a "school of thought" which held that a ten-fold increase in fishing could be safely planned, employing 13,350 men at sea, with an annual return from such an increase being a "minimum of 20 million Pounds, with exports valued at at least 15 million Pounds". Such quaint, albeit, dangerous optimism, based as it was upon a total lack of scientific data and an uncritical acceptance of just what such drastic expansion might do to both the fishery and the fishers, is typical of the period. It would shortly be reinforced, and the rationalization process set in train, by the nature of the (National) Government members of the subsequent Fishing Industry Select Committee, for example, Messrs Duncan MacIntyre and Robert Muldoon.

The focusing of interest upon fishing led to the setting up of the aforementioned 1961 Parliamentary Select Committee on the Fishing Industry, out of whose deliberations grew the Fisheries Act 1963 and a complete reversal of a policy which successive governments had long held to be wise. Conservation suddenly became a "bogy"; a modest fishing industry serving the domestic market was, as if by magic, to become a great export earner; and restrictive licensing was overnight to give way to no licensing at all, combined with a liberal system of fishing permits. The Leader of the (Labour) Opposition, Norman Kirk, had fought a splendid rearguard action on behalf of sanity and circumspection against this abrupt volte-face: chief of his concerns was that a regime based upon conservation was to be scrapped without scientific proof that it was no longer necessary. Why, he asked, was the Marine Department so concerned about the Japanese threat if the resource was as large as the proponents of delicensing maintained? And why, significantly, was the New Zealand Federation of Commercial Fishermen (NZFCF)

41 Ibid., p. 1597.
It is from this point in New Zealand's short economic, political and legislative history that the objective observer, from a convenient remove and with the benefit of hindsight, might judge such supremely confident strides away from a sound, albeit very conservative fisheries policy, toward a spectacularly reckless one, thoroughly unwise. However, such a policy did carry with it the apparently unassailable logic of the economist: New Zealand's economic welfare rested upon an export economy; its underdeveloped fisheries represented wasted export potential; therefore New Zealanders were duty bound to exploit these treasures hitherto untapped by a "stunted" fishing industry. Concerns about the health of the fishery and the welfare of the fisher would henceforth be subsumed in the wake of the export imperative. Bearing in mind this traditional strategy in the unremitting quest for economic sustainability, the extremely radical policy change in fisheries becomes understandable whilst remaining regrettable.

Legislation passed on 23 October 1963 included an Act establishing the Fishing Industry Board (FIB), which replaced the Fishing Industry Advisory Council set up in 1957 on the advice of the 1956 Caucus Fisheries Committee. The FIB's reason for being was to promote the development of the fishing industry, and its budget would be met partly from a levy on both the domestic and export catch. Under an Amendment Act of 16 October 1978 the FIB became the NZFIB. Since its inception the Board has shown an unwavering commitment to the export creed. The NZFCF's opposition notwithstanding, response among industry's more entrepreneurially-inclined members to deregulation was a surge in fishing vessel construction destined to gain further impetus from tax incentives announced in the Government's 1965

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48 See AJHR for successive Reports of the FIB and NZFIB.
Budget. The latter had followed closely in the wake of the first reading of the Territorial Sea and Fishing Zone Bill. This piece of legislation was prompted by the trend current among maritime nations to turn to advantage an adjunct to the 1958 Geneva Convention on the Territorial Sea's recognition of the legality of the old three mile limit. The Convention had arisen out of the First United Nations Conference on the Law of the Sea 1958 (UNCLOS I).

When defining the baseline for measuring the limit, the Convention had also recognized the legality of a contiguous zone extending out to twelve nautical miles beyond the baseline within which a Coastal State could "prevent infringements of its customs, fiscal, immigration or sanitary regulations", (Article 24 (a)). Since 1930 there had been gathering international momentum for extension of the territorial seas out to 200 nautical miles. Subsequently, the Truman Proclamation of 1945, the doctrine of which embodied the meaning, limits and legal status of the US continental shelf, and placed it under American jurisdiction, had triggered a chain reaction of unilateral claims by coastal nations to enclose the oceans. New Zealand, which had signed but had yet to ratify the 1958 Geneva Convention, was thus only one of many coastal states eager to make the relatively modest gain in control of marine resources out to twelve nautical miles as a first step in what was generally perceived to be the right direction.

At the 1930 Conference of the League of Nations on the Codification of the International Law in The Hague, seventeen nations had been in favour of a three mile zone, four for a four mile zone, and eleven for a six mile zone. The majority of delegates, representing thirty-seven states, agreed not to vote for any proposals. However, feeling had very much changed in the wake of the Truman Proclamation to one favouring the extension of the territorial sea to twelve nautical

49 NZPD Vol. 342, 10 June 1965, p. 349.
50 NZPD Vol. 343, 2 June 1965, p. 61.
54 Wang, pp. 24-25.
miles. Having voted for the extension at Geneva in 1958 (UNCLOS I), and 1960 (UNCLOS II), New Zealand would subsequently follow the precedent set by Britain, Canada, and a number of countries in Europe, to claim a twelve nautical mile exclusive fishing zone based, loosely or optimistically, upon the provisions of Article 24 (a). Such action overseas had been taken in the wake of the rapid increase in fishing activity in European and Atlantic waters since World War II. Whereas other countries might subsequently have problems with neighbours long accustomed to fishing in hitherto accessible waters now denied them, Keith Holyoake opined, somewhat wishfully as it would transpire, that New Zealand was in a fortunate position in that "no other country has established traditional fishing rights off our shores."55

That being the case, Holyoake did not think that any nation could substantiate a historic claim with regard to the zone that New Zealand proposed to establish with the Bill. The presence of foreign fleets off the coasts of New Zealand was "a relatively new thing", he observed. Furthermore, most of the vessels were Japanese, and because his Government had had it in mind to bring down a Bill of this kind, Holyoake had taken the opportunity when latterly in Japan, to "discuss the question with Prime Minister Sato and other ministers, as well as with departmental people, and I explained the situation to them". New Zealand's position was, therefore, certainly understood, and Holyoake was hopeful that his Government would have the same degree of cooperation as it had had "with regard to the 3-mile fishing limit."56 In the matter of his personally conducted international relations, the New Zealand PM was merely showing himself to be as sublimely and serenely unaware of the subtleties of Japanese diplomatic convention and protocol as were most Westerners at the time. As both he and later Robert Muldoon would learn to their considerable discomfiture, beatific smiles and nods do not necessarily signal agreement. As for the true situation within the existing territorial sea of his own homeland, Holyoake was hardly likely to concede before Parliament, and in the face of intense Opposition opprobrium, that there existed no limit, and scant impediment, to Japanese forays into the three mile zone. A confident front needed to be maintained, mounting evidence, both official and anecdotal, of blatant infringements by Japanese fishing vessels (JFVs), and extreme disquiet among domestic fishers,

56 Ibid., p. 1843.
notwithstanding.

However, others were less sanguine, on both counts, than was the PM. Consequently, several major questions arose during the debate on the Bill upon its second reading. For example, would the Japanese recognize the extended no-take zone, and how was the new law to be enforced? Norman Kirk poured scorn on the Government's inability to police the three mile limit, let alone one of twelve miles. He drew attention to the unedifying spectacle of Government having invited the Japanese to send one of their own vessels to police their fleet under the three mile limit, and, after their having obligingly done so, "everywhere the patrol vessel was, the fishing vessels were not". Kirk spoke of the widespread dissatisfaction within the fishing industry at the complete failure of Government to protect even the three mile limit, and said that what was about to be undertaken was "a declaration of faith rather than a declaration of intent to police the new limit".57

The impact of an extended limit upon the domestic fishing industry was even more problematical. Kirk noted that justification for a twelve mile zone rested upon its utilization by large modern vessels employed by big companies. The traditional backbone of the industry, the small owner-operator, would be forced out of a glutted market if his larger rivals met with success. However, should the relatively unfished extended zone prove unbountiful, the larger vessels would be forced to operate inshore and thereby displace the small fisher from his traditional grounds. Kirk believed that the inshore fisheries were already showing signs of depletion.58 The operation there of efficient large vessels would exacerbate the problem. But even should the more offshore fisheries prove to be a rich resource, if adequate markets failed to materialize, forcing wholesalers to impose catch limits, the small owner-operator would inevitably be the one to suffer.59 Given both the soundness of his warning and the character of the inshore fishery, Kirk's prophesy would in due course be accurately and devastatingly

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57 NZPD Vol. 343, 11 August 1965; for particulars of NZ's marine resources protection capability down to that time, see: Reports of the New Zealand Naval Board for the period 1 April 1952 to 31 March 1953, AHRR, 1953, Vol. III, H-5, p. 3; for the year ended 31 March 1959, AHRR, 1959, Vol. III, H. 5, p. 11; NZPD Vol. 343, 12 August 1965, pp. 1870, 1910. In addition to the defence forces' effort, the Marine Department operated a small number of inshore vessels working out of the main ports.

58 Statistics showing increased landings throughout the 1960s, e.g., Slack, p. 22, Table 5, reflect increased fishing effort and not the state of the resource.

fulfilled. However, at the time his was a voice in the wilderness, and Government again forged ahead with its plans. The Territorial Sea and Fishing Zone Act 1965 took effect from 1 January 1966. Under generous incentive schemes announced in its wake, no fewer than 17 new fishing vessels began construction.

Unsurprisingly, given Japan's already proven post-World War II expertise in achieving ends favourable to itself, like the remarkable 1952 San Francisco Peace Treaty, but also the lack of firm international legal grounds for New Zealand's action, the Japanese Government chose not to recognize the new twelve mile fishing zone. Instead, they astutely suggested placing the dispute before the International Court of Justice, knowing full well that New Zealand would be reluctant to follow such a course in the light of the unresolved six-year saga of a similar case involving South West Africa. Given Japanese non-recognition of the new "New Zealand Fisheries Waters" and the stark reality of its inability for a long time to come to effectively police them, the Holyoake Government was forced into negotiations for a short-term solution to a problem not a little of its own making.

What emerged on 12 July 1967 was a short-term agreement that highlighted total reliance upon the goodwill of other nations to enforce upon themselves New Zealand's unilaterally-declared regulations, but regulations which in the event were very favourable to Japan. Under the agreement the Japanese were permitted to operate no more than 17 vessels in the extended zone but only to within six miles of the coast and only around the North Island and the northern portion of the South Island from Cape Campbell to Cape Farewell. No vessel was to exceed 500 tons, apart from one exception that was not to exceed 700 tons. Longlining was the only fishing method permitted, and the snapper size limit was to conform to New Zealand regulations. The agreement was to terminate on 31 December 1970, after which time Japanese vessels would be totally excluded from the zone. The agreement passed into law as the Fisheries (Agreement with

60 1965, No. 11, An Act to make provision with respect to the territorial sea and fishing zone of New Zealand, 10 September 1965, New Zealand Statutes 1965, Vol. 1, pp. 110-117. [Consolidated (as from 1/10/77) by s.33 (3) of 1977 No. 28].


Japan) Act with effect from 12 October 1967.\textsuperscript{64} An exchange of notes appended to the agreement provided for Japan to deal with any infringements. The New Zealand Government claimed a general scrupulousness on the part of the Japanese in sticking to the rules. However, in the light of Japan's subsequent covert and cynical infringements of the International Whaling Commission's (IWC) regulations\textsuperscript{65} and its circumvention and, finally, virtual unilateral abandonment of the Convention for the Conservation of Southern Bluefin Tuna (CCSBT),\textsuperscript{66} the objective observer is left to wonder at this touching act of faith.

Under the prevailing circumstances, there was probably little alternative to trusting the Japanese, short of diverting the meagre RNZN deepwater force from its prime commitment of maintaining one vessel on station in the Commonwealth Strategic Reserve based at Singapore, or mobilizing the nation's potential civilian air surveillance resources onto a semi-wartime status to augment the limited RNZAF capability. As for the extension of the territorial sea to twelve nautical miles, its ultimate declaration was made inevitable given the precedent in place overseas, coupled with the need to establish at least some degree of sovereignty and usage beyond the traditional three nautical mile limit, in the face of the de facto presence of the Japanese and the likely looming of others into New Zealand waters. The expansion and rationalization of the fishing industry and the abandonment of a careful conservation policy were also inevitable, given the tradition of the quarry, which only needed a nudge in order to divert some of its attentions to fisheries. An export economy based almost exclusively upon "processed grass", sold mainly to the single market of Britain, required augmentation when returns became less favourable, as they eventually did after the collapse of the wool price in December 1966.\textsuperscript{67} However, it should have been possible to establish a lucrative export market for New Zealand's fisheries, without largely destroying a community-based industry and abandoning a careful


\textsuperscript{65} I.e., the illegal sale in Japan of the meat from protected whale species, including fin, humpback and various toothed whales. Doctor Scott Baker, who used the polymerase chain reaction technique of DNA analysis in establishing the identity of the meat, expressed himself as being shocked by its widespread availability in Japan. The University of Auckland News, Vol. 24, No. 6, July 1994.

\textsuperscript{66} RNZ National Programme, 18 September 1997.

\textsuperscript{67} Easton, p. 48.
conservation policy of a kind that would later be known as the precautionary approach to fishing. A fisheries research programme commensurate with the extraction effort should also have been given the highest priority.

In order to achieve a planned economy, the Government had in 1968 set up the National Development Conference. One of its several committees was assigned the task of facilitating the rapid development of the fishing industry. The Fishing Industry Committee proceeded loyally to implement a plan arising from the logic of the current economic philosophy, under the imprimatur of the then Minister of Finance, Robert Muldoon. Calculating from a baseline of $9 million in exports for 1967/68, targets of $15 million and $25 million were set for 1973 and 1979 respectively. To achieve these magically produced millions, existing fisheries would need to be exploited to the full and new ones conjured up along the way.

Mr H.G. Callam applied a dour realism, rather than a magician's wand, to his task as Chairman, Fisheries Committee. There is more than a hint of anxiety in his address to the plenary session of the Conference held between 27 and 29 August 1968. Expansion of the industry would depend upon the development of the pelagic fishery, the "most exciting" but also, alas, the "most uncertain" of the potential sources of wealth. He admitted that data on resources were "virtually nonexistent", and new markets for wetfish beyond the main traditional one of Australia would have to be found. In fact, the only certainty beyond the targets set him and his determination to meet them was Mr Callam's admission that the bulk of exports presently depended upon the Chatham Islands cray fishery. However, it was expected that "once the old crayfish are removed there will be a decline in exports from this source for some years." It was a patently dicey prospectus for the promotion of an export drive.

By 1969 the cray fishery was under severe stress from over extraction. So too the dredge

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70 Ibid.
oyster fishery, which served a popular but exclusively domestic demand. The contrasting manner in which these simultaneous crises would be addressed provides an excellent example of the manner in which economic considerations take precedence over the sustainability of a natural resource. Whilst the dredge oyster fishery with its domestic market would be conserved, the cray fishery, which provided New Zealand with almost its only source of US dollars, would continue to be exploited to the maximum.

On 23 September 1969 the Minister of Marine, W.J. Scott, when introducing the Fishery Amendment Bill (No. 2), invited the House to set up a select committee to investigate the dredge oyster fishery. In the meantime the Bill just presented would restrict the Bluff oyster fleet to 23 vessels and prevent fishers from simultaneously holding both an oyster and a crayfish "license". "There has been a fair amount of pressure from the fishermen's association", the Minister explained, "which says that if we deny anyone the right to go oyster fishing then why should the oyster men be allowed to go crayfishing." The redoubtable Norman Kirk, after reminding the House that he had several times advocated restricted licensing for the crayfishing industry, suggested that what was required was a "very careful examination of the fishing industry itself."71

On 8 October 1969, the Fishing Industry Committee was set up. This body's task was to "review the findings of the 1962 Fishing Industry Committee relating to dredge oysters and to recommend measures necessary for the conservation and management of this fishery". It was also "to inquire into the crayfish fishery both at Chatham Islands and on the mainland of New Zealand and to recommend measures necessary to maintain a maximum level of production."72 The fact of the obviously differing goals for these fisheries is remarkable only if the reader forgets the export imperative.

The Fisheries Amendment Bill (No. 2) as outlined above was passed on 17 October 1969. However, when the Committee announced its findings on the Bluff oyster, it recommended retention of the 23 boat limit but unsurprisingly, in view of the commitment to "maximum level

of production" in the cray fishery, advocated lifting the ban on these boats shifting to crays in the off season. It is equally unsurprising that when on 9 June 1971 the Committee presented its report on rock lobsters, "market forces" were to apply.\(^7\)

This philosophy, whilst it conveniently matched the requirements of the export drive, would shortly lead to the unedifying spectacle of the great crayfish gold rush, and the virtual destruction of the resource's Chatham Islands component. The severely stressed mainland fishery would somehow manage to survive continued depredation to recover in most Quota Management Areas (QMAs) in the mid-1990s, under the care of the National Rock Lobster Management Group (NRLMG).

The Committee had also examined the deferred Fisheries Amendment Bill (No. 3) which contained the provisions required for the establishment of trout farming, the output of which was to be exclusively for export. Like its 1962 predecessor, the Committee recommended that trout farming be established, but advised that the fish should be sold "for consumption in New Zealand" as well as for export.\(^7\) However, threat of disease to the acclimatized recreational trout fishery led to acrimonious political debate over the issue. Duncan MacIntyre's loss of his seat in the November 1972 general election was widely ascribed to his enthusiastic support for trout farming.\(^7\) In the event, the sea farming of salmon would become the preferred option. The final in what had evolved into a series of reports by the Committee was tabled in July 1972.

Under "Other Subjects" the Committee found itself in full agreement with the Government's announced decision to transfer the Marine Department's Fisheries Division and Fisheries Research Division to the administration of the Department of Agriculture. There were many reasons given for such a transfer, including the fact that the Department of Agriculture already had some fishery functions, namely responsibility for hygiene and quality control over fish

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\(^7\) The Committee is convinced that under the present system the normal mechanism of business enterprise which attracts resources to situations of profit and repels them from situations of loss, will ensure that the resources of the fishing fleet are best disposed in the national interest." Report of the Fishing Industry Committee 1970-1971, 2. Rock Lobsters, AJHR 1971, Vol. IV, l. 14, p. 26.


exports and inspection of fish packing premises.\textsuperscript{76}

In the subsequent debate over the Ministry of Agriculture and Fisheries Amendment Bill enabling the transfer, the Opposition made plain both its outright rejection of such a plan, and its preference instead for an autonomous Ministry of Fisheries, "...charged with the function of capitalizing on the abundance of our sea resources and of encouraging and administering incentives to achieve this."\textsuperscript{77} Whilst a Ministry so described would hardly gladden the heart of a conservationist, its separation from Agriculture has infinite appeal. Historically, primary production in New Zealand has almost invariably meant ruthless exploitation rather than wise husbandry and care for the environment. Land-management and conservation horrors have followed in the wake of deforestation, high country overgrazing, "marginal land development", and indiscriminate use of pesticides. As a bleak example of "Tory pragmatism",\textsuperscript{78} the extension to New Zealand's waters of the philosophy which produced these "farming" practices elicited grave concern from the Opposition. However, even as the debate proceeded the die was cast: the PM, when introducing the Bill into a House over which he exercised comfortable control, had stated that the Act would come into force on the first day of September 1972.\textsuperscript{79} And so it did.

The new Ministry of Agriculture and Fisheries (MAF) had eight functional divisions, two of which were Fisheries Management and Fisheries Research transferred from the Marine Department. Management consisted of 30 enforcement officers, supported by a number of honorary fisheries officers who policed recreational fisheries. Fisheries research, which had traditionally been the poor relation of enforcement in the Marine Department, focused upon the main commercial species, and new research was initiated when a species was considered likely to become a commercial proposition. The Fisheries Research Division began systematic trawling after World War II, using the research vessel \textit{Ikatere} (1939-81) and commenced extensive study of fish stocks on the continental shelf in 1969 with the \textit{James Cook} (1969-90). Any fisheries policy direction and advice resided with the Economics Division of MAF, which had been


\textsuperscript{77} \textit{NZPD} Vol. 380, 29 August 1972, p. 2245.

\textsuperscript{78} Mr Brooks, Opposition Member for Marlborough, \textit{Ibid.}, p. 2238.

\textsuperscript{79} \textit{Ibid.}, pp. 2238, 2246.
established in 1970 by the old Department of Agriculture to examine broad issues of agricultural economics and rural research.\textsuperscript{80}

The organization of MAF would remain unchanged until 1988 when the post-1984 focus on policy advice in Government led to the restructuring of the Ministry into four businesses with distinct functions: MAFQual, responsible for quality management; MAFTech, responsible for research and technology transfer; MAFCorp, the Ministry's administrative arm; and MAFFish, which retained responsibility for fisheries, although the formal distinction between research and management was removed. MAF would undergo a further structural change in 1992, when it was restructured into six groups covering policy, regulatory authority, quality management, fisheries, "Agriculture New Zealand" (the farm advisors), and the corporate office. The Policy Group had four areas of focus: external policy, concerned with international developments such as agricultural trade liberalization under the General Agreement on Tariff and Trade (GATT); domestic policy, for example, policy research, including the development and passage of legislation; the Rural Research Unit, which provided policy information advice on factors affecting rural communities; and fisheries policy, with a focus on resource management.\textsuperscript{81} A further reorganisation would see the establishment of a stand-alone Ministry of Fisheries (MFish) in July 1995.

Following the exclusion of the Japanese fleet from the twelve mile zone from the end of 1970, the domestic industry lacked the capacity to exploit the allegedly vast and virtually untapped treasures of the deep which would be required to meet the needs of the export drive currently underway. The obvious answer lay in chartering the abundant foreign tonnage loitering with intent just over the horizon, and this some New Zealand companies were in the process of doing. The Government had no option other than to permit these arrangements, but was concerned that, whilst current legislation allowed for such registration, it failed to provide for any form of control once a foreign vessel was registered. Acting upon advice from the Crown Law Office, appropriate amending legislation was included with other provisions in the Fisheries Amendment

\textsuperscript{80} See Nightingale, Chapter 5.

\textsuperscript{81} Ibid.
Bill introduced into the House on 23 July 1971.\textsuperscript{82}

A change of government resulting from the surprise win of Labour in November 1972 brought with it Colin Moyle as the new Minister of Agriculture and Fisheries, but alas no detectable change in policy. The juggernaut of expansion and export had for too long been out of control to be contained by a mere alteration in the colour of the treasury benches. Coincidentally, the decline in landings of both fish and rock lobster during 1972, and the "economics and profitability" of the industry were causing concern to the FIB. The Board also noted "increasing pressure on the New Zealand resources by foreign fishing fleets", and recalled that it had consistently advocated an extension in the New Zealand fishing zone.\textsuperscript{83} Moyle's response was to encourage the development of the industry as a whole,\textsuperscript{84} in the hope that pressure on the traditional fishing grounds would ease as newly equipped entrepreneurs moved elsewhere. The report on his address to the 13\textsuperscript{th} meeting of the Fisheries Development Council suggests a Minister grappling with a wide range of topics within a multi-faceted industry and certain only of the fact that his brief is centred upon its expansion.\textsuperscript{85}

Meanwhile, fleets of foreign vessels, most of them Japanese were reaping a rich harvest outside, and, when the opportunity presented itself, within, the sporadically-monitored twelve mile zone.\textsuperscript{86} This situation was beyond any immediate remedy. It merely gave detractors of Government policy further fuel and Colin Moyle something else to ponder as he reported to Parliament the mounting numbers of vessels squid fishing, trawling and long-lining in the happy hunting grounds off New Zealand's coasts.\textsuperscript{87} However, help of sorts for the domestic industry would soon be at hand, although not in the event for this particular minister and government. Subsequent to National's sweep back into power in November 1975, Duncan MacIntyre assumed

\textsuperscript{82} NZPD Vol. 373, 23 July 1971, pp. 2123-2131.


\textsuperscript{84} Financial Statement by the Minister of Finance, 30 May 1974, Vol. I, B. 6, p. 9.


\textsuperscript{87} NZPD Vol. 399, 9 July 1975, pp. 2898-2899.
Firstly the mantle of Agriculture and Fisheries. Hitherto unobtrusive, aside from his earlier unfortunately too-eager espousal of trout farming, MacIntyre proceeded to address the fisheries portfolio with considerable gusto. The same high-powered enthusiasm would be maintained by his even more stolid temporary successor, the decidedly uncharismatic James Bolger. Two unconnected events had come together to precipitate this uncharacteristic behaviour in two otherwise undemonstrative New Zealand farmer-politicians.

First, in 1974 the Third UN Conference on the Law of the Sea (UNCLOS III, 1974-1982) had commenced proceedings to consider the extension of territorial limits to 200 nautical miles. Whilst it had failed in its purpose on that occasion, another session was due to convene in August 1976. Should the Conference again fail to deliver, New Zealand was prepared along with many other nations, the Soviets and the Japanese being notable exceptions, to go ahead and unilaterally declare a 200 mile Exclusive Economic Zone (EEZ). Secondly, the philosophy of "Think Big" had recently, as MacIntyre's unwoNTed enthusiasm over the idea indicates, been eagerly embraced by Government, the contemporaneous warnings of The Club of Rome and good advice of E.F. Schumacher notwithstanding. This brash exhortation, most uncharacteristic in a hitherto modest nation, was subsequently applied as a generic name for the series of major state energy projects planned in response to the first oil shock of 1973, all six of which would prove ill-advised and economically disastrous to at least some degree. However, "Think Big" as policy conforms in every respect with Gandhi's postulation, and was applied to the economy with an earnestness as to the verisimilitude of its effectiveness exceeded only by that expressed by successive governments post-1984 for the philosophy of the New Right.

88 See address by the Minister of Agriculture and Fisheries to the NZFCF, as reported by The Evening Post, 9 June 1976, p. 6, quoted in Harding, pp. 64-65: "If I have one succinct prescription to give you today, it is simply - Think Big! Think Big in terms of investment in boats, gear and processing plants. Think Big in terms of crews, catches and markets. Think Big in terms of a whole new fishing industry."

89 See The Evening Post, 9 March 1977, p. 12, quoted in Harding, p. 67; "It's all go at the moment."

90 In the event, the concept of an EEZ would be finally adopted by the 1982 UNCLOS Convention. For its legal status, see Wang, p. 69.


93 See Easton, Chapter 11. Also, Shane Cave, 'Think Big', Listener, 12 December 1998, p. 31.
The prospect of "Think Big" being applied to a 200 nautical mile EEZ was surely enough to excite even the most conservative of politicians. However, even as it expressed an eagerness to see off interloping foreigners from its more distant waters, Government was forced to set its sights upon fisheries closer to home. Certain of these were under threat of extinction, and a Fisheries Amendment Bill, introduced in 8 December 1976, acknowledged this fact. The Bill allowed the Minister to declare any fishery listed in its schedule to be a controlled fishery for the conservation of the resource and the economic stability of the industry. The schedule could be extended or reduced by Order in Council to meet changing circumstances. Fisheries so nominated became "controlled" to the extent that fish and catch sizes, quality, number of fishing units and methods of fishing were defined. The Bill, passed on 5 July 1977,\textsuperscript{94} created the Fishing Licensing Authority, later known as the Fisheries Authority, the function of which was to hear applications to operate in a controlled fishery, and to "grant, renew, revoke, or amend" licenses in accordance with the Act.\textsuperscript{95}

Any sobriety which might otherwise have been induced by reflecting upon the parlous state of New Zealand's inshore fisheries was obliterated by the intoxicating effect of attention diverted outward to beyond the sea's horizon. There, for imminent acquisition, lay the unimaginably vast 200 nautical mile zone, an ocean of apparently relatively untapped wealth. The Territorial Sea and Exclusive Economic Zone Act which passed into law on 26 September 1977 with effect from 1 April 1978, did indeed involve an area of staggering proportions: 1,181,487 square international nautical miles with the enclaves of the Chatham and Pukaki rises added,\textsuperscript{96} the fourth-largest zone after those of the US, Australia and Indonesia.\textsuperscript{97} Its wealth was to prove less immediately measurable.

Bolger stood in for Maclntyre in the Fisheries portfolio for a year from 8 March 1977. In order to apply "Think Big" to the EEZ, what the Minister and Government needed was a large

\textsuperscript{94}NZPD Vol. 411, 5 July 1977, p. 1153.


\textsuperscript{97} Wang, p. 74.
domestic fleet feeding New Zealand processing plants which in turn were meeting large overseas demand, neither of which existed at the time. What actually was in place was a small, albeit growing fleet, unable to keep existing plants supplied from a diminishing fin fish stock. Potential assets included an apparently huge deepwater demersal fishery within the EEZ, estimated from data gathered by the Japanese research vessel Shinkai Maru during four cruises in the New Zealand deepwater fishing area made between October 1975 and February 1977. Detailed catch and effort information from all Japanese commercial trawlers that fished the New Zealand area in 1975 and 1976 was held. Large foreign fleets mainly Japanese, Soviet and South Korean had been harvesting this resource for an apparently insatiable overseas market.

Thus, in the absence of a domestic deepwater fleet-in-being, certain painful facts existed amid the euphoria of New Zealand finding itself the apparent technical owner of a potential million tons per annum of demersal fish. Chief of these was to be found in even the most careless reading of the published deliberations to date of UNCLOS III, governing the conditions under which international recognition of the EEZ could take place. Such recognition hinged upon concurrence that any fish amenable to sustainable harvest, but which the domestic industry did not have the capacity to catch, that is, almost all of it in New Zealand's case, was to be made available to the foreign nations which had traditionally fished in the area. This important stipulation would ultimately be codified in the 1982 Law of the Sea (LOS) Convention. Specifically, Articles 61(1) and 62(1) of the 1982 LOS Convention require "the coastal state" to provide management measures within its EEZ in order to ensure that the living resources are "not endangered by overfishing exploitation." Under provisions of the bilateral agreement or regional arrangement, or in accordance with national legislation, after the state has determined the total allowable catch (TAC) in the zone and its capacity to harvest the living resources, any excess fisheries are the "allowable access to surplus", which may be granted to foreign vessels fishing in


In the event, the provisions of the Territorial Sea and Exclusive Economic Zone Act would attempt to address the situation. Whilst there were two alternative courses of action, the choice was obvious, given the current climate of unreflective optimism. As has been amply demonstrated, from the time Government began its drive for a large fisheries export industry, it had proceeded in unseemly haste. By 1977 it was "Thinking Big" in terms of immediate short-term gain, and a quick return offshore by the only means at hand, namely the fishing effort of foreign fleets. Therefore, the reasonable, sensible, and entirely practical choice of using the provisions of UNCLOS III to impose a strict conservation regime, based upon a precautionary approach, on the legitimate grounds of the prior need to accumulate domestically-acquired scientific data before deciding the "allowable access to surplus", was an unlikely option. Government, predictably, went for the money, however modest a sum it might entail.

Subject to the successful conclusion of government to government agreement, the Act empowered the Minister of Fisheries to license foreign fishing vessels (FFVs) for the purposes of harvesting an annually set quota tonnage of nominated fish species within specified areas of the EEZ but outside the 12 mile limit. Such agreements were entered into without complication with the Republic of Korea on 16 March 1978 and with the Soviet Union on 4 April 1978, and the fish quotas granted to either nation announced shortly thereafter. In the case of Japan, however, an attempt by the PM and Minister of Finance Robert Muldoon to link Japanese access to New Zealand's fishing waters with access for its meat, dairy products, timber and squid to Japan, led to some delay. After an interesting series of exchanges, the dispute was settled most amicably with, unsurprisingly, "...satisfaction for Japan, and ambiguous gains for New Zealand." The agreement was signed on 1 September 1978, and Bolger announced Japanese fish quotas three days later.

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100 Wang, p. 114.


The policy of licensing a limited number of FFVs certainly got New Zealand off the hook in so far as meeting the most pressing UNCLOS requirements were concerned, but was relatively trifling as a source of income. Since Government interest in the fishing industry had for fifteen years been directed towards its utilization as an earner of foreign exchange, that interest now focused upon ways to achieve its aim within the realities of the situation now currently obtaining in the EEZ. The most immediate need was to catch fish, and the quickest way to go about it was to exploit the vessels, capital and expertise of those unlicensed foreign companies latterly engaged in fishing New Zealand waters but now excluded, by inviting them to enter into cooperative and joint ventures. Such schemes would of course involve New Zealand earning less revenue than would otherwise accrue from itself harvesting the fish. However, the domestic industry patently could not do this for many years to come. Well before that happy time arrived foreign nations would demand, in the absence of the alternative argument, licences for more quota of the remaining unished resources of the New Zealand EEZ, in accordance with both the spirit and the letter of UNCLOS.

So began the "Joint Venture" saga, beloved both of Government and most of the large fishing companies but viewed with a more jaundiced eye by its victims and objective observers alike. Joint ventures involved not just the chartering of foreign vessels, as in a cooperative venture, but also foreign ownership of up to no more than 49% of equity in the case of a joint venture. On 2 November 1977 Government announced the criteria for the establishment of joint ventures between New Zealand companies and foreign partners and a list of guidelines for their operation. The regulations were designed primarily to ensure maximum export earnings, but were meant also to protect and promote all sectors of the domestic fishing industry and to facilitate its expansion into the development of the deepwater fishery, with the ultimate goal of 100% New Zealand exploitation of the resource. "NewZealandization" of the deepwater fishery

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104 Revenue from licence fees for 1978/79 had been $7.8 million. However, Labour MP Stan Roger pointed out that the cost of policing the EEZ during the same period was only about $1 million less than this amount. Acknowledgment of this fact forced Doug Kidd, replying on behalf of the Minister, to resort to a desperate and dubious "sunny side" argument in justification. NZPD Vol. 422, 6 June 1979, pp. 474-475.


would become a catchcry of successive Governments. However, the utilization of chartered FFVs, and the coincidental employment of their foreign crew under arguably morally reprehensible pay and conditions, would continue to be regarded by the majority of members of the New Zealand Fishing Industry Association (NZFIA) as a sound business practice.

By the end of March 1979, and the first year of the New Zealand EEZ, twelve "mixed fishing operations" involving New Zealand partners and partners from Japan, South Korea, and Taiwan, had been approved by Government, permitting 72 vessels to fish for squid within the EEZ. In addition, six operations involving New Zealand partners and partners from Japan, South Korea, and the Federal Republic of West Germany were approved involving 10 trawlers.\(^\text{107}\) The joint venture with Germany involved the use of the 3,000 tonne Wesermunde in a series of exploratory fishing cruises in the southern waters of the EEZ. It was during the first part of her third cruise that the vessel took 300 tonnes of orange roughy, a species hitherto unrecorded in New Zealand catches,\(^\text{108}\) but one, so it transpired, well known to the Soviets, who had harvested it here in unrecorded amounts between 1972 and 1977.\(^\text{109}\) It was one which would shortly lead to yet another unedifying spectacle of arguably unrestrained rapacity on New Zealand's part, aimed at yet another valuable but highly vulnerable resource. Wesermunde herself was destined to attract fleeting public attention to the fishing industry when she became the focus of a demarcation dispute at Bluff at the end of her first season.\(^\text{110}\) Government quickly plugged this legislative gap with the Fishing Industry (Union Coverage) Act on 13 November 1979.\(^\text{111}\)

The era of delicensing and encouragement was destined to end in the same dangerous and haphazard fashion as it had begun; the only difference was one of magnitude. In 1961 a hazardous course was about to be steered by a modest fleet into the waters of a traditional fishery

\(^{107}\) Report of the NZFIB for the year ended 31 March 1979, AJHR 1979, Vol. IV, C. 6, P. 13. As for the ultimate return, the majority of joint venture companies in the squid, fin-fish, and tuna fisheries were expected to earn a net profit of 5% on sales. NZPD Vol. IV, C. 6, p. 13.

\(^{108}\) Catch '79, Vol. 6, No. 6, July 1979, p. 2.


\(^{110}\) Brown, pp. 78-79.

\(^{111}\) This was accomplished after typically acrimonious debate during which James Bolger suggested that the Opposition appeared to be a wholly owned subsidiary of the trade union movement! NZPD Vol. 427, 13 November 1979, pp. 4277-4283; report of the NZFIB for the year ended 31 March 1980, AJHR 1980, Vol. II, C. 6, pp. 12-13.
extending out the few miles to the limits of the continental shelf. By 1979 an even more perilous course was being maintained, but this time by a veritable armada sweeping the water column of the seas out to 200 miles in relentless pursuit of an irresistibly alluring resource of unknown dimensions, the biological history of which was equally unknown or little understood.112

Even as the NZFIB drew attention to the sobering realities of falling export prices for the harvest from the deepwater fishery, and relayed the fears of fishermen and scientists over the impending doom of the inshore resource,113 so too did Government maintain a policy of growth. It continued to hand out incentives to more and more hopefuls114 wishing to enter the fishing industry. This policy was pursued despite the fact that the inshore component was already grossly overcrowded, and the deepwater sector a literal unknown quantity. By 1979 all the late Norman Kirk's wise predictions as to the likely fate of the fishing industry had come to pass. The new large vessels commissioned at the behest and with the active encouragement of a Government apparently locked into an export mindset, had found the harvest of the deepwater fishery too unrewarding. Faced with an otherwise insoluble debt burden, they moved inshore, strip mining a resource already badly depleted by the greatly increased numbers of full and part-time fishermen, themselves victims of the same dangerous policy, one which had seen inshore fishing permits multiply from 4,000 in 1975 to over 14,000.115 Plainly, something needed to be done before total collapse of the inshore fishery became a reality rather than a threat.

The cumulative dosages of concerned MAF and NZFIB reports, coupled with determined lobbying by all sectors of the industry, finally had a sobering effect. In May 1979 a meeting was arranged between Government and industry, out of which came the Policy Review Committee and the decision to redraft the Fisheries Act 1908.116 In the meantime, two further amendments

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112 Two vessels, the W.J. Scott and James Cook, were currently being employed in midwater and deepwater research. MAF Annual Report for the year ended 31 March 1980, AJHR 1980, Vol. III, C. 5, p. 41.

113 Report of the NZFIB for the year ended 31 March 1979, AJHR 1979, Vol. IV, C. 6, pp. 5, 7. Apropos the Japanese market and the less popular fish varieties: "Fish has been exported at a loss in many cases."


115 NZPD Vol. 426, 9 October 1979, p. 3390.

would be appended to that venerable and much amended document. The first, passed on 2
November 1979 with the purpose of facilitating better future control of marine resources,
redefined the term "fish" to include all marine life with the exception of salmon, trout, oysters,
and marine mammals. The second amendment restricted qualification for registration of
fishing vessels to those wholly New Zealand owned and operated. Exceptions for partly foreign
owned vessels could, however, be approved by the Minister, subject to certain conditions.
Stipulated in the amendment was the significant rule that foreign chartered or joint venture
vessels were confined to fishing outside the twelve-mile limit. Whether such a rule would be
generally respected is problematical.

So ended the era of delicensing and encouragement, with small doses of remedial action
but also on a note of promise to provide machinery of sufficient power to address, albeit
belatedly, an acknowledged crisis. Much change would take place during the next phase of
this almost unrelievedly depressing history. However, Government's overriding policy aim
would remain unchanged, namely, maximum export revenue. All remedial action taken
during the next decade, and indeed to the present, will be seen as being entirely consistent
with this goal rather than being directed toward achieving a sound industry based upon a
healthy resource.

Some important patterns, trends and policy changes can be gleaned from the foregoing
examination, via the legislative record, of fisheries and the aquatic environment in New Zealand
from 1866 to 1979. The most noteworthy aspect is the sudden and complete reversal of
Government policy in 1961 with regard to commercial fishing. A modest industry, serving an
almost exclusively domestic market, was to be converted almost overnight into a big export
earner. This policy change was not made at the behest of the fishing industry, which at the time
chiefly consisted of small owner-operators whose main concern was the protection of their
livelihood.

Such a drastic shift in policy direction, breaking the historical thread of a hundred year's


118 Brown, pp. 76-77.
tradition of what today would be called "the precautionary approach" to fisheries policy is remarkable. After all, a strong fisheries conservation ethic, apparent in Government policy soon after the start of the European colonization period, had led to the establishment of a licensing regime that endured from 1866 to 1961. A policy of protection of marine resources was adhered to even throughout the 27-year tenure of the development-minded inaugural Chief Inspector of Fisheries, L.F. Ayson. Whilst Ayson wished to see the establishment of an export industry, he was at the same time no proponent of mindless exploitation. Furthermore, Ayson's successor, A.E. Hefford was a thoroughly uncompromising conservationist, whose aim was to protect and husband the fisheries resource for the exclusive benefit of ordinary New Zealanders in perpetuity. Hefford's stance, like that of his immediate successors, was wholeheartedly endorsed by Government.

In the 1950s a combination of factors, including the increasingly-apparent inshore presence of the Japanese, led to an unprecedented focusing of attention upon New Zealand's fisheries, and a reappraisal of their utilization. Such attention did not necessarily presage the abandonment of a policy of conservation. Rather was it the subsequent inclusion of fisheries as part of the planned economy of the 1960s that brought about the reversal of fisheries policy. Once fisheries were required to meet export-earning targets, the real world of biology, including that of people, gave way to the narrow and fanciful wishing-will-make-it-so verities of economics. Edward O. Wilson has convincingly shown that economics is a weak social science, because it has neglected psychology and biology in the formulation of microeconomics, and remained ignorant of the environment.119 Conservation necessarily gave way to rationalization, with apparently little or no consideration of the consequences. Whilst this new export-oriented policy would lead inevitably to the debacle of 1979 and the destruction of fisheries and livelihoods, successive Governments would adhere to it with the characteristic apostolic zeal noted by Gandhi.

Whilst fisheries were coming under the acquisitive eye of the exponents of the quarrying economy, still hard at work reducing the indigenous forests, other components of the environment were faring somewhat better. Thanks to a perceptible brightening of the first glimmer of environmental awareness, conservation legislation, albeit, piecemeal and incremental

119 Wilson, Chapter 9.
continued to be passed. The innovative Soil Conservation and Rivers Control Act 1941 had made the giant intellectual leap of recognizing natural rather than man-made boundaries in environmental management. However, other legislation, such as the Wildlife Act 1953, and the Marine Mammals Protection Act 1978, after belatedly noticing the vulnerability of the latter and then assessing their instrumental value, merely added species to protected status without also protecting their habitat.

One historical theme remained constant throughout the two periods so far reviewed, and indeed obtains to this day. It is the matter of the minimal or non-existent scientific data available at the time each new fisheries resource was targeted for exploitation. There was little danger arising from this paucity of biological knowledge under a severe conservation regime. However, a policy of rationalization, coupled with a cheerful "learn as you go", ensures that a resource is destroyed, damaged, or at best irrevocably altered before the learning process is complete. Of course, the availability of scientific data is in itself no guarantee of wise policy decisions. Fisheries policy decisions are almost invariably based upon economic and political considerations, rather than upon the maintenance of a healthy resource in accordance with non-negotiable biological laws. In addition, the transfer in 1972 of the Marine Department's Fisheries Division and Fisheries Research Division to the control of the Department of Agriculture ensured that the dubious traditions of "farming", driven by economics and so demonstrably damaging to the land, would also be applied to the waters.

An historical thread, parallel to that of the dearth of scientific data, and observable from the early 1960s, is that of a succession of fatally flawed fisheries policy decisions, made in haste and against sage advice. In the first instance, a large export-oriented commercial inshore fishery was conjured up, almost literally from nothing. It was in fact based not upon a suitable existing industrial, management and enforcement infrastructure, but rather, purely on the imaginary export earnings such an equally imaginary industry could achieve. Likewise, subsequently was a deepwater commercial fishery cobbled together out of a newly declared EEZ containing an imagined resource. There existed no domestic fleet or infrastructure. Only the hoped-for cooperation of foreign fleets could set the project in motion. "Growth", greed and plunder were actively encouraged. Export earnings, rather than the maintenance of modest livelihoods based
upon a managed resource, remained the only goal. Such a policy would be carried over into the subsequent phases of this introductory history, and continues to this day.

Given the world milieu at the commencement of New Zealand’s Pakeha history, the nature of the natural resources and the political economy of the indigenous people, and the consequent and subsequent mind-set of colonial and post-colonial Pakeha, it was inevitable that the future nation would be founded upon an export, essentially quarrying, economy. For as long as Pakeha New Zealanders, basically materialistic in nature, craved for the variety and luxury of imported goods, frugality and a simple lifestyle would never be an acceptable option. Likewise would economic nationalism never have any real appeal. That being the case, it would only be a matter of time before fisheries, too, would be quarried in order to maintain the desired standard of living within a welfare state founded upon an export economy hitherto dependent upon processed grass. Given, also, the looming pressure from foreign fishing fleets, in the first instance, the Japanese, the extension of the old three mile limit to twelve miles, and the implications of UNCLOS and the EEZ, it was also inevitable that the New Zealand fishing industry would expand.

However, the internal and international situations notwithstanding, it is reasonable to argue that things could, and should, have been done differently. Given the years of warning of increasing foreign encroachment into New Zealand’s inshore, near and distant waters, adequate policing could have been mobilized, by, for example, utilizing existing civilian resources, in the air, on the ground, and at sea, to support the meagre military assets and thereby enhance surveillance whilst maintaining sovereign integrity. To expect foreign powers to police one’s territorial waters is indicative neither of collective self-respect nor of maturity as an independent nation. As for the expansion of the fishing industry and its greater participation in the export economy, such undertakings could have succeeded without destroying either the inshore fishery or the socially desirable, community-based character of its human component. Rather than thinking big, Government should have made its first priority the continued protection of the small inshore fisher and the resource upon which he depended. Next, whilst remaining within both the spirit and the letter of UNCLOS III, Government should have insisted upon minimum extraction from the EEZ by foreign fleets, basing its argument upon the lack of sufficient domestically-gleaned scientific data regarding
sustainability. Meanwhile, greatly increased New Zealand scientific research effort should have proceeded ahead of, or at least apace with, development of a domestic deepwater fishery, based upon a modest-sized fleet.

Finally, it is noted that environmental groups had yet to address the looming problems wrought by New Zealand’s ever-expanding export fishing industry. Their attention would continue to focus into the next decade upon such urgent matters as commercial whaling, and State vandalism manifested in clearfelling and environmentally heedless energy development.
Chapter Five

Retrenchment and Quotas (1980-1990)

The catch of the domestic-based fleet is rising remarkably.

Mr Gray

Chapter Four began the task of Part Two of this thesis, which is to show how and why policy pertaining to fisheries and the aquatic environment in New Zealand fails to meet Goodin's criteria for successful management of such natural resources and why change is urgently required. Chapter Five takes up this task from the period 1980 to 1990. This period charts the course of the continuation of what this thesis argues to be a generally catastrophic trend toward the rationalization and corporatization of commercial fishing, to the detriment both of the small owner-operator and the resource, and toward the capitalization of Nature, to the detriment of all.

In what the objective observer could fairly describe in the circumstances outlined in the previous chapter as an ill-considered and dangerously myopic quest for foreign exchange from fisheries exports, Government found itself at the dawn of the 1980s hoist on its own petard. In order to maximize the total return from the fisheries in terms of overseas earnings, some self-imposed and conflicting problems required simultaneous and urgent address. Government had to encourage increased domestic participation in a foreign-dominated deepwater fishery and somehow take the pressure off a distressed and overcapitalised inshore fishery which nonetheless still provided its chief source of fisheries revenue. However, a modicum of assistance was at hand in the shape of the unlovely Hoplostethus atlanticus or orange roughy, a deepwater species found in most temperate seas, including the North Atlantic, and waters off South Africa, southern Australia, and New Zealand. In the late 1970s this ubiquitous species was particularly

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1 Harding, p. 77.


3 Or alternatively, in the words of the somewhat more partisan Mr Courtenay, Labour Member for Nelson, a "Government...so obsessed with the desire to make a quick quid or a fast buck, that the mighty dollar rules the day." NZPD Vol. 424, 18 July 1979, p. 1628.
common in some areas on the Chatham Rise.⁴

Orange roughy had formed an unmeasured component of the Soviet catch in New Zealand waters between the years 1972 and 1979. However, subsequent to roughy turning up in Wesermunde's trawl in 1979, the Wellington firm of R.C. McDonald began to look for a market.⁵ In the event, Sealord Productions Ltd., after conducting processing trials at Nelson, initiated sales to Australia, and by 1980 was New Zealand's major exporter of the species.⁶ Customers were soon found in the US, where orange roughy rapidly occupied a firm and growing niche market in the "white table cloth" sector. Destined to be the industry's top export earner in 1993,⁷ the species was by 1980 about to become the object of yet another "gold rush", an invariably unseemly event, and one happily not seen since the crass Chatham Islands crayfish stampede of the 1960s.

From the time of orange roughy becoming a desirable prey species in 1980, domestic fishers had been able to obtain a share of this apparently potential major fishery only in open competition with joint venture companies and the foreign licensed fleets. Ostensibly to prevent unruly competition on the roughy grounds between domestic and foreign vessels, Government in April 1981 signalled its intention to apply, from 1 April 1982, a degree of management to the fishers if not the fish of the deepwater resource. Henceforth, access to the most rewarding fishing grounds would be limited to the domestic fleet. Second-best venues would go to joint ventures, while foreign licensed fleets were to be content with farming the least desirable areas.⁸ As for the moment's chief object of interest, its total allowable catch (TAC)⁹ was to be apportioned thus: one third of the orange roughy catch belonged exclusively to the domestic fleet; domestic and

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⁵ Catch '79, Vol. 6, No. 6, July 1979, p. 2.
⁹ TACs were devised by MAF in 1978 in order to provide a basis for the issue of quotas. See MAF report for the year ended 31 March 1979, AHHR 1979, Vol. IV, C. 5, p. 65. "They are presumably below the maximum sustainable yield, which is a theoretical measure of the maximum biological yield from that fishery on a sustainable basis." Report of the NZFIB for the year ended 31 March 1980, AHHR 1980, Vol. II, C. 6, p. 5. Note the disturbingly vague word "presumably"!
joint venture vessels would compete for the remainder. Under the circumstances prevailing this was the closest Government could get to appropriating to itself the hitherto unloved and, until recently, unknown, roughy. This intriguing animal, the mismanagement of which has since become an object lesson in how not to conduct a fishery and the subject of a significant campaign on the part of Greenpeace NZ,\(^{10}\) will form part of the case study on the deepwater fishery in Part Three of the thesis.

Remedial action, required as a direct result of Government's thinking big in an area where extreme caution would have been more appropriate, proceeded apace. In February 1982, after discussions with representatives from various sectors of the fishing industry, MacIntyre approved the establishment of the National Fisheries Management Advisory Committee (NAFMAC).\(^{11}\) On 15 March the Minister signed the fisheries moratorium, an enlarged version of one imposed in 1980 on the Hauraki Gulf snapper fishery, as a stopgap measure until such time as the rewrite of the Fisheries Act 1908 came into force and wrought the required remedies upon the inshore fishery.\(^{12}\) A discussion paper issued by the Minister in the following August, on future policy for the deepwater fishery, came to grips with the realities of the limitations of that resource, a fact acknowledged by MAF, based upon observations over four years.\(^{13}\)

Out of the discussion paper, NAFMAC's deliberations and MAF's advice, there emerged on 24 November a deepwater policy based upon a plan for the next 10 years, but open to review as the need arose. Its main feature was the allocation of rights to individual companies to catch prime species, with such rights being based on commitments to, and dependence on, deepwater species in both the catching and processing sectors. Company allocations were to be made to New Zealand companies, all of which were coincidently the domestic partners in joint ventures.

\(^{10}\) Consequent upon the Minister of Fisheries having set a catch limit for the Chatham Rise 1993/94 season four times higher than that recommended by MAF scientists, Greenpeace took the Minister to the High Court for failing in his obligations to conserve the fishery. See Greenpeace Newsletter, March 1994. The case will be examined in detail in Part Three.


\(^{12}\) The Fisheries (Wetfish, Shellfish, and Eel Fisheries) Moratorium Notice 1982, Statutory Regulations 1982, Vol. I, Serial No. 1982/59, pp. 358-359. Paragraph 3 of the Notice read: "Moratorium Imposed - No further licenses, permissions, or fishing permits shall be granted or given under Part I of the Fisheries Act 1908 authorising the holder to take shellfish, wetfish, or eels in the designated NZ fisheries waters."

Thus those involved were the original nine joint venture companies, plus two conglomerates, and "other", the last-named representing those who did not receive an individual allocation and who would compete for the otherwise unallocated remainder of the quota. Eight species were included in this new management regime. The plan took effect from 1 April 1983, with the participants henceforth required to pay Government a royalty of $3 per tonne.14

The venerable Fisheries Act 1908, "long regarded as unwieldy and not meeting the needs of the modern fishing industry", was replaced by the Fisheries Act 1983 which came into force on 1 October 1983. MAF admitted to having put considerable effort into the preparation of new regulations, and claimed to have liaised closely with all interested parties and heeded their advice.15 The Bill had been introduced on 16 December 1982 but was not enacted until 23 September 1983 after months of earnest expressions of concern over its adequacy, and amidst acrimonious debate. The most striking feature of the former was the innate wisdom of Maori, as demonstrated by their representatives in the House. Peter Tapsell, Opposition Member for Eastern Maori, who, whilst he acknowledged both the fact of the export imperative and the perceived need to develop the deepwater fishery, expressed the unease of the tangata whenua over the state, and the likely fate, of the inshore fishery.16

Noticeable throughout the debate was the Government's failure to fully grasp the Bill's Treaty implications. Indeed, the Lands and Agriculture Committee, after consideration of the Bill, decided rather disingenuously that "the Treaty of Waitangi should not be specifically mentioned or ratified in the Fisheries Bill."17 Unsurprising was the Opposition's unrelenting execration of the policy which had brought New Zealand's fisheries to their present pass: Basil Arthur reminded the Government that its current PM and Minister of Fisheries were members of the 1962 Fisheries Committee which had initiated that policy.18

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As previously noted, ostensibly the most pressing purpose of the new legislation was to rescue the near mortally wounded inshore fishery. Provision was made in the Act for the management of fishery resources by way of fishery management advisory committees, fishery management plans (FMPs), and fishery management areas (FMAs), these last-named being scheduled for gazetting in May 1984,\(^\text{19}\) appeared all to the good, and signalled signs of future wise husbandry. However, it is apparent from other aspects of the Act that even the rescue of the inshore fishery from the brink of extinction was to be a consideration secondary to the longstanding and consistent priority of Government, and those of an entrepreneurial bent, namely export earnings, generated by big operators. The main thrust of the Act would eliminate the part-time fisher, destroy many small fishing communities, and, in a process being enacted to the present, set the modest owner-operator on the road to ruin.

The Act replaced, among other things, the Moratorium Notice 1982. However, legislation produced within policy constraints already noted was doomed in so far as the salvation of the inshore fishery was concerned. Its signal failure to address the problem of overfishing can only be seen as a reckless gamble that the deepwater fishery would come into its own before the inshore component, the industry's current prime earner, finally collapsed. The Act would pursue rationalization and economic rents rather than remedial conservation measures.

In 1983, 99% of New Zealand's total fishing catch was being taken by 19% of the vessels.\(^\text{20}\) Therefore, if reduced fishing effort was to be achieved, surely it was the owners of the significant 19% who should have been targeted in the Act rather than the part-timer. Instead, quite the reverse was to obtain. "Commercial fisherman" as defined in the Act effectively excluded those persons eking out a living with part-time commercial fishing and posing no threat to the fishery.\(^\text{21}\) Moreover, whilst amongst the criteria for inclusion were those earning at least $10,000 for the 1983-84 fishing year, no ceiling was applied to the upper income end. Such a ceiling should, on the face of it, have had an immediate and salutary effect upon the health of the inshore fishery, but this was not the object of the exercise. Instead, Government was to be seen to be

\(^\text{21}\) \textit{NZPD} Vol. 455, 16 December 1983, pp. 5110-5111.
doing something, even if that something was to be the sacrificing of the hapless part-timer. Thousands of small fishers were ultimately excluded from the inshore fishery. By 1995, 75% of the latter would be concentrated in 18 companies and once more teetering on the brink. In the Far North the tribes of Muriwhenua, heavily dependent upon part-time commercial fishing, were hard hit.22

Unsurprisingly, the inshore problem continued to grow. According to the NZFIB, even though "various peripheral activities were tidied up", and "part timers were excluded, the root cause of the problem was not officially recognized to the point of authorizing action."23 However, NAFMAC had meanwhile been busy preparing a discussion paper entitled *Future Policy for the Inshore Fishing Industry*.24 During August, September and October 1983, meetings were held at major fishing ports to discuss its findings that the resource was overfished and its recommendations that urgent action was required to correct the problem, including reductions of fishing effort.25

First requirement was a TAC, based upon sustainable levels of catch of the more important species of coastal demersal finfish. TACs could be immediately applied, based on past data, and adjusted as new information was gleaned by MAF. Reduced fishing effort required a choice from a number of options, including the soon-to-be-gazetted FMAs, all of which NAFMAC rejected except Individual Transferable Quotas (ITQs), allocated within a TAC. The committee summarized the views on its findings garnered at the public meetings and submitted its conclusions to the Minister in a report dated 18 December 1983. However, nothing happened. Cabinet had baulked at the prospect, insisted upon by NAFMAC, of funding compensation for fishermen who had to leave the industry, and had sat upon the report even as it sought the mechanisms for reducing fishing effort.26 Hence the NZFIB's plaint that, "Despite much analysis, work, discussion, and communication, the situation has not changed over the past 12

22 Walker, p. 107.
months, since the mechanisms needed to resolve the problems have not yet been put in place".  

Following Labour's win in the snap election of July 1984, Colin Moyle reassumed the mantle of MAF and released the NAFMAC report with commendable speed. Legislation designed to discourage expansion in the industry, first introduced in the dying days of the previous government, was promptly reintroduced by the Minister and was enacted at year's end. The effects of this new or, more correctly, recycled broom were reflected in the optimistic tone of the NZFIB's next annual report: it welcomed the Government's acceptance of the need to restructure the industry and its commitment to compensate fishermen who volunteered to retire from the industry.

In September 1984 Government set up inter-departmental study groups to review all deepwater fishery policies and the squid policy, with a target for policy change implementation from the 1 October start of the 1985-86 fishing year. Inshore, one severely stressed fishery received urgent attention: years of increasing pressure on paua (abalone) was finally acknowledged when a TAC, subsequently administered as a quota to individual harvesters, was applied to this small but important fishery.

Meanwhile, both MAF and NZFIB had been busily working on the enormous task of formulating the ITQ regime and preparing the industry for its implementation. MAF mailed details of the proposed scheme to all commercial fishermen, whose reaction varied, it has been

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28 The Fishing Vessel Ownership Savings Amendment Bill. See NZPP, Vol. 456, 6 June 1984, pp. 72-74; Vol. 457, 22 August 1984, pp. 88-90; Vol. 460, 21 December 1984, pp. 2867-2868, 2870. When MacIntyre first introduced the Bill, Sir Basil Arthur could not resist pointing out that: "The Bill signals the end of the line for 'think big' in fishing. I remember that, after the extension of the EEZ in 1977, the Minister who has introduced the Bill invited New Zealanders - young New Zealanders in particular - to think big and to get into fishing. The result - as he, the country, and the industry know - is that half of them must tie up their boats and go on the dole if New Zealand's inshore fishery is to be saved." Vol. 456, p. 72. At the third reading, National, now the Opposition, could still clamber among the wreckage and proclaim that "...during the period of the former National Government, particularly under the stewardship of the Rt. Hon. Duncan MacIntyre, the export worth of the industry grew from $8 million to $450 million and continues to grow." Vol. 460, p. 2870. Which can fairly be translated as "We ruined the fishery, but we made a lot of money!"
charitably assumed, according to their perception of the problem which the new regime was designed to address. The inshore fishery was most obviously stressed in the Auckland area, and progressively less apparently so further south. Accordingly, acceptance was general in the north and totally absent in the far south.

NAFMAC had recommended the ITQ system as a means to save the inshore finfish industry. In the subsequently tumultuous interval between this recommendation and its ultimate passage into law as part of the Fisheries Amendment Act 1986 on 25 July 1986, sufficient time had elapsed to assess the likely benefits from applying ITQ management to rock lobsters, scallops and dredge oysters, and to the increasingly valuable deepwater finfishery. A full programme for integration of the latter with the inshore fisheries' ITQ procedure was developed by MAF during 1985. Movement toward an ITQ approach in the squid jig fishery commenced with the introduction from 1 October 1985 of aggregate catch quota limits for the domestic, joint venture and foreign licensed fishing groups.

Following the passage of the Act, but well before the implementation of ITQs from 1 October 1986, inshore fishermen were allocated preliminary quotas based on assessed fishing histories of permit holders. Fishers were then able to offer back to Government a part or all of those preliminary quotas through a tender scheme promulgated on 27 June 1986. When this tender failed to purchase as much fish as Government required, a second tender round was initiated on 23 October 1986 at fixed prices for selected species. $45 million was expended and purchased back 15,000 tonnes of various species. A Quota Appeal Authority (QAA) was set up for some 1,000 fishers dissatisfied with their individual fishing histories and preliminary and final quotas.

In theory, the ITQ quota management system (QMS) was simplicity itself. For each of the

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33 Harding, p. 102.
species managed under the scheme a total allowable commercial catch (TACC) of the TAC was set for separate FMAs and divided, in the first instance, into individual quotas "owned" by fishers. Fishers could catch their quota or lease or sell off all or part of it to others. In practice the quota system was complex and fraught with difficulties. Chief of these was the problem of by-catch, that is, non-quota species caught in the process of hunting target species; and like most human cooperative activity, the system required honesty and good will by all participants if it was to work the way it was designed to.

Aside from the problems obvious in the application of the QMS to the New Zealand fishery, one major consideration had apparently been disregarded if not entirely overlooked: Maori. Given what many see as New Zealand's appalling history of naked injustice to those with a prior claim on these islands, a people who should have had continuous protection under the Treaty of Waitangi, one further instance of insult and betrayal should carry with it no degree of surprise whatsoever to the sympathetic historian. Yet, abysmal record notwithstanding, it still amazes, even at this small remove, that Government should have acted in such a high-handed fashion in issuing property rights without so much as consulting the tangata whenua. However, credulity is restored once it is remembered that New Zealand fisheries legislation has traditionally, since 1877, included a clause, meaningless to all but Maori who have clung with remarkable fortitude to the Treaty, to the effect that "nothing in the Act shall affect any Maori fishing rights" guaranteed under the Treaty.

Such window-dressing had thus, as a matter of routine, been included under Section 88(2) of the Fisheries Act 1983. Having made this ritual nod in the direction of the tangata whenua, Government had got on with the thorny problem of quota allocation and failed to heed the warnings signalled by the inexorable tide of events overtaking archaic colonialist-type rule. This tide had begun to flow in February 1982 when the Te Ati Awa tribe had appealed to the Waitangi Tribunal against the obscenity of the proposed Motonui synfuels plant outfall in Taranaki, in 1983 the Tribunal found in favour of Te Ati Awa. In 1985 the Muriwhenua tribe

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38 The saga of this splendid and grotesque example of "Think Big" can be handily perused in Jennifer Anne Heyes, The National Government's 'Think Big' Projects: Planning Implications for the Surrounding Communities. A Case Study of Motonui Synthetic Fuel Plant, Bachelor of Planning Research Study, University of Auckland, 1991. Maori, along with many other indigenous peoples, and unlike the controlling interests of so-called Western civilization, regard the fouling of waterways as a most reprehensible offence against Nature.
I hope you have noticed that despite the sealords deal, I'm paying the same price for my fish as every other bugger...
began their ultimately famous claim with the allegation that the Crown had failed to meet its Treaty obligations with regard to fishing rights. In 1986 Tom Te Weehi successfully tested Section 88 of The Fisheries Act 1983, and in August of the same year Ngai Tahu made their first statement of claim.

On 10 December 1986 the Director General of MAF, M.L. Cameron, was asked by the Waitangi Tribunal not to proceed with the allocation of quota, on the grounds that such action would prejudice the Tribunal's ability to make recommendations on Maori customary fishing rights. The response was a firm refusal, based upon a claim of *fait accompli*, and ending with an outrageously platitudinous paragraph expressing "continued acceptance and commitment to applying the principles of the Treaty of Waitangi as they relate to fisheries." However, when in the following year MAF moved to add squid and jack mackerel to the QMS, the New Zealand Maori Council and Runanga o Muriwhenua Incorporated won their case against the addition of further species: the High Court "placed injunctions on developing the quota management policy".

The High Court also advised Government and Maori to enter into negotiations. A joint working party of four Government and four Maori members was established to settle Maori claims. The tangata whenua claimed 100% ownership of fisheries, but, with commendable generosity and realism, conceded 50% to Government. However, agreement was not reached: after each side had issued a report the working party broke up. In a bid to prevent further litigation, the Minister for SOEs and the Minister of Fisheries entered into direct negotiations with the Maori members of the late working party. An excellent outcome was achieved: 50% of

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39 Waitangi Tribunal, *Findings and Recommendations of the Waitangi Tribunal on the Application of Aila Taylor for and on behalf of the Ati Awa Tribe in Relation to Fishing Grounds in the Waitara District*, Department of Justice, Wellington, 1983, p. 5.


41 Walker, p. 107.


fisheries would indeed be conceded to Maori over a 20-year period at 2.5% per annum; it was intended that the agreement, included in the draft Maori Fisheries Bill, should pass into law. However, a Pakeha backlash, encompassing the NZFIB and all sectors of the fishing industry, plus an opportunistc (National Party) Opposition playing a reverse-racist hand, brought about an abject Government cave-in.45

Whilst the initiatives of Muriwhenua, Ngai Tahu and others had led directly to the debate, the Pakeha backlash ensured a watered-down Maori Fisheries Act 1989, which, among other things, required the Government to transfer 10% of the TACs to a Maori Fisheries Commission before 31 October 1992. In 1990 the Maori Fisheries Commission (MFC), later the Waitangi Fisheries Commission (WFC), purchased Fletcher Fishing's inshore operations, which together with the purchase of Skeggs Seafoods, and subsequently Wilson Neil, now formed a joint venture company, Moana Pacific Fisheries. Fletcher Fishing had led the charge against the Maori claims of 1988, and a representative of Fletcher Challenge was subsequently appointed to the seven member board of a Government-established Maori Fisheries Commission. This Commission bypassed the independent Maori Fishing Corporation, and, for the moment, successfully channelled Maori claims into a form acceptable to industry.46

However, continued Maori pressure in pursuit of rights guaranteed under the Treaty, coupled with Government's attendant inability to further develop the QMS, would culminate, on 14 December 1992, in the dubious Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The most superficially spectacular aspect of this was the enabling of the MFC to purchase a 50% share of Sealord Products Ltd. Fletcher's deepwater operations had earlier been purchased by Sealord, jointly owned by Carter Holt Harvey (CHH) and the partly foreign-owned BIL. CHH in turn sold its half of Sealord to the MFC. Sealord finally became owned jointly by the MFC's Te Waka Unua Ltd and BIL. More importantly, the Act guaranteed Maori 20% ownership of all quota allocated to new species as they came under the QMS.47

45 See: Walker, 'ToW and the Fishing Industry', in Deeks and Perry, eds., p. 108. During the course of a no-holds-barred campaign by the National Party to quash Maori fishery claims, the Leader of the Opposition, James Bolger, conjured up the spectre of institutional apartheid. NZFD Vol. 501, 19 September 1989, pp. 12672-12673.


47 WaI 307, Background, pp. 2-3.
Part II of the Maori Fisheries Act 1989 consisted of amendments to the Fisheries Act 1983. Section 49 brought rock lobsters under the QMS, the quota to have a life of 25 years after which time it would revert to Government. A further significant piece of legislation appeared in the form of the Fisheries Amendment Act 1990. Consequent upon a Memorandum of Understanding between Government and industry, the Act changed the QMS from a tonnage-based system to a proportional quota system. Under the latter, quota holdings change in volume terms as TACCs for fish stocks increase or decrease, while the proportion of the TACC held by a quota holder remains fixed. This legislation got Government off the hook over its obligation under the Fisheries Amendment Act 1986 to compensate a quota holder for quota reductions at market rates when faced, as it inevitably was, with the need to reduce TACCs in fisheries under stress.

To assist industry in adjusting to the amended system, resource rentals were frozen in real terms over the period 1 October 1989-30 September 1994. All resource rentals, instituted under the 1986 Fisheries Amendment Act, generated over the period would be returned to industry as compensation for TACC reductions. Industry gained the significant advantage of 50% representation on the TACC Advisory Council established under the Act.\(^48\) However, all was far from sweetness and light: as a direct result of this legislation MAF found itself "subject to court cases by the fishing industry involving claims for some $230 Million" in lost quota.\(^49\)

As has been amply demonstrated, the economic history of New Zealand's fisheries in the period under review had not been a happy one from a conservation viewpoint, despite the passage of a whole raft of ostensibly remedial legislation. In fact, policymaking had been directed toward the further expansion of exports, based upon a rationalized industry, rather than aimed at achieving effective conservation measures. In such a climate, the warnings of the tangata whenua over the likely fate of the littoral and inshore fishery went unheeded. Consequently, the virtual removal of target commercial inshore species wrought the irreversible modification of whole ecosystems, and the destruction of valuable shellfish beds, particularly those of the prized toheroa, tuatua, and pipi.\(^50\)

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Such ecological tragedies were drawn to the attention of the policy makers by Maori parliamentarians,\textsuperscript{51} but to no avail. Likewise was the growing problem of marine pollution made plain by Peter Tapsell.\textsuperscript{52} Although the matter was temporarily highlighted in the Motonui case, it would continue to be ignored by the policymakers. Successive governments concentrated instead upon the business of dividing a diminishing inshore resource among fewer hands, regardless of any other considerations, while at the same time striving to achieve the fullest exploitation of the deepwater fishery, the likely ecological outcomes of which were entirely discounted.

Within the greater commonweal, by the late 1960s and early 1970s, public awareness of environmental issues, however fleeting, had been increasingly exposed to such matters, particularly through the medium of television. High profile campaigns, like those directed against the raising of Lake Manapouri for hydro development, the continued clearfelling of the rapidly decreasing indigenous forests, air and water pollution, and international issues such as commercial whaling and nuclear testing, were waged by various environmental groups.\textsuperscript{53} However, as Brian Easton points out, the majority of environmental supporters are willing to make only limited sacrifices. They are prepared to make donations, sign petitions, or perhaps even attend a rally, but, basically, they desire economic growth, material welfare and a healthy environment.\textsuperscript{54} Hence, arguably, the popularity of the anti-nuclear campaign: it required no material sacrifice whatsoever on the part of New Zealanders. In response to this public environmental ambivalence, Government can be said, as a general rule of thumb, to have passed legislation that at least gave the impression of addressing the problem of "environmental bads"\textsuperscript{55} while avoiding serious impediment to economic growth. As for The New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987, aside from incurring virtual expulsion from the Australia, New Zealand and United States military alliance (ANZUS), this almost entirely symbolic gesture would garner massive domestic and international environmental kudos without

\textsuperscript{51} NZPD Vol. 451, 11 August 1993, p. 1376.

\textsuperscript{52} NZPD Vol. 449, 16 December 1982, p. 5750.


\textsuperscript{54} Easton, The Commercialisation of New Zealand, p. 36.

\textsuperscript{55} Ibid.
Government or nation having to do anything in environmental terms other than produce the appropriate legislation.

Prior to 1986, environmental responsibilities were scattered over a variety of governmental institutions. As part of the central government reform process instituted by the Fourth Labour Government (1984-1990), the following institutions with environmental administration functions were abolished: New Zealand Forest Service, Department of Lands and Survey, Wildlife Service of the Department of Internal Affairs, and Commission for the Environment. In their place were created the following institutions, with "clearly defined commercial, regulatory, administrative, policy and environmental advocacy functions": ForestryCorp, LandCorp, Ministry of Forestry (MoF), Department of Survey and Land Information, DoC, MfE, and the CfE. In the characteristic separation of roles wrought by the reform process, MfE was instituted as an environmental policy advising ministry, DoC was to function as an environmental operations department, while the CfE's role was to audit environmental performance. Whilst the exponents of the NPM can rightly be held to account for the general effectiveness or otherwise of policy advice and management performance of the new institutions, it will be shown that both MfE and DoC would be excluded from participation in the future development of fisheries legislation. As for the framing of the Fisheries Act 1983 and the Fisheries Amendment Act 1986, responsibility does not necessarily rest with an earlier generation of public servants within MAF. However, the latter had, since the 1960s, already set fisheries inexorably on the road to rationalization and corporatization.

Aside from the as yet unproven value gained from the institution of MfE, DoC and the CfE, the era ending in 1990 concluded on at least one positive note, namely the Fourth Labour Government's internationally acknowledged leadership in dealing with the obscenity of driftnet fishing. Under Geoffrey Palmer's enlightened aegis, Government in 1989 began a series of progressive steps to halt this barbarous practice. First, it imposed legislation under urgency to ban such activity within the NZ EEZ. Next, it helped provide the necessary leadership and impetus to frame the Tarawa Declaration, which established a convention to create a South

56 The State of New Zealand's Environment, 4.5.
Pacific driftnet free zone. Out of this splendid example of international cooperation grew UN Resolution 44/225, which called for an extension of anti-driftnet action to the North Pacific "and all the other high seas." Unfortunately, this has not eventuated. However, The Drift Net Prohibition Act 1990 extended and enlarged the 1989 legislation to include all driftnet-associated activity within the convention area.58

The tumultuous period of retrenchment and quotas can be concisely summarised. Government dealt with the inshore fishery crisis in a manner consistent with overriding policy goals. These goals consisted of extracting maximum revenues from an export trade based primarily upon the inshore fishery, but with the foreign-dominated deepwater fishery assuming ever-increasing importance. The maintenance of these goals would be achieved in the first instance by rapidly rationalizing the inshore fishery, then by gradually "NewZealandizing" the deepwater fishery. To achieve rationalization of the inshore fishery, the small and part-time fishers, which included many Maori, were sacrificed under the provisions of the Fisheries Act 1983. Preservation of small communities and of a cherished way of life received scant regard. Moreover, whilst these small and part-timers represented the greatest numbers of persons engaged in the inshore fishery, they accounted for only a tiny percentage of the fish taken. These facts illustrate Government's policy priorities. The maintenance, or, better yet, the optimizing of export revenues came before the wellbeing of the small fisher and his community, let alone conservation considerations.

Such priorities notwithstanding, Government was rapidly forced by dire necessity to address the conservation issue. Hence the Fisheries Amendment Act 1986, which introduced the QMS and ITQs. A quota allocation system based upon catch histories ensured that the catching right to the resource, in the shape of fixed tonnages of the TACC, fell largely into the hands of the major companies. When the prospect of decreasing TACCs brought with it the spectre of huge compensatory payments to industry for loss of quota, Government, through the Fisheries Amendment Act 1990, changed the catching right from a tonnage to a proportion of TACC. But by any measure, industry, in the shape of its major players, had been given a huge handout.

Meanwhile, whilst the Pakeha part-timer had irretrievably gone to the wall, his Maori

colleague would at least have the weapon of the Treaty with which to attempt to recapture his fishing rights and restore his community. The Waitangi Tribunal, together with a series of enlightened judgements by the High Court, and specific corrective, albeit imperfect, fisheries legislation would ensure that justice would eventually set upon the course of being done. However, such gains for the tangata whenua must be seen within a wider, more worrying fisheries policy context, in which Maori have become a major component of the quarrying political economy. As for the greater environmental commonweal, the institution of the MfE, DoC, and the CfE provided at least a promise of holistic and effective environmental policy. Anti-nuclear legislation, the undoubted altruism of some of its proponents notwithstanding, can be seen by the objective analyst as a largely symbolic gesture, involving no material sacrifice, and one, most unfortunately, helping to perpetuate the myth of a clean and green New Zealand.

By 1990, thanks to Government's rationalization policy, the inshore fishing industry consisted mainly of a few large companies controlling almost all the wetfish quota. The deepwater fishery also consisted almost exclusively of large New Zealand companies, operating in joint ventures with mainly Asian and European-owned vessels under charter. Representatives of the NZFIA, to which these large companies belonged, were now in a position to flex their muscles and aim for control of fisheries policy. Government, long committed to a policy of rationalization, and, since 1984, firmly in the grip of factions espousing the philosophy of the New Right, would prove to be almost totally complaisant.

As noted in the preceding chapter, the environmental groups had largely been occupied into the 1980s with issues other than the burgeoning environmental problems associated with commercial fishing. However, in the 1990s the latter would receive serious green attention.
Chapter Six

Almost daily the industry is bombarded with outrageous claims of the damage we are causing to the environment and the resources.

Peter Talley

Chapter Five continued the task of the opening chapter of Part Two. This entailed charting the course of what this thesis argues to be the destructive trend in fisheries legislation arising from policy decisions made by the National Government in 1961 to develop an export market without sufficient knowledge of the resource or adequate sustainability safeguards. Chapter Five demonstrated that, during the 1980s, legislation would progress the rationalization and corporatization of the industry, and initiate the capitalization of Nature via the QMS and ITQ ownership in the guise of resource protection. The need for an urgent change of direction was once again highlighted. Chapter Six continues the task of the preceding chapters of Part Two. In particular, it examines the role of the environmental groups in the so-called consultative process and the nature of that process. With an agenda closely akin to that arising from Goodin’s green theory of value, environmental groups are shown trying to affect the change in policy and legislation so urgently required to correct the destructive trend begun in 1961 and pursued by successive governments.

Following the National Party's return to power after the 1990 general election, in April 1991 the new Minister of Fisheries, Doug Kidd, announced an independent review of all fisheries legislation presently administered by MAF. Subsequently, as a common starting point for the "current debate of conservation, commercial, recreational and Maori issues", the Minister proffered some recommended reading. This consisted of a report, commissioned by MAF late in 1990, by Peter H. Pearse, a Canadian expert in natural resources management. The report, whilst industry oriented, was by no means antagonistic toward larger concerns. The quota management experiment having succeeded, in his view, in demonstrating a new and better approach to fisheries management, Pearse had concluded that the task now was to "build on the successful

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experiment; expand the quota system, improve it, and harmonize the other machinery of fisheries policy with it.\textsuperscript{2}

To facilitate the review, in August 1991 the Minister appointed an independent Task Force to "make recommendations on the future development of fisheries legislation and associated structures in New Zealand."\textsuperscript{3} The Fisheries Task Force quickly produced a comprehensive public discussion paper\textsuperscript{4} couched in terms of the most commendable detachment.\textsuperscript{5} A summary of the 565 submissions, prompted by the discussion paper and its concomitant roadshow, was published in April 1992 by Lincoln University's Centre for Resource Management which had assumed the role of conveyors of information between the submissions received and the Task Force.\textsuperscript{6}

The Task Force's report (FTR), which it submitted to the Minister in April 1992, consisted of eight sections: Treaty issues and Maori concerns; objectives in the management of fisheries; processes for establishing environmental prescriptions; commercial fishing; recreational fishing; aquaculture and enhancement; the role of government in fisheries management; and structures for new fisheries legislation. These sections corresponded very closely to the key issues identified in the Task Force's terms of reference.\textsuperscript{7} Whilst commercial fishing naturally received most attention, all subjects were accorded comprehensive coverage and clear recommendations made for their betterment.

Public submissions were invited on the FTR, and the Bridgeport Group was commissioned by MAF Policy (Fisheries) to review the 219 submissions subsequently received. These were

\textsuperscript{2} Peter H. Pearse, Building on Progress: Fisheries Policy Development in New Zealand. MAF Policy, Wellington, 1991: Foreword by the Minister; Conclusion, p. 25.

\textsuperscript{3} Sustainable Fisheries, Tiakina nga Taonga a Tangaroa: Report of the Fisheries Task Force to the Minister of Fisheries on the Review of Fisheries Legislation. Wellington, April 1992, iv, Foreword.


\textsuperscript{5} Ibid. N.B.: p. 17, Confused Objectives in New Zealand; Chapter 8, Environmental Objectives for Fisheries Management.


\textsuperscript{7} Report of the Fisheries Task Force, p. 4.
published as a synopsis in August 1992.\textsuperscript{8} One of the highly significant "common reactions" listed was that whilst there was widespread public support for Government retaining its key role in fisheries management, "larger commercial operators" sought an increased role there for themselves. Unsurprisingly, recreational and environmental "interests" were apprehensive about, and in opposition to, any shift toward self-management by industry, as were small commercial fishers. There was also wide public support for Government's maintaining its research role, with strong opposition from environmental groups against the privatisation of this vital sector.\textsuperscript{9}

Meanwhile, a piece of corrective fisheries housekeeping legislation had been debated and passed into law. After signing an agreement with industry to settle court proceedings outstanding since October 1990, the Minister of Fisheries on 17 December 1991 achieved the final reading of the Fisheries Amendment Act 1991.\textsuperscript{10} Among other things, this tidied up the machinery for payment of compensation to those aggrieved major quota holders of the NZFIA and their lesser brethren of the NZFCF. The way was now clear for a resumption of dialogue, not to mention a meeting of minds, between industry and MAF in the guise of MAF Policy (Fisheries), a new organisational group consolidated out of "all of MAF's policy standards setting and audit groups."\textsuperscript{11}

More of the same kind of corrective surgery to the Fisheries Act 1983 followed on 29 September 1992, when the Fisheries Amendment Bill (No. 3) had its third reading.\textsuperscript{12} This Amendment clarified and enhanced the "deemed value" system, a method whereby payment is exacted from fishers for fish taken in excess of or without annual catch entitlement (ACE) for a particular species. It also provided for the southern scallop fishery to be managed as an enhanced quota management fishery from 1 October 1992.\textsuperscript{13}

\textsuperscript{8} Synopsis of Submissions on Fisheries Task Force Report: Sustainable Fisheries; Tiakina nga Taonga a Tangaroa, Bridgeport Group, Wellington, August 1992.
\textsuperscript{9} Ibid., pp. 4547.
\textsuperscript{10} NZPD Vol. 520, 17 December 1991, pp. 6275-6281.
\textsuperscript{12} NZPD Vol. 529, 29 September 1992, p. 11312.
\textsuperscript{13} NZPD Vol. 528, 20 August 1992, p. 10797.
The fishing industry had been greatly concerned over the implications of the RMA 1991, prior to its coming into force on 1 October of that year. The NZFIB coordinated industry's submissions "on a range of concerns",\textsuperscript{14} and doubtless assisted greatly in ensuring that the Act did not include two important aspects of coastal management, to wit, resource ownership and fisheries management. Nor did the Act embrace those resources outside the 12-mile limit. The NZFIB also coordinated industry's input into the draft NZ Coastal Policy,\textsuperscript{15} the production of which was the responsibility of DoC.

As discussed in Chapter Three, the RMA is based upon the idea of sustainable management, implicit in which is the idea of stewardship. Genuine stewardship had been the guiding principle for A.E. Hefford during the fisheries licensing era. It has a strong appeal among some managers of natural resources steeped in the Judeo-Christian tradition. However, ownership of marine resources, rather than stewardship on their behalf, is demonstrably the overriding goal of industry. The whole concept of stewardship is, in any case, entirely anthropocentric and thus can be argued as seriously limited in its environmental effectiveness.\textsuperscript{16}

As noted earlier, the Treaty of Waitangi (Fisheries Claims) Settlement Act came into force on 14 December 1992. The Minister had explained its essential ingredients on 8 December when moving that the Bill be read for the third time.\textsuperscript{17} For Maori, these essentials consisted of $150 million with which to purchase a half share in Sealord and 20% of future quota in exchange for repeal of section 88(2) of the Fisheries Act 1983 that had guaranteed Maori fishing rights. Unsurprisingly, what Doug Kidd had described as "a settlement of Maori commercial fishing claims" appeared to the Member for Northern Maori, Dr Bruce Gregory, as something quite different: "To me, the $150 million is but a smokescreen. To me, the $150


\textsuperscript{16} "Even the 'stewardship paradigm', which attempts to reorient human compassion and responsibility to nonhuman nature is rejected by deep ecologists as unduly anthropocentric in that it continues to operate on the assumption that humans can and do know what is good for other species, and thus it retains for humankind a privileged position among the Earth's stakeholders or community members. They argue that what is required is an eocentric perspective and a radical 'holistic/preservationist' paradigm which at least purports to accommodate the needs of \textit{all} living things". K.L.F. Houle, 'Spinoza and Ecology Revisited', \textit{Environmental Ethics}, 18, 4, 1997, pp. 418-419.

\textsuperscript{17} \textit{NZPD} Vol. 532, 8 December 1992, p. 13033.
million is but the 30 pieces of silver." Similar heartfelt statements would inform the whole debate.\textsuperscript{18}

The Bill's passage had been preceded by a Deed of Settlement entered into between the Crown and Maori representing the New Zealand Maori Council and others after qualified support from national hui (meetings) and some 23 marae (meeting areas) throughout the country. Complaints to the Waitangi Tribunal came mainly after the terms of the deed were studied. According to the Tribunal, "...the deed was not packaged well for Maori, in our view. What might have been a noble compact presents like a warranty to protect the manufacturer. There is a poverty of spirit in the operative parts..."\textsuperscript{20} Nevertheless, all that had apparently remained was for the WFC to obtain approval from iwi (tribes) throughout the country on how best to apportion the Sealord cake and to distribute over $200 million in pre-settlement assets. However, by the end of November 1994, after working for 18 months upon this onerous task, the 12 commissioners were reported as being ready to give up on the idea.\textsuperscript{21} The matter remains unresolved into the year 2000.

Meanwhile, legislation that modified, clarified, or improved the provisions of the Fisheries Act 1983 continued to be enacted. The Fisheries Amendment Act (No. 4), passed on 8 December 1992, clarified access to the QAA and allowed for those persons who, holding quota, and who

\textsuperscript{18} Ibid., p. 13045.

\textsuperscript{19} Ibid., pp. 13032-13060.

\textsuperscript{20} Wai 307, p. 3. The skills of the practitioners of the NPM emphatically do not extend to the production of noble compacts. Easton writes of the economists among the NPM fraternity. "One can read New Zealand economist's reports and research papers without any impression that they were written with any tangible image: pages and pages bereft of people, of institutions, of reality. All the texts conjure up is over-idealized abstractions, whose content – if any – is only recognizable to the initiated. Easton, The Commercialization of New Zealand, p. 255. Government later would find this out to its cost in the almost universal rejection of the Treasury-coined and constructed "fiscal envelope". This splendid example of the policymaking process at work in post-1984 New Zealand consisted of a grandiose version of the "Sealord Deal", as the Deed of Settlement is popularly known. Its purpose was to resolve all Treaty grievances within 10 years, in a full and final settlement that was not to exceed a cash value of $1 billion. In December 1994, the Minister for Treaty Settlements, Doug Graham, readily admitted that, in September 1992, Cabinet had swallowed the preposterous fiscal envelope idea from Treasury unmodified and without discussion, unfortunate "market newspeak" name included. The policy had in fact grown out of the Sealord Deal, and Government had apparently been emboldened to proceed with a total Treaty package on the strength of the former's "successful" negotiation. Yet, even as the fiscal envelope was about to be waved in the air before an unimpressed tangata whenua, its impending failure was being made plain by the ongoing discord over a Sealord Deal that had long been set in concrete. It must be concluded that, in the light of the experience of the Sealord Deal, only a Government totally committed to imposing market models upon all modes of existence, come what may, could have persisted in attempting to foist the fiscal envelope upon Maori. See Kelsey, pp. 320-322, pp. 335-336.

\textsuperscript{21} New Zealand Herald. 21 November 1994, p. 2.
for some legitimate reason had not fished for two seasons, not automatically losing their quota.\textsuperscript{22} The Fisheries Amendment Act (No. 5), passed on 1 July 1993, provided for marine farming permits after consultation, "albeit over a fairly shortened period of time", with industry and with "the environmental groups."\textsuperscript{23}

On 2 March 1994 the Minister announced "an extensive consultation programme" which would be a key part in the Government's intention to review the Fisheries Act. "Sustainable use of the fisheries resource" would be the key objective of the review, which would consist of two stages. The first stage, to be in place by 1 October 1994, would facilitate three key changes: the introduction of new species into the QMS, which would limit commercial catches and give effect to the Maori Fisheries Settlement; the introduction of cost recovery for the commercial fisheries management undertaken by MAF Fisheries Division; and to substitute an annual harvest access fee to be paid by commercial fishers for the resource rental regime introduced in 1986 and in suspension for a period of five years from 1 October 1989. The second stage would be a new Fisheries Bill which would "address the wider issues in the review, including the purposes and principles of fisheries legislation."\textsuperscript{24}

Doug Kidd was at pains to point out in his press release that the issues had been discussed by interest groups for some years and whilst papers had been prepared by officials, these were not Government policy. Indeed no, said the Minister, "Before Government considers making any decisions it will consider the views of the various fishing interest groups."\textsuperscript{25} There was an element of truth in these statements to the extent that the issues had been discussed at length ever since the institution of the Fisheries Review in 1991. However, in the topic under discussion, Government had already been well and truly discredited, at least in the eyes of the environmental groups. Only the Minister's apparently cynical view of public memory, not to mention attention

\textsuperscript{22}NZPD Vol. 523, pp. 13084-13086.

\textsuperscript{23}NZPD Vol. 536, 1 July 1993, pp. 16511-16512.

\textsuperscript{24}Office of the Minister of Fisheries, Media Release, 2 March 1994, p. 1. This chapter will include only an outline of the first stage of the review, as originally delineated by the Minister. It shall, therefore, follow its fortunes to the third reading of the Fisheries Amendment Bill 1994. The second stage, culminating in the introduction, and subsequent passage, of the Fisheries Bill 1994 into law as the Fisheries Act 1986, will be covered in Chapter 6.

\textsuperscript{25}Ibid., p. 2.
span, allowed him to make his media release without the least degree of discomfiture. In fact, Government had not only made key fisheries policy decisions after discussions only with those groups it regarded as vital to achieving its policy aims, but had also been caught out in the process by one of those groups not so favourably regarded, namely, ECO.

An anonymous environmental sympathiser had supplied ECO with material that indicated at best an inappropriately cosy relationship between senior MAF officials and industry. The material consisted of two sets of notes compiled by industry representatives during secret meetings held on 11 and 12 November 1992 between MAF officials, the fishing industry, and Maori. The notes clearly show a process whereby MAF formulated policy proposals then submitted them exclusively to industry for approval or rejection prior to their submission to Cabinet. The main thrust of the particular exercise under scrutiny was for the production of amendments to current fisheries law, and the making of vital decisions on the new legislation, which would effectively place control of fisheries management in the hands of industry.

The essential debate between Government and industry centred upon Government’s determination to extract cost recovery from industry for services provided by MAF, and industry's equal determination to gain control of fisheries management in recompense. Government had also been set upon the aim of extracting a greater share of the economic rent generated from the institution of new quota, in return for giving industry exclusive commercial access to a public resource. This would be achieved either by setting resource rentals, presently in abeyance but due for review, or through a market-based system such as tendering for the new quota. Industry was violently opposed to either idea, and insisted that new quota should be allocated in a much more agreeable manner: "It argues that Government policy has been that harvesting rights be allocated on the basis of past involvement in the fishery." In view of


29Doug Kidd, Paper to Chairperson, Cabinet Committee on Enterprise, Growth and Employment, Increased Fiscal Return from Fisheries, Office of the Minister of Fisheries, undated, 1992.
industry's uncompromising attitude, Government, unsurprisingly, after much tacking to and fro, would ultimately steer more toward the Scylla of cost recovery rather than the Charybdis of rentals or tendering. Both courses would be equally hazardous, but the former promised a more comfortable passage in so far as it was less liable to incite mutiny by industry.31

In the event, Cabinet was to be greatly assisted in the decision making process through the good offices of both the NZFIA and the NZFIB. On 25 January 1993, the NZFIA provided the Minister with a "Memorandum to Cabinet", thoughtfully set out in the prescribed format for making submissions to Cabinet and requiring only the addition of the imprimatur of the Minister's Office and the appending of his signature.32 On the same day the NZFIB submitted to the Minister its massive collation of industry's response to the current drift of Government policy. Prominent among industry's cries from the heart was the plea that the cost of Treaty of Waitangi (ToW) claims should be borne not by "existing fishers" but by "the nation as a whole", and that, in the realm of cost recovery, "Industry should not have to pay for services that have all the character of a public good. Full costs of recovery must be accompanied with the guiding principle of 'user pays, user says'”.33 This, from an industry that even James Bolger suggested had mistakenly been given a gigantic handout in 1986, deserves full marks for bold-faced effrontery.

One further piece of intelligence supplied by ECO's unidentified benefactor provides a chilling reminder, if ever one were needed, that strong interest groups not necessarily representing the public Good have ready access to departmental officials, MPs, and ministers. This item consisted of a "news bulletin" from the President of the NZFIA to all FIA

30 For example, the Cabinet Expenditure Control Committee had agreed to make cost recovery, as opposed to resource rentals and tendering "the principle means of implementing any moves toward the achievement of a better fiscal contribution from fisheries". ECC (92) M 28/6, 26 May 1992, p. 1. Cabinet would subsequently decide upon implementing all three methods for gaining revenue. CAB (92) M 48/18 23 November 1992, pp. 1-2. However, by May 1994 Government had abandoned the idea both of resource rentals and tendering.

31 The above assessment is based upon information gleaned from a package of Cabinet Material provided by Doug Kidd to Forest & Bird. This gift had been made in response to a letter from F&B on 16 November 1992 asking the minister about material which F&B understood had been given to industry at a meeting on 3 November 1992. In response, the Minister stated that, whilst the meeting had consisted of an oral briefing and that no papers had been released to industry at the time of F&B's request, industry had since requested and obtained papers under the Official Information Act. These the Minister now forwarded, albeit somewhat filleted, to F&B. Letter, Doug Kidd to F&B, 24 December 1992.

32 Letter, Eric Barratt, President NZFIA, to Doug Kidd, 25 January 1993, and attached draft Memorandum to Cabinet.

33 NZFIB, Fishing Industry Response to Minister of Fisheries: Critique of Government Policy to Tender Fisheries Rights and Other Policy Directions, 25 January 1993, pp. 2-3. See Bibliography for the array of "big guns" amongst the legal and commercial worlds listed in the appendices to the document.
Councillors recounting what amounted to something akin to a royal progress through the corridors of power in Wellington on 16 November 1992. The document indicates willingness by the Minister of Fisheries to represent the NZFIA in Cabinet on issues not privy to less privileged mortals. These issues had been gleaned, as the associated documents prove, from policy papers prepared by MAF officials and distributed to industry at secret closed meetings. Such behaviour could reasonably be construed by those prone to idealism as making a mockery of the whole democratic process. To these folk, the Ministerial media release of 2 March 1994 becomes fatuous and, indeed, fraudulent, rather than merely being one containing the degree of "spin" appropriate to its context. However, the intimate relationship between Government and industry merely reflects policymaking life the way it is actually lived, as discussed in Chapter Two.

What was of most concern to environmental groups was the devastating confirmation in the Ministerial media release of the disturbing proposal, made earlier by Doug Kidd in a meeting with ECO, that "The consultation process is to be managed by Chris Horton CBE, Chairman of the NZFIB." To allay any fears at this point the statement immediately continued with the comforting reminder that "The NZFIB is a statutory, non trading organisation." That fact that this same statutory organisation itself most effectively represents trading organisations was apparently beside the point. Both ECO and Forest & Bird had already made strong cases to the Minister against FIB dominance of the Review. On 9 February ECO wrote that the situation would be akin to having the “NZ Dairy Board running the Resource Management Reform process”. Similarly, Forest & Bird wrote on 10 February reminding Kidd that, as the FIB was a vested interest representing only commercial fishers, it would be “more appropriate for officials to undertake this consultation”.

Chris Horton wrote to all sector groups on 3 March and attempted to allay their fears by

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34 Minute, Eric Barratt, President NZFIA, to all FIA Councillors, 18 November 1992.
pointing out that he was merely responding to the Minister’s request, and adding somewhat disingenuously that,

My position as Chairman of the Board requires that I have no business links with the fishing industry. Accordingly I can undertake to see that the consultation is conducted in a manner that is fair to all concerned. One of the Board's technical staff, Jonathan Peacey, will assume the role of secretary for the consultation process but while undertaking this role will be responsible to me rather than to other Board staff. The fishing industry will be required to make submissions to me in the same manner as other sector groups.38

Horton rounded off the whole unsatisfactory situation by apprising sector groups of the unsettling fact that he had been requested to provide the Ad Hoc Ministerial Committee with a response by 15 April, "only six weeks away."39

Forest & Bird, upon receipt of Horton's discouraging missive on 3 March, immediately wrote to the CfE Helen Hughes protesting the dominance of the NZFIB in the Review consultative process. They pointed to the impossible brevity of the timetable, and the certainty that consensus would not be reached and little achieved. Forest & Bird also pointed out that, "After 18 months of secrecy from MAF it is important the process is designed to work rather than further alienate the different parties." The letter concluded with the significant point that: "It is also unclear whether a number of issues are to be covered, for example the interface between the RMA, conservation statutes and the Fisheries Act."40 As previously noted the CfE functions as the auditor of environmental performance, that is, the assessor of environmental outcomes rather than an influence on policy direction. In other words, the CfE is really limited to commenting on the results of things done rather than influencing the nature of things about to be done. In this case, there was little more the CfE could do other than register personal dismay at Government's intended course of action. As has already been shown, it is fair to observe that the Review process would appear, at least to the idealistic, to be little more than a glib, cynical and ill-disguised public relations exercise.

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39 Ibid.
Whilst inclusion of the non-commercial sector groups in the consultative process for policy decisions already made can be readily seen for the cosmetic that it most certainly was, the process was also of little value to industry. Consultation Committee meetings as envisaged in MAF's "Terms of Reference for Sector Group Consultative Process" would indeed provide a legitimate forum for publicly airing industry's goals previously aired in covert and clandestine discussions with MAF. Now designated "the Crown's key objectives", the consultative process would afford a suitable venue for their disclosure to the light of day. However, as has already been indicated, and will be clearly demonstrated later in the work, this kind of openness does not appear to have any part in industry's preferred modus operandi.

Although resigned to the rules of engagement set by the Minister, the environmental groups nevertheless tried to salvage the situation by ensuring that some good would come out of the forthcoming exercise. On 6 March they wrote to the Minister pointing out that the consultative process outlined for the Committee by the FIB Chairman did not meet legally tested parameters; neither did it conform to the process prepared by officials. The Environmental groups offered instead an alternative that met these requirements. They also repeated their concerns in a letter to Mr Horton, at the same time stating: "We do not question your personal integrity, only the consultation process proposed." Copies of both letters were also sent to all other interested parties.

On 15 March 1994, the Minister, in response to a question in the House, stated that he had "now invited" Mr Chris Horton, "the independent chairman of the NZFIB", to convene a "final-phase process" of the Fisheries Legislation Review involving representatives of "key interest groups." Quite how Mr Horton could simultaneously be chairman of the NZFIB and "independent", Doug Kidd did not pause to explain. This anomaly aside, the "final phase process" had already begun: on 11 March 1994 Horton had convened the first of what was to

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42 ECO would note concerning the review of the Fisheries Act 1996: "One of the industry people consulted boasted that they had done as much as possible of the work in meetings to avoid written records and the reach of the Official Information Act. (Actually the Act covers what is in people's heads as well)." ECOLINK, June 1997, p. 12.


become a series of eight meetings with sector groups from industry, Maori, recreational and environmental organisations. Whilst environmental representatives were keen to have officials closely involved with the Review Committee, industry was not. Representatives from the "Officials' Committee", that is, the various departmental officers concurrently also working upon the Review, had made it clear from the outset that they were offering to work inter-actively. In the event they would provide copies of their working papers, attend Review Committee meetings on an occasional basis, and offer advice.

The Minister had identified those issues on which the Ad Hoc Ministerial Committee required a response by 15 April 1994. However, all sector representatives having protested during the first meeting at the lack of time to discuss the issues with their members, the Chairman subsequently sought and was granted a two-week extension of this daunting deadline. In the event, unlimited extensions would not have prevented the whole exercise from finishing in fiasco. Forest & Bird's letter to Horton on 29 March indicates their frustration at the inability of the steering committee, established on 11 March, to achieve its designed purpose of preparing a commentary on the officials' papers, and the utter futility of participation in "rigged" proceedings:

The industry has adopted a non-negotiable position that they intend presenting privately to Government. This makes a mockery of the consultation process and seems designed to marginalise the other groups at the table, namely the recreational fishers and environmental groups.

Forest & Bird continued:

Our attempts to make the committee more productive and the consultation more meaningful

\[45\] Meetings No. 1 to 7, plus a special meeting with aquaculture officials on 19 April 1994.

\[46\] NZFIB, Consultations on Fisheries Legislation. Record of Meeting No.1, Fisheries Legislation Review Committee, 11 March 1994. Industry's apparent coyness over interaction with officials in the presence of "the enemy" is understandable. As has been amply demonstrated, industry prefers tête-à-tête discussions with senior policymakers about the serious and straight-forward business of commercial fishing unhindered by what they see as irrelevant and "unscientific" distractions over ecosystems posed by "greenies and save-the-whale cranks".

\[47\] Ibid., and record of subsequent meetings to end of April 1994.

\[48\] Letter, F&B to Horton, 29 March 1994. It should be noted that "Maori" representation in this committee consisted of WFC personnel, and was therefore to all intents and purposes part of Industry. Ranginui Walker's sage observation that the advent of Moana Pacific Fisheries "effectively put the Maori into the extractive mode of western capitalism" is borne out in perusal of the Reports of Meetings: Industry and the WFC almost invariably speak with one voice. See: Consultations on Fisheries Legislation, Record of meetings No. 1 to 7, Walker, "Treaty of Waitangi and the Fishing Industry", p. 111.
(such as establishing working groups as suggested by the Minister, and liaising more closely with officials) have been blocked by the industry. You as chairman have rejected our requests and allowed the industry view to prevail. Time is rapidly running out for our committee to produce any worthwhile advice that would assist the government.\(^49\)

However, things would go from bad to worse to ultimate disaster at the final meeting on 28 April 1994, when industry not only maintained its strategy of blunt intransigence, but also proceeded to pontificate at length over the vital importance of democratic consultative processes. Unsurprisingly, the record of the meeting states that,

> At this stage the Environmental Groups withdraw from the consultation. Their statement tabled for the purpose read: 'The environmental groups wish to withdraw our consultative input including papers from the Chairs (sic) report due to undemocratic finality and non-consultative production of the report'.\(^50\)

The close of the final meeting of the Review Committee also saw the withdrawal of the NZRFC from the proceedings, together with all their papers for the Chairman's report to the Ad Hoc Cabinet Committee, due on the Minister's desk the next day. This withdrawal had been triggered by industry's insistence that the FIB cease funding recreationalists for costs incurred in the consultation process.\(^51\) With both the environmental groups and the NZRFC now gone, the Review Committee's proceedings were effectively concluded.\(^52\)

Immediately after their withdrawal from the meeting, ECO wrote to Doug Kidd urgently seeking a joint meeting between the Minister, environmental and recreational sectors, the last-named having indicated their intention of writing in a similar vein. ECO recounted the events of the final "Horton" meeting, encapsulated the saga of the whole sorry consultative exercise, and thereby outlined "our joint concerns regarding the future consultative processes and our desire for it to continue." The letter concluded: "Due to the time constraints imposed by the legislative

\(^{49}\) Ibid.

\(^{50}\) Consultations on Fisheries Legislation, Record of Meeting No. 7, 28 April 1994, pp. 10-11.

\(^{51}\) Ibid., pp. 4-5, p. 11.

\(^{52}\) Ibid., p. 11.
timetable we seek an urgent meeting with you to discuss our continuing involvement." No such meeting took place. However, on 5 May ECO again wrote to the Minister, enclosing the environmental groups' response, framed on 4 May, to Horton's Report to the Fisheries Ad Hoc Ministerial Committee. ECO pointed out that "Environmental groups were only given 3 hours to comment on the draft report". They noted that: "The report in many cases does not record our position or does not accurately reflect our position." Before submitting an item by item critique of the report, ECO made this brief commentary on its stance for the benefit both of Minister and officials:

Environmental groups reject the fishing industry proposition that they control fisheries management, including research and enforcement structures and agendas. There are other interests that are damaged by fishing which have as much legitimacy in the marine environment. The fishing industry should in part be paying because they are doing the damage.

ECO's covering letter reiterated environmental groups' interest in continuing their involvement in the comprehensive review of fisheries legislation, while noting that, "To date the process has only scratched the surface of the detail required to develop new legislation."

In the event, the Minister failed to take any of ECO's sound advice. Government shortly thereafter announced its "intentions", so obligingly framed for it by industry in 1992. These included the introduction of cost recovery, and the abolition of resource rentals. Forest & Bird correctly pointed out in its own media release of 29 May 1994 that the latter decision "meant that the Government was handing the fishing resource over to the industry without charging anything for them." As for cost recovery, "All the industry is going to pay is the cost of managing the

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54 Horton wrote to all members of the Fisheries Legislation Committee on 3 May 1994, enclosing copies of his covering letter to the Minister and of the report to the Fisheries Ad-Hoc Ministerial Committee.

55 Letter, ECO to Doug Kidd, 5 May 1994. As will be discussed in some detail, industry equates ownership of quota with ownership of the resource and its environment. It is all part of the "farm". Fishing activity, e.g., bottom trawling, both damages the resource, i.e., the biota, and the environment. However, it has already been agreed with Goodin and the law that ownership of a resource does not entitle the owner to destroy the resource. Thus, even were ownership conceded to industry, the latter should still pay for destruction and damage inflicted upon the resource and its biota.


fisheries but nothing for the environmental damage or cost to the nation they will cause." In addition to these specific issues, Government's decision to focus new legislation on fisheries utilization allowed for no ability to protect marine life and would undermine the current focus on fisheries management, said Forest & Bird, who concluded by stating that:

Much of the detailed policy issues have yet to be grappled with and the failed Horton committee did not grapple with these issues. The rushed timetable will only result in poor policy development and poor legislation that will get bogged down in the select committee.58

As this thesis will demonstrate, just such a fate would befall subsequent proceedings. The plea by Forest & Bird, ECO and Greenpeace for circumspection and reappraisal was not heeded by Government as it hurried toward the goals set out in the Ministerial media release of 3 March 1994 and addressed in a Fisheries Amendment Bill. This was to be followed swiftly by a "further and more comprehensive" Fisheries Bill, as described by the Minister when he introduced the former to the House on 13 July 1994.59 The Fisheries Amendment Bill would cover extension of the current moratorium on fishing permits, the introduction of cost recovery from 1 October 1994, and the revocation of resource rentals from 30 September 1994. The Minister readily admitted that the rationale for revocation of resource rentals was the avoidance of conflict with industry.60 In fact, the Bill met all of industry's "views" of what constituted an acceptable package of legislation.61 After enduring a good roasting from Labour and New Zealand First, the Minister got the Bill read for the first time and referred to the Primary Production Committee (PPC).

Meanwhile, on 11 July, Cabinet, in the matter of Fisheries Structural Reform, had agreed to the establishment of two "Scoping Groups". One was to undertake scoping studies for a national

60 Ibid, pp. 2833-2834.
61 Letter, Tipene O'Regan, Chairman, Treaty of Waitangi Fisheries Commission, Chris Horton, Chairman, FIB, Vaughan Wilkinson, President FIA, Roger Bartlett, President, Federation of Commercial Fishermen, to Doug Kidd, copies to Jim Bolger and Bill Birch, 21 June 1994. The letter contains no threats, merely "industry's views on an acceptable package of legislation for introduction this year." And, "So that there is no misunderstanding, we consider the total package [should] consist of: 1. the removal of resource rentals, access fees or selective taxes imposed by Government; 2. the implementation of a robust cost recovery regime; 3. fundamental institutional change to ensure the highest value for money in the delivery of commercial fisheries administrative services."
fisheries council, and to consider options for contestable delivery of fisheries management services. The other was to determine the most appropriate relocation of research assets and activities in a Crown Research Institute (CRI) framework, and to identify transitional strategies that would minimise the risks to the implementation of new legislation. In a graphic example of deja vu, environmental groups would again find themselves invited to participate in the so-called consultative process, and would again feel honour-bound to withdraw once proceedings were under way.

This significant incident will be examined later as part of the lead up to the Fisheries Bill 1994, in which the unfortunately adversarial nature of the proceedings is again highlighted. In the chain of events just described, fault must fairly be laid with industry and with Government. Industry, in its bid, at minimum cost, for the capitalization of Nature as represented by New Zealand's fisheries, obviously wishes to exclude from policy discussion interest groups with agendas plainly at variance with its own. Government, through its officials, is chiefly concerned with cost recovery and revenue generation from commercial fisheries and is, therefore, however covertly, ranged alongside industry with respect to the revenue generation. Government and industry thus find themselves in an uneasy coalition, with each partner trying to extract the maximum gain from the relationship at minimum cost to itself.

Ranged against this Government/industry economic coalition stands an equally uneasy and extremely loose non-commercial coalition of environmental groups, recreationalists and Maori customary fishers whose relationships will be discussed throughout the work. The goal of the environmental groups is a sustainable fishing industry, that is, one that has adopted a precautionary approach, operating within a healthy aquatic environment. Maori not caught up in the coils of a corporatized fishing industry, but concerned with customary rights, are subsistence fishers rather than recreationalists. Maori resent what they see as environmentalists' attempts to interfere with their customary rights by trying to lock up traditional tangata whenua food sources in the conservation estate. Recreationalists see industry as pillagers of a New


Zealander's birthright to go out and freely catch fish for sport or the table. They frequently find themselves allied with the environmental groups, but do have philosophical differences with the latter, as will be demonstrated, over such issues as marine reserves. Industry sees the environmental groups as rabid exponents of the "unscientific"64 concept of ecosystems management, recreationalists as greedy free riders, and the exercise of traditional Maori customary rights as a mask for poaching.

Returning to the Fisheries Amendment Bill, the PPC duly reported on the Bill on 29 September 1994; the Bill was read for the second and third times that very same day. Aside from complaining about the rushed pace of proceedings, Graham Kelly, Member for Porirua and Labour's fisheries spokesperson, generally went along with the Bill's passage into law.65 Kelly did perform one particularly useful humanitarian service in drawing attention to the unedifying spectacle of New Zealand fishing companies chartering vessels whose crews received "Third World country wages". He stated that Labour members of the select committee had argued in vain for a change to this "tacky practice." Such a practice does of course comply perfectly with New Right ideology, and was a situation to which, as Kelly readily admitted, "both the Governments that have managed this legislation have turned a blind eye."66

In fact, rather than merely turning a blind eye, Government would, until 1996, encourage what some would consider a disgusting practice. For example, in 1995 the Immigration Service granted visas to Indonesian fishermen for the specific purpose of crewing Asian-owned vessels chartered by the New Zealand firm Takaroa Fisheries. The reason for the preference for such crews over New Zealand workers was made plain: the Indonesian men were smaller, ate less, and were willing to work an 18 hour day for a pittance. Such a rationale should not surprise in a labour market environment operating under the Employment Contracts Act (ECA) 1991, which heralded a marked deterioration in pay and conditions for domestic workers, particularly among the unskilled.67 Further, Dr John Town, late Executive Director of the NZFIA, had observed that

66 Ibid., p. 3872.
it is not New Zealand's place to enquire into the living and working conditions of foreign-owned charter vessels. By way of mitigation, Town noted that these vessels did, however, receive a safety check upon first arrival in New Zealand ports.68

The saga of Fisheries Structural Reform, leading to the introduction into the House of the Fisheries Bill 1994 on 6 December 1994, and all subsequent events culminating in the Fisheries Act 1996, will receive appropriate treatment in the next chapter. Meanwhile, an important point to emerge from this chapter is one that arguably goes beyond the politics of fishing and has ramifications for the whole realm of policymaking in New Zealand. It concerns the questionable value of public participation, through non-commercial interest groups, in the consultative process, as reflected in the experience of the environmental groups and recreational fishers. This chapter clearly demonstrates that Government policy concerning fisheries and the aquatic environment is decided prior to due consideration of evidence gleaned from consultation with concerned sections of the public which Government purports to "recognize", as discussed in Chapter Two. Instead, policy decisions are arrived at after negotiation between Government officials and powerful commercial interest groups, that is, those upon which Government depends for its revenue and arguably its ability to govern.

The politics surrounding the ascendency of the fishing industry became the most significant and contentious component of the politics of fishing in New Zealand. What emerged between 1991 and 1994 was an uneasy coalition between Government and an industry that now included a significant Maori component. Government wished to extract as much revenue out of industry as it could safely manage; industry was determined to gain control of fisheries management in return for such payment. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 ensured the tribal elites among Maori, the group which Manamotuhaki Party MP, Alliance co-leader, and Minister of Conservation Sandra Lee consistently and scathingly refers to as the "Browntable", would also become a major component of the Government/industry coalition.

The RMA 1991 virtually excluded fisheries, thanks in no small part to the lobbying efforts of

the NZFIB on industry's behalf. However, because sustainability was "now the umbrella principle for management of natural and physical resources", the Government did at the very least have to adopt it as the catchcry in its dealings with the extractors of such resources, including those of fishing. Further, 1992 saw the largely symbolic UNCED "Earth Summit", in response to which Government was forced, out of regard for international sensibilities, not to mention those of its own ENGOs, to couch its extractive policies in the language of sustainability and stewardship. Unfortunately for the aquatic environment and its biota, the bottom line remains that New Zealand has made itself dependent upon an export economy, of which the fishing industry is a significant part. An anthropocentric, consumerist society requires economic growth to achieve what it interprets as the continued improvement of human wellbeing. However, equally unfortunate is the "cold, hard fact that most modern methods of improving human wellbeing", a goal not necessarily that of the corporate fisher, "are destructive of nature".

The commercial fishing industry has become New Zealand's fourth-largest export earner. Accordingly, its most powerful component, the NZFIA, latterly SeaFIC, has considerable clout in its dealings with Government. Watched over by the NZFIB, its guardian angel statutory body, the Association negotiates fisheries policy with representatives of MAF, now MFish, a Department of State which will be shown to be thoroughly imbued with New Right values. Such a situation bodes ill for the biota and ecosystems of an aquatic environment whose few champions, represented particularly by the environmental groups, are effectively excluded from meaningful discourse with the predominantly anthropocentric elites who constitute the policymaking machinery.

This chapter has continued the task set for Part Two, which was to demonstrate the environmentally destructive trend in fisheries legislation arising out of policy pursued since 1961. It argued the case for a change to the ecosystems approach to fisheries and the aquatic environment that was espoused and promoted by the environmental group, albeit

69 The State of New Zealand's Environment, 4.9.
70 Ibid., 4.23.
72 As for The Greens, during both the period under review and the next, these were ably represented in Parliament by a member of another
unsuccessfully, during the period under review.

party in The Alliance, Manamotuhake’s Sandra Lee, a dedicated green Maori who also very much subscribed to an agenda similar to that arising from Goodin’s green theory of value.
Chapter Seven

The Privatization Net Closes:

Fisheries Structural Reform and the Fisheries Bill 1994

Given that the Department of Conservation, the Ministry for the Environment, and the
Ministry of Maori Development were not included in all the restructuring negotiations, and
that the environmental groups have now walked out, what will the Minister do to salvage the
credibility of the current consultation Process?

Graham Kelly

I cannot be responsible for people who behave in a childlike way and who show that they can
bring only their prejudices to a matter requiring open-minded consideration.

Doug Kidd

Fishing is all about people, not just how many export dollars the government can earn.... The
Bill gives us no status....

Bob Burstall

The Bill's Purpose (clause 6) has been substantially weakened after submissions from the
Fishing Industry Board and the Treaty of Waitangi Fisheries Commission. The result is that the
Bill's purpose gives priorities to economic well being but only needs to have "regard to"
environmental constraints. This is much weaker than the provisions of Part II of the Resource
Management Act.

Kevin Smith

The task of the preceding chapters of Part Two has been to document and analyse the trend in
fisheries policy and legislation. It is argued that the trend, ever since a radical change of policy in
1961 sent New Zealand's fisheries down the path of rationalization, corporatization and
privatization toward the ultimate capitalization of Nature is detrimental to the wellbeing of the
aquatic environment and its biota. Chapter Seven continues the Task of Part Two, with
particular reference to the genesis of the Fisheries Bill 1994 and its ultimate emergence as the
Fisheries Act 1996 that would enable the completion of the privatization process. The essentially
undemocratic nature of the exercise, in its denial of a meaningful role for those attempting to

2 Ibid.
4 Letter, Kevin Smith, Conservation Director, Forest & Bird, to Secretary, Primary Production Committee: Initial Submission on Fisheries Bill,
represent the public Good in terms of the protection of natural resources and the "people’s right of fishery", is painfully obvious throughout the proceedings.

The Minister of Fisheries' media release of 25 May 1994, already examined in connection with matters subsequently addressed in the Fisheries Amendment Bill, included this announcement: "A new Fisheries bill is to be drafted by 8 November this year."\(^5\) The Bill was to include "the purposes and principles of the Act to ensure sustainable utilization", "institutional reform", and some ten other items. Doug Kidd was at pains to point out that, although the review of legislation to date had entailed a 3-year consultation process, culminating in the recently completed Horton Report, the consultation process had by no means ended.\(^6\) The Minister ended his message thus: "I welcome submissions on these decisions. Effective consultation is the key to good legislation."\(^7\) However, non-industry participants in the fisheries reform process wisely braced themselves for the prospect of yet another round of acting out a script sketched years before, co-authored by industry and officialdom, lightly censored by a complaisant Cabinet, and conducted with the usual unseemly haste.

Within two days of the Minister's media release, the sector groups who had participated in the Horton Committee, together with the Iwi Legislative Review Working Group (ILRWG), received an undated joint letter from the Minister and Robin Allen, Group Director Fisheries Policy. This letter invited the several groups to nominate two persons to attend a series of meetings with officials in a tightly scheduled programme in June 1994, during which "...it will be necessary to quickly progress to discussing the detail...."\(^8\) The NZRFC expressed their dismay on 30 May in an open letter to their prospective hosts in which they protested both at the narrow timeframe for the discussions and at the reduction of their long-standing team of experts from four to two.\(^9\) Sector groups were issued policy papers "...revised to take account of the


\(^6\) Ibid. "There will be further opportunity for input by interest groups and individuals throughout the year. In order to ensure their input Government has approved a budget of $10,000 for the use of MAF to meet any necessary travel expenses to bring recreational and environmental representatives to Wellington to provide further input as necessary."

\(^7\) Ibid, pp. 2-3.


\(^9\) NZRFC, open letter to Minister and Robin Allen, 30 May 1994.
views put forward through the Horton Committee Process.

However, the process by which only industry's wishes came to fruition as the Fisheries Bill 1994 is well illustrated in the proceedings of the QMS Simplification Working Group. Out of four meetings in May 1994 between MAF Fisheries (Policy) and legal representatives of industry grows an urgent formal request by the latter to obtain an early "agreement in principle" from MAF to accede to industry's demands with regard to such matters as Annual Catch Entitlement (ACE) and TACC adjustments. Importunately, Industry's legal representatives asked to attend in-house meetings between MAF and Minister. In the event, all industry's demands with regard to matters of QMS simplification were faithfully met in Part III of the Fisheries Bill 1994. A "P.S." included in the above-quoted letter promised a quick delivery of "Industry's position paper in relation to forfeiture, offences, defences and penalties." Adoption of this paper by the Minister resulted in MAF officials and crown prosecutors holding emasculated enforcement powers as reflected in Part XI of the Bill, which they would later describe as "toothless and ineffective" and "leading to more corporate crime - the biggest problem now facing NZ fisheries."

Covert deals done betwixt Minister and industry aside, the appearances of non-industry participation in the consultation process would be maintained throughout the proceedings. On 13 June 1994 MAF Fisheries wrote to Forest & Bird informing them of the "process and timetable

10 Ibid.
12 Fax, B.D. Shallard, Acting Deputy Group Director, MAF Fisheries, to Bruce Scott, Chapman Tripp Sheffield Young, 23 May 1994; and attached documents: Other Issues for Consideration; Areas of Difference on Matters Already Discussed.
14 Ibid., p. 2.
15 Ibid.
16 "Report critical of fisheries law", New Zealand Herald, 1 June 1995, p. 16.
for reviewing the institutional arrangements for fisheries services." It explained that Cabinet had instructed officials from MAF, Treasury, SSC, DPMC, Ministry of Research, Science and Technology (MORST) and the Crown Company Monitoring and Audit Unit (CCMAU) to analyze the implications of corporatizing MAF Fisheries. They were also to examine the idea of transferring fisheries research to a CRI, and report back by 1 July. Forest & Bird were asked to meet with officials in order to "incorporate your input early next week", and to facilitate this input were made privy to "the relevant papers considered by Cabinet." These papers included an undated memorandum from Kidd to the chairperson, Cabinet State Services Committee (CSSC), which chiefly agreed that MAF Fisheries should be corporatised. There was also a memorandum dated 3 June 1994 from Ross Tanner, Deputy State Services Commissioner (DSSC), to the Ministers of Fisheries, Finance and State Services, chiefly proposing that the Crown Law Commission examine the implications of having a corporation with enforcement powers. This information was useful to Forest & Bird in that it indicated both the dangerous direction in which the restructuring was currently heading and the early exclusion of MfE, DoC and the Ministry for Maori Development (MoMD), most frequently referred to as Te Puni Kokiri (TPK), from the officials' group.

On 21 June 1994, the WFC, NZFIB, NZFIA and NZFCF wrote their arguably infamous letter, quoted earlier, in which they outlined "both the Commission's and Industry's views on the composition of an acceptable package of legislation for introduction this year." Of the three items listed, the first, "the removal of resource rentals, access fees or selective taxes imposed by Government", was subsequently addressed to industry's satisfaction, as explained in Chapter Five, in the Fisheries Amendment Bill. The second item, "the implementation of a robust cost recovery regime", will be considered later in this chapter. It is the third item, "fundamental institutional change to ensure the highest value for money in the delivery of commercial fisheries administration services", which shall now be addressed.

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17 Letter, Russ Ballard, Director General MAF (Fisheries), to F&B, 13 June 1994.
18 Ibid., Enclosures 1 and 2 respectively.
20 Ibid.
The "Industry/Commission Structural Proposal" was nothing less than an industry-dominated "National Fisheries Agency" (NFA) exercising virtually total control over all aspects of fishing other than policy which, together with "Approval", it generously conceded to the Minister. What this represents is an industry-controlled, souped-up statutory body, constructed upon the foundations of the NZFIB. "Government appointees" representing the public interest, recreational and environmental sectors, however impartially selected, would have had as much influence upon an NZFIB-dominated board as presently do the Ministers of Conservation, Environment, and Maori Development in Cabinet, that is, virtually nil. Yet here was envisaged a body which would not only effectively control fisheries management and research but would also be involved in enforcement. Happily neither industry's NFA, nor the officials working group's almost equally dangerous successor-proposal, the National Fisheries Council (NFC), would come to fruition. However, as has already been shown, industry would still be clear winner both as a result of the restructuring process and in the composition of the Fisheries Bill 1994 and the Fisheries Act 1996. Other sector groups would not be so fortunate.

On 23 June 1994 the environmental groups ECO, Forest & Bird and Greenpeace in combination wrote to the members of the Fisheries Structural Reform Officials' Committee (FSROC) thanking them for "allowing us the opportunity to meet with the Officials Committee...and discuss our concerns over proposals to change the MAF." The environmental groups wished both to reiterate their concerns over the process being pursued to review MAF structure and to forward their own proposals. Their concerns were succinctly expressed:

Firstly, any consideration of structure should not come before decisions are made on the shape and administration of the revised fisheries legislation. For example, we have suggested roles for Ministers other than the Minister of Fisheries in decisions on fisheries management in line with recommendations of the Fisheries Task Force.

21 Ibid.

22 Ibid. Industry's NFA "would comprise a board of ten, including an independent chair, along with a secretariat of equal size. The Board would contain Industry and Maori representatives as well as Government appointees who would represent the public interest, recreational and environmental sectors. Both the Board and the secretariat would be expected to have substantial operational knowledge of fisheries management and administration as well as strategic planning and budgeting skills". Ibid., p. 5.

23 Ibid.

Secondly, officials need to be clear on what they are trying to achieve and what the costs and benefits of various options are. The papers released to us, under the Official Information Act, give little justification for the structure suggested nor for the speed in making the decisions. Once the objectives of restructuring are known then the benefits and costs of various options should be compared in a transparent manner. We look forward to further dialogue on this.\textsuperscript{25}

The environmental groups offered their own proposal for the splitting of MAF into two agencies, thus:

\begin{enumerate}
\item A Ministry of Sustainable Land Management, incorporating the agriculture functions of MAF with the Ministry of Forestry, and
\item A Ministry of Sustainable Fisheries which would retain responsibility for fisheries management and fisheries research.
\end{enumerate}

Such a split was considered by environmental groups to provide a clear focus for each agency. To avoid the conflict of interest that might arise with one agency of the Crown owning quota and setting environmental constraints, environmental groups recommended that the Ministry of Commerce take over the role of managing the Crown's quota portfolio. Other advantages of the proposal were that it would result in an integrated agency with less opportunity for capture by any sector, and one with "current information flows" intact. It was also likely to reduce the "corporate overheads on fisheries",\textsuperscript{26} that is, the cost of running the Ministry. In the event, a stand-alone, if truncated, MFish would be instituted on 1 July 1995, whilst the Ministry of Agriculture would subsequently once again become MAF by absorbing the rump Ministry of Forests (MoF). However, Government, together with the respective ministries and associated extractive industries, displayed an extreme aversion to appending the highly proscriptive "sustainable" to the respective ministries' titles. Probably the most charitable conclusion to be drawn from this behaviour is that such a title was considered totally unnecessary rather than grossly inappropriate. Whatever the case, they would assent, albeit with great reluctance, to the inclusion of the term and its derivative "sustainability" in the "religious" sections of the Fisheries Bill 1994 and the Fisheries Act 1996.

\textsuperscript{25} Ibid.

\textsuperscript{26} Letter, Environmental groups to FSROC, 23 June 1994, pp. 1-2.
The environmental groups opposed the corporatization of MAF Fisheries chiefly on the grounds that such an agency would become captured by industry; environmental and non-commercial concerns would have little influence over funding and resourcing decisions. The environmental groups questioned the constitutionality of corporatizing the enforcement arm of MAF Fisheries.\(^7\) This legal view was subsequently shared by the Law Commission, and would ultimately seal the fate of the whole corporatizing initiative.\(^8\)

Unsurprisingly, the environmental groups did not support the proposal to turn MAF Fisheries Research into a CRI. They argued that, whereas CRIs are largely institutions that deal with a range of principally commercially oriented research from many funding sources, MAF Fisheries Research was involved with management oriented research. Aside from a minor amount of research carried out on aquaculture, such research was focused on providing information required for the sustainable management of fisheries in the long term. It is noted that the NZRFC shared this view.\(^9\) Additional problems with regard to CRIs arose over the ownership of information. As ENGOs, the environmental groups already knew that CRIs were reluctant to provide information to the public; CRIs tended to see the information as having a commercial component. In the interests of public accountability it was vital that adequate peer review of information took place in order to protect the marine environment and ensure sustainable fisheries management.\(^\text{30}\) Of course, Government and industry were entirely aware of such "problems"; the very taciturnity of CRIs is itself a bonus for both. Arguably, public accountability tends not to be cherished to the same degree by a government and industry of an economistic bent as it is by those genuinely committed to the public Good, an admittedly ideologically-freighted phrase, but one placed within context earlier in the work.

The environmental groups were also able to quote from experience when issuing a commendably low-keyed condemnation of industry's proposal for establishing a National

\(^{27}\) Ibid., p. 2.

\(^{28}\) *New Zealand Herald*, 18 July 1994, p. 3.  

\(^{29}\) NZRFC, Submission No. 3 on Fisheries Legislative Review - CRI/Fisheries Research Issues, undated 1994.

\(^{30}\) Letter, Environmental Groups to FSROC, 23 June 1994, p. 3.
Fisheries Management Agency (NFMA). Their clear and reasoned rejection of industry's proposal deserves to be quoted in full:

We do not support the industry proposal of establishing an NFMA. This agency would be easily captured by the industry as has occurred with the equivalent agency in Australia - the Australian Fisheries Management Agency (AFMA).

The response we have had from Australian colleagues and from talking to state and federal officials is that the AFMA places industry concerns over community interests or the public good elements in fisheries management.

The NFMA suffers from being a further means of avoiding public involvement in fisheries management and would inevitably result in industry dominating decisions over which research project was funded, at the expense of the marine environment.

The industry proposal fails to acknowledge that the costs they will pay for fisheries management only arise because they are fishing. In the same way, the petroleum industry and other miners are now proposing controlling where the Crown spends resource rentals or costs recovered for managing mineral permits.

While the industry has a legitimate interest in the priorities of MAF, that interest is not less or more than that of any other groups interested in fisheries management.31

With respect to achieving greater accountability in the financial and resource decisions of MAF, environmental groups considered there were better methods than going to the expense of setting up an NFMA. They recommended a mechanism similar to the annual plan process required of regional and territorial councils, as set out in sections 223D and 223E of the LGAA, using the "Special Consultative Procedure" set out in section 716A of the Act.32

After stressing the importance of information dissemination and retention of institutional memory, the environmental groups concluded their submission as follows:

31 Letter, Environmental Groups to FSROC, 23, pp. 3-4.
32 Ibid., p. 4.
We support the establishment of an integrated Fisheries Ministry. Any advantages that may exist in splitting up MAF will be lost by the greater chance of the agency being captured by the industry. Fisheries are a publicly owned resource and any management and resourcing decisions should be accountable to the community.  

It can be readily ascertained from all the constructive contributions to the fisheries structural reform process provided thus far by the environmental groups, that they had done their homework. This dedication should not surprise. It is fair to suggest that their commitment to the fight for the environment and for community concerns is total, and untainted by commercialism. They are obviously not "in it for the money". Their agenda is, like that of The Greens, closely akin to that arising out of Goodin's green theory of value. In addition, their collective breadth and depth of expertise in the natural and social sciences render the environmental groups at least the intellectual and academic equal of any ministry or government, let alone an industry consisting of narrowly educated corporate managers and notoriously rough-hewn extractors.

Although destined once more to be left out in the cold and prohibited both from joining the officials' group discussions and membership within scoping groups, MfE, DoC and TPK senior management had all the while been involved in work relating to fisheries policy and structural reform, and had consistently cooperated with the environmental groups since the very beginning of the reform process. MfE had held meetings with NGOs on 28 May and 2 July 1992 to discuss fisheries issues, and had provided environmental groups with a copy of its submission to the Minister of Fisheries commenting on the Fisheries Task Force's final report. It is therefore unsurprising that an excellent rapport continued to exist between MfE, together with the two other "outcast" agencies DoC and TPK, and the environmental groups. The latter would subsequently be hauled over the coals by officials for passing on vital scoping group information

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33 Ibid., p. 5.

34 Those doubting the veracity of the above assessment should acquaint themselves with, for example, the editorial content of ECOLink and Forest & Bird and compare it with that of Seafood NZ. As for the post-1996 performance of The Greens in Parliament, perusal of Hansard, will demonstrate by how much the precision, clarity, scientific acumen, scholarly demeanour and graciousness of The Greens' co-leader Jeanette Fitzsimons stands in sharp contrast to the mix of bombast, tired ideology, vague generalities and slippery evasions served up in the previous Parliament by ministers and their strident backbencher acolytes. The cooperative and constructive nature of The Greens is typified in Fitzsimons' 2000 Address in Reply speech, whereas an example of the opposite is to be found in the churlish and tiresomely unoriginal remarks of the former Minister of Fisheries in the late Right Wing government, John Luxton, on the same occasion: "Here we have the 'Watermelon Party', the Greens, who are green outside but actually red and mushy on the inside". Weekly Hansard, 2, 9 February 2000, p. 378.

inexcusably denied to MfE, DoC and MoMD. ECO co-chairperson Cath Wallace reports the incident in a subsequent media release as follows:

Anyone who cares for the sea, the marine ecosystem and the fisheries should be alarmed at what is happening. A group of officials from the Treasury, the SCC and MAF is working closely with the fishing industry to set up new arrangements that will give the fishing industry much control over what fisheries research and management is done. MfE, DoC and TPK have been denied a place at the table by the Cabinet. This has prevented these Departments who have vital interests in fisheries, the opportunity fully to participate. There has been no official public notification of the process or the options being considered. ECO itself told the public and at one stage supplied papers to an excluded government department. We were reprimanded for this.36

As noted in Chapter Five, on 11 July 1994 Cabinet agreed to establish two "Scoping Groups": one to consider National Fisheries Council (NFC) issues, the other to consider CRI/Fisheries Research issues.37 The matter of the corporatising of MAFFish, a scheme enthusiastically endorsed by the CSSC and subsequently rubber-stamped by Cabinet,38 had by this time been dropped,39 as Doug Kidd would shortly announce,40 in the wake of the thumbs-down opinion by the Law Commission on the enforcement issue.41

Given that the ultimate shape of the new Ministry of Fisheries (MFish), fashioned out of the old MAFFish, would conform exactly to that outlined by the Minister in an announcement on 17 July 1994, it is reasonable to ask why all the apparent bother of convening scoping groups would subsequently be entered into. The Minister had stated that:

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36 ECO Media Release, 28 August 1994. Wallace, who lectures in the Department of Public Policy at Victoria University, Wellington, is a recipient of the prestigious Goldman Award, the "Nobel Prize for the Environment", for her outstanding contribution to the Antarctic Environmental Protocol.


38 Letter, Ross Tanner, Deputy SS Commissioner, to Ministers of Fisheries, Finance, and SS, 3 June 1994; Cabinet Minute CAB UNNUMBERED, Ref. 436, 7 June 1994.


40 New Zealand Herald, 18 July 1994, p. 3.

...a revamped fisheries division would retain responsibility for law enforcement and fisheries policy. Administrative functions, such as quota management, would go to a new commercial division which would be open to competition. Scientific research would be given to a new fisheries crown research institute or an existing institute would be remodelled.42

So little importance was attached to the idea of a NFC that it received no mention,43 and the CRI matter was merely one of an either/or choice, yet both these issues were deemed worthy of the attention of specially convened scoping groups involving extra-departmental input. However, arguably, the question becomes unnecessary when it is remembered that, with the edifice of structural reform having largely been constructed, it remained only to apply a veneer of public participation to complete the process. The NFC and CRI scoping groups would, it is suggested, fit the bill quite nicely. Accordingly, on 19 July 1994, Robin Allen, Group Director, MAF (Fisheries) Policy, wrote to ECO, Forest & Bird and Greenpeace, asking them to nominate two persons for the officials’ NFC scoping group; appointments would be made by the Minister on 22 July.44 On 21 July ECO, replying on behalf of the three groups, stated their preference for all three to be represented, and accordingly nominated Cath Wallace, Barry Weeber and Nikki Searancke.45 In the event, all three persons would attend the NFC scoping group meetings.

Meanwhile, the CRI scoping group, under the chairmanship of Sir James Stewart, got underway on 27 July 1994. Consisting of officials from CCMAU, MAF and Treasury, plus representatives from industry, this group had originally been directed to report back to the CSSC on the scoping studies no later than 31 August 1994. However, this draconian deadline, together with that set for the NFC scoping group, was subsequently deferred to 14 September 1994.46 The CRI scoping group, after considering over 50 written and verbal submissions from a wide range

42 New Zealand Herald, 18 July 1994, p. 3.
43 What finally eventuated within the provisions of the Fisheries Bill 1994 was a National Fisheries Advisory Council (NFAC), a purely advisory body, the purpose of which was to replace the existing TACC Council and the existing but moribund Fisheries Council. SSC, Report on the Scoping Group to Consider Options for the Management of New Zealand’s Fisheries, 20 September 1994; The Fisheries Bill 1994, Part XIII, sections 280-287.
44 Unnumbered Fax: Jul 94 02:34PM MAF Fisheries.
of interests, recommended the merger of MAFFish Research with the National Institute for Water and Atmospheric Research (NIWA).\textsuperscript{47} However, many participants had been most dissatisfied with the proceedings. For example, the Royal Society of New Zealand (RSNZ) deplored the obvious lack of analysis preceding important policy decisions in such a vital area as fisheries research which must be free from commercial pressures. The RSNZ supported the stance of both greens and recreationalists that the resource belonged to all New Zealanders and not to industry.\textsuperscript{48}

Whilst the CRI scoping group's deliberations were completed in an air of comparative quiet, such was not to be the case with the NFC scoping group. For, once having ascertained the pre-programmed outcome guaranteed by the latter's narrow and rigid agenda, the environmental groups were quick to make public their dismay. On 29 July ECO published a media release airing its worry that the Government was ramming through the dismemberment of MAF (Fisheries) in the space of three weeks, as originally scheduled, apparently for the sake of a deal with the fishing industry over management costs. Cath Wallace expressed the environmental groups' sense of anger, frustration and betrayal thus:

\begin{quote}
We seriously question the merit of such a deal since it is only reasonable for the fishing industry to pay the management costs because they take the fish. Why the Government should allow itself to be bullied into dismembering MAF Fisheries has yet to be explained. No New Zealander should wear this for a moment. What's more, while everyone else in the community is made to pay their own way under user charges, the fishing industry has persuaded the Government also to remove fisheries resource rentals which are the payments for taking the fish itself.

We have entered into the Minister's group in good faith but feel obliged to speak out because the timetable is far too compressed. No one who is not already involved in the process will be able to respond. It is completely unacceptable.

What is happening is that the fishing industry is filleting the fisheries section of MAF and repackaging it as a present to itself. Officials on the scoping group and the
\end{quote}

\textsuperscript{47} CRI Scoping Group Report, Annex C.

\textsuperscript{48} Ibid., pp. 14-16.
working groups will likely be presiding over the hauling in of the catch for the industry. It is highly ominous that Ministers have refused to allow the Ministry for the Environment, Department of Conservation and Te Puni Kokiri to be part of the reform process. We are concerned that we have been asked to attend a *fait accompli* to legitimize the process.

It is proposed within a space of 2-3 weeks to design the dismemberment of MAF (Fisheries) and to put into place a National Fisheries Council which will almost certainly be dominated by the fishing industry interests. If the industry gets control of management decision making, fisheries stock assessment, the commissioning of research and a host of other functions then the integrity of fisheries management and research will be seriously jeopardised. The marine environment and New Zealanders will be the losers.49

There, in a nutshell, was the whole fisheries restructuring process revealed, namely industry’s takeover of New Zealand’s marine resources, aided and abetted by Government and the most powerful of the ministries. Subsequent general public indifference to the matter is unsurprising, considering what had recently gone before in the arguably wholesale dismantling of the welfare state, and the state-sponsored substitution of New Right individualism for a caring society. For the public, fisheries restructuring was an abstract, as removed from the realities of life, and about as interesting, as the contemporaneous news that the discovery of the *top* quark confirmed and completed a distinct phase of fundamental particle physics research in quantum theory. Fisheries fail to excite in the manner of forests, and certainly not in the milieu of the post-1984 reforms.

A meeting on 23 August 1994 between the NFC scoping and working groups elicited an interesting response from industry. David Sharp, an industry official who later worked under the aegis of the NZFIB as Chairman of the Legislation Review Committee, wrote an appropriately sharp letter on 24 August to Ross Tanner, Chairman of the NFC scoping group.50 In it Sharp said he had some concerns about the previous day’s meeting "with the Scoping Group" and, after noting that there appeared to be some confusion within "your Group", proceeded to lecture Tanner thus:

> It needs to be emphasised that the quota management system in New Zealand is

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50 Fax, David Sharp, Chairman FLRC, to Ross Tanner, Chair NFC Scoping Group, 24 August 1994.
widely recognised as being the best fisheries management regime anywhere in the world.\textsuperscript{51} The introduction of cost recovery provides Government, industry, and other sector groups with an ideal opportunity to ensure that the structures we have in place in the future to manage our fisheries maintain the strength of our management systems in a cost-effective and transparent manner. It is important therefore that the Scoping Group has a detailed understanding of fisheries matters, as the recommendations you make may have a lasting effect on the viability of a very important export industry.\textsuperscript{52}

Sharp ended his lecture with the standard industry statement apropos its self-interested stewardship and cooperative spirit:

There was considerable discussion at Tuesday's meeting of concerns held by some of the Scoping Group members about the risk of industry somehow capturing the process of management for their own ends.\textsuperscript{53} This reveals a lack of understanding of the property rights nature of the New Zealand fishing industry. We have a vested interest in ensuring sustainability of our fisheries, as without sustainability we lose very valuable quota and other assets.\textsuperscript{54} It is therefore rather insulting to have continual inferences that as an industry we cannot be trusted to play our part in ensuring future sustainability. It is even more concerning when the comments come from members of a group we expected to be totally open-minded about future directions for our industry.

I can assure you and your scoping group that we will vigorously oppose the imposition of management structures which will significantly and unnecessarily add to the bureaucracy of our industry. At the same time we will enthusiastically adopt structures which lead to good management, good liaison with other sector groups and continued sustainability of our fisheries. We would expect the Scoping Group to have the same objectives.\textsuperscript{55}

\textsuperscript{51} Ibid. This industry anthem is of course based upon the melancholy fact that the NZ ITQ QMS is itself seriously flawed and only looks good because fisheries management elsewhere is generally so bad.

\textsuperscript{52} Ibid.

\textsuperscript{53} See Environmental groups' submission to NFC Scoping Group, esp. "Capture Avoidance", 15 August 1994.

\textsuperscript{54} Fax, Sharp to Tanner, p. 2. This statement is of course pious nonsense. As was amply shown in Part Two, mere possession of a property right does not guarantee wise husbandry. The NZ fishing industry is a notorious risk-taker. For the period 1990-94 industry asked on average for a 34% higher TACC than MAFFish's recommendations. See ECO Media Release, 2 October 1994.

\textsuperscript{55} Ibid.
The unidentified "some" among the scoping group's members were, of course, the environmental groups' representatives. These individuals, as the case studies will clearly demonstrate, spend a great deal of time, effort and expense in attempting to counter industry's penchant for demanding TACCs at levels well in excess of admittedly hypothetical sustainability and employing arguably underhand methods in achieving its goals. The stance of industry's senior representative was doubtless worthy of that which finally convinced the environmental groups of the futility in continued participation in the whole process and to withdraw from the NFC Scoping Group. Accordingly, they informed the Minister:

It is with regret and disappointment that ECO, Greenpeace and Forest and Bird write to tell you that we no longer feel that we can participate in the Fisheries Scoping Group on the National Fisheries Council and related matters. As you know, we have always had concerns about the skewed composition of the Group, the very constricted timetable that you have asked it to adhere to, and the process that it has followed which has not called for public input.

These concerns have remained alive and pressing. We have now come to the view that the methodology the Group has followed cannot have our support. We had all agreed that there were to be indicative tests and criteria applied to assess options. On Thursday we found that though this methodology had been reaffirmed on Tuesday, the agencies had simply chosen preferred options with no prior application of the tests. We cannot endorse a methodology that uses criteria as an ex post dressing up of the options chosen.

We understand that you have criticised Cath Wallace for lack of input to the committee. This is completely unjustified. We have attended every meeting we could and have worked diligently and hard intersessionally. It was notable that at times when deadlines were tight it was the NGOs and not the government departments or the industry that complied substantially with these, the latter two not delivering in time for meetings.

You demean yourself by resorting to unfounded personal attacks.56

Doug Kidd's immediate response to the environmental groups' walkout is recorded in the "Questions for Oral Answer" quoted at the head of this chapter. He would later, albeit

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temporarily, adopt a more conciliatory stance.\textsuperscript{57}

Subsequent to their well-publicised and lucidly explained withdrawal from the scoping group, the environmental groups would continue to alert public and Parliament to the extremely flawed and downright dangerous nature of the forthcoming Fisheries Bill and associated legislation. They particularly emphasised the extremely narrow focus of the fisheries structural reform process upon commercial fishing rather than a holistic approach which would include within its embrace the requirements of the community, the maintenance of aquatic ecosystems, and biodiversity.\textsuperscript{58}

Meanwhile, the implementation of the reform process, including non-commercial sector group participation, would proceed at its characteristically swift pace. On 3 October 1994, Cabinet had directed the Director General of MAF, in consultation with SSC, DPMC, Treasury, CCMAU officials and sector groups, to report back to the Cabinet Strategy Committee (CSC) by 16 November 1994 with a detailed strategic transition plan (STP), and associated costings that would minimise the financial implications to the Crown for structural reform of MAF Fisheries.\textsuperscript{59} Copies of a draft outline of this plan, together with an invitation to a meeting to be held on 4 November 1994 to discuss its contents, were subsequently sent by the Minister of Fisheries to sector groups.\textsuperscript{60} In the event, whilst the bulk of the Fisheries Bill 1994 would languish with the PPC until its passage on 31 July 1996 as the Fisheries Act 1996, several of the key dates listed in the STP were quickly met. By the simple expedient of instructing the PPC to split the Fisheries Bill into separate Bills,\textsuperscript{61} Government ensured that the Ministry of Agriculture

\textsuperscript{57} Letter, Doug Kidd to ECO, 3 October 1994: “It is with regret that I received your letter of 27 August expressing ECO’s decision to withdraw from participation in the Fisheries Scoping Group. I am advised that you, Ms Searance and Mr Weerer and your respective organisations have made a major contribution to the discussions. I can assure you that the efforts of NGOs was (sic) appreciated by the Scoping Group and will be taken into consideration when reaching final decisions. I look forward to working with you and the NGOs in the future to preserve our shared goal of the sustainable management of NZ’s fisheries.” However, Kidd would revert to type in his letter to Mr C.S. Withers, 14 November 1994, in which he states that, “Cath Wallace chose to walk out halfway through the process.”

\textsuperscript{58} With regard to biodiversity, see ECO Media Release, 20 September 1994: “Carnage of Thousands of Protected Dolphins Fur Seals and Albatross Set to Become Law, 20 October 1994.” This release was in response to proposed amendments to the Marine Mammal Protection Act and the Wildlife Act, due for introduction into the House on 1 December 1994, which would effectively subvert their intent in the interests of commercial fishing.

\textsuperscript{59} CAB (94) M 37/13; CAB (94) M 37/14, 3 October 1994.

\textsuperscript{60} Draft Memorandum: Fisheries Structural Reform: Strategic Transition Plan, Doug Kidd to Chair CSC, 1 November 1994; Letter, Patricia Kelly, Manager, Change Management Unit to Max Heatherington, NZRFC, 1 November 1994.

\textsuperscript{61} NZPD Vol. 547, 28 March 1995, p. 6444.
and Fisheries (Restructuring) Bill achieved relatively unhindered passage into law on 1 July 1995.\footnote{\textit{Ibid.}, pp. 7000-7006; 7065-7073.}

The Fisheries Bill 1994 was introduced into the House on 6 December 1994.\footnote{NZPD Vol. 545, 6 December 1994, pp. 5389-5402.} Doug Kidd found himself not only strongly supported by his Government colleagues but also backed, unsurprisingly, by Graham Kelly, one of two Labour members of the PPC and a pro-fisher traditionalist of the narrowly anthropocentric school. Disappointingly, Labour's co-spokesperson for the environment, John Blincoe, simultaneously boosted industry's fatuous "$2 billion by the year 2000"\footnote{See The Fishing Industry Marketing Council, \textit{Seafood Exports: 6 Years to 2000}, FIMC, Wellington, 1994, p. 6. Annual seafood export returns 1993 and 1998 averaged around $1.2 billion.} slogan, doubtless for the benefit of his Nelson electorate which included the country's largest fishing port, even as he fretted about sustainability. The whole introductory exercise can probably best be summed up as an initially serious exchange of views between basically like-minded protagonists, which finally degenerated, in an air of uncharacteristically general bon homme, into the generally laboured humour so typical of the venue. The prevailing atmosphere in the debating chamber boded ill for the production of wise legislation. After being so introduced and read a first time the Bill was referred to the PPC.\footnote{Committee Members were: Eric Roy (Chairman from 28 June 1995), David Carter, Jack Elder, Graham Kelly, Ross Meurant, Alec Neill (Chairman until 28 June 1995) and Hon Jim Sutton. \textit{L.11A, Interim Report on the Fisheries Bill: Report of the Primary Production Committee}, New Zealand House of Representatives 1995, Bennets Government Books, 1996, p. 3.}

PPC chairman Alec Neill presented an interim report on the Fisheries Bill 1994 on 15 March 1995. This report dealt only with a matter which the Hon. Jim Sutton referred to as "a cock-up": compensation to industry for a reduction in the hoki quota, a saga known as "the hoki tail", the money for which had mistakenly found its way into the general fund.\footnote{NZPD Vol. 546, 15 March 1995, pp. 6160-6162; 6190-6192. The first matter recognized the need to divide the grossly over-exploited pua fishstock of the Southwest into three more manageable areas. The second concerned the welfare of the Nelson scallop fishery, earlier destroyed by mindless exploitation but now brought back to life under an enhancement regime. Third was the previously noted "hoki tail", while the fourth and final matter merely recognized the melancholy fact that fisheries management plans, envisaged in the Fisheries Act 1983, had never been drawn up and so "withdrew" them.} Of much greater import was Leader of the House Don McKinnon's success in seeking leave of the House for the PPC's division of the Fisheries Bill, on 28 March 1995, into such separate Bills as the House thought
desirable. In the event, there would be two Bills passed before the main event on 31 July 1996. The first was the previously noted MAF (Restructuring) Bill that would bring the Ministry of Fisheries into existence on 1 July 1995. The second was the Fisheries Amendment Bill (No. 3), which dealt with four matters, most of which needed to be disposed of before the start of the 1995/96 fishing season on 1 October 1995. The Bill underwent all three readings on 13 September 1995.

Meanwhile the PPC had presented its report on the MAF (Restructuring) Bill to the House on 1 June 1995, before presenting its report on the Fisheries Amendment Bill (No. 3) above, on 13 September 1995. As for the Fisheries Bill 1994 itself, the closing date for submissions had been 13 February 1995 and the committee had received 117 submissions, of which 73 requested to be heard orally. The PPC would subsequently take its show on the road to the main centres in both the North and South Islands. There it heard evidence from sector groups on 1, 14, 15, 16, 21, 22, 28, 29 and 31 March, 10 May, and 15 and 22 November 1995, before publishing its Interim Report in December 1995.

The afternoon of 22 March 1995 had been allocated to the hearing of oral submissions by non-industry sector groups, and provided a graphic example of the democratic process of public participation in policymaking being acted out in fast forward mode. It was noted that, with the exception of the Chairman, individual Committee members left the room in regular rotation for long periods. Alec Neill ruled with a rod of iron. Each sector group had been allocated a scant few minutes in which to plead its case, and was rigidly held to its allotted span. When the NZRFC President objected to former police officer and Government MP Ross Meurant's taking up the Council's precious submission allocation time with what can only be described as a rant on industry's behalf over the allegedly huge recreational charter boat snapper take, Neill

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69 NZPD Vol. 547, 1 June 1995, p. 7000.
71 PPC Interim Report, p. 4.
72 The present writer attended the Parliamentary Primary Production Committee Hearings at Auckland Airport Travel Lodge, 22 March 1994, hereafter referred to as PPC Hearings.
73 MAFFish's 1994 estimate of the annual catch of snapper from charter boats in the combined areas SNA1 and SNA8 was 400 tonnes.
brusquely stated that, as Chairman, he would decide who would speak and when. To the observer, the whole proceedings were extremely disconcerting, both for their breakneck speed and in their denial of natural justice.

Without exception, all of the plaintiffs had done their homework and stated their case with commendable candour, conciseness and lucidity. The overall theme was one of general dismay at the Bill's focus upon "utilisation" of marine resources for the benefit of an industry unhampered by meaningful environmental constraints and encouraged into wrongdoing by token penalties. Not one of the six sector groups represented found itself at odds with any other. Whereas Greenpeace, which opened the submissions, and The Alliance, which closed them, presented an overall picture of the Bill's most glaring deficiencies, other groups concentrated upon aspects most troubling to their areas of responsibility. It is fair to observe that altruism rather than narrow self-interest was the overriding theme, even within the most apparently specialised group. All groups expressed their frustration at the prospect of being rendered helpless by the mechanisms of a Bill, the purpose of which purportedly included "improving the processes for public participation in fisheries management." In the event, the manner in which the hearings were conducted would accurately presage the likely efficacy of any such participation. A few examples can be usefully quoted.

The Bay of Plenty Regional Council (BOPRC)) representatives drew attention to their present dearth of powers, which they would continue to lack under the provisions of the Bill, over a typical scenario involving the local underwater photographic club. The club has found its very reason for being, ruined by the actions of one trawler emptying the section of the coast frequented by the club, of its entire resident marine biota. This news elicited no comment from the Committee. The NZRFC representatives found, to their dismay, that the Committee had obviously not read the Council's meticulously researched snapper plan submission, which was crucial to their case, and which omission led to the squandering of the NZRFC's precious submission allocation time. The erudition and quiet competence of the NZRFC's snapper expert

industry's 5,000 tonnes; charter boat catch was included in the total estimated recreational catch of 3,000 tonnes. NZ Fisherman, May 1995, p. 12. These facts were known or at least available to the Committee before its hearings commenced.

74 Fisheries Bill 1994, Purpose of Bill (a).

75 PPC Hearings.
contrasted sharply with Ross Meurant's extremely aggressive and domineering performance. Despite being seriously disadvantaged by such antics, the NZRFC presented an excellent case, and came across as champions of the public Good, any aspect of which, they were at pains to point out, were singularly lacking in the Bill.\(^7\)

The Underwater Association drew attention to the priority of non-commercial use of the fishery; such priority was not reflected in the Bill. The Association stated that, in their view, whereas Maori were covered in the Treaty, and the commercial sector was covered by the TACC, the recreational sector had no concrete rights; the rights of all parties should be set out in the Bill. The importance of regional input was emphasised. The Association drew attention to the huge profits made by the commercial sector from illegal fishing, which the Bill not only failed to address but indeed encouraged with reduced penalties. The PPC was not moved to comment upon this submission.\(^7\)

The NZ Gamefish Council (NZGFC), aside from pointing out such anomalies as the total lack of reference to swordfish in the Bill, drew the Committee's attention to the contrast between the huge monetary investment in fishing by recreationalists and their total lack of say in the running of the fishery. This claim elicited a surprising degree of animation from a Committee gone noticeably quiescent after the Meurant outburst during the NZRFC's submission. However, a revived Meurant exclaimed: "That is a dangerous argument. The commercial fishers will win if you follow that line." Instantly replied the NZRFC, out of turn and in chorus: "No they won't!" "No they won't!", roared a much encouraged NZGFC in happy echoing agreement. Both organisations then proceeded to explain just how much money is both tied up in fishing and generated by recreationalists. The Committee, having ascertained that hotels were included in such calculations, settled down in silence to await deliverance of the final submission, that of The Alliance. This, unsurprisingly, given Sandra Lee’s previously noted credentials, expressed the fears of those espousing community and other green concerns.\(^7\)

\(^7\) PPC hearings.

\(^7\) Ibid.

\(^7\) Ibid.
It is instructive to note and to compare the ambience of the House upon each occasion of the progression of the Fisheries Bill 1994 and its associated business. As previously noted, the Bill's introduction was marked by a great deal of what was once known as "undergraduate" behaviour. Untoward levity and absenteeism suggest a careless attitude toward the wise solution of important matters. This carelessness was reflected in the sparse attendance in the House during the debate over the MAF (Restructuring) Bill, and, finally, in the sad spectacle of a practically deserted Debating Chamber for the passage of the Fisheries Act 1996. Apropos the former, David Carter, a Government member of the PPC, stated that, "I will not take too much of the House's time because I can see from the lack of attendance that there is not a lot of interest in this Bill".79 During the course of this debate, Doug Kidd noted that the members of the select committee were trying to write the Bill so that "even a fisherman can understand it", at which point the Rt. Hon. Jonathan Hunt, Father of the House, interjected: "I wish them good luck."80 Aside from the Members' acknowledgment that commercial fishermen tend generally not to be strongly represented amongst the ranks of Rhodes Scholars, there was also implicit recognition of the fact that the Bill required a more circumspect approach.

This would subsequently be confirmed in that the Fisheries Act 1996 would be placed under review almost immediately after it was entered in the Statutes and before most of its provisions had been actioned. Furthermore, criticism of the Bill by two key watchdogs of parliamentary legislation supported the demands of ECO, Forest and Bird and Greenpeace that the Bill be revised. The Legislation Advisory Committee of the Law Commission recommended that the Bill be withdrawn for substantial rewriting, while the CfE recommended major changes to the provisions dealing with sustainability.81 Conversely, industry would continue to the very end to call for further weakening of the few modest environmental safeguards actually contained in the

79 NZED Vol. 547, 1 June 1995, p. 7004.
80 Ibid., p. 7005.
81 Sir Kenneth Keith, representing the Law Commission, a Government-appointed group of eminent lawyers, judges and laypersons whose task is to monitor and report on all facets of legislation and decision making, said the Bill needed a lot more work; and for this to be done well the Bill needed to be rewritten. He cited the complexity in the legislation, poor order and inconsistency procedure as examples of problems with the Bill. Sir Kenneth said it was the first time in the history of Law Commission submissions that they recommended a Bill be withdrawn to allow time to rewrite it. The PCE, Helen Hughes, had equally damning criticisms. However, these criticisms were not merely procedural. They focussed on the Bill's environmental aspects, in four main areas of concern. These were: 1. purpose of the legislation, which failed to provide good environmental constraints; 2. poor procedures for developing environmental standards; 3. provisions that allowed the TACs to be set higher than stock could stand; 4. an unusually large amount of Ministerial discretion. The PCE Said that the Bill's purpose allowed economic needs to override the constraints which are necessary for ecological sustainability. Ecolink, March 1995, p. 7.
pending legislation. Their myopic focus lit upon four main areas which, whilst assisting in the maintenance of long term "sustainability" within the aquatic environment, would doubtless inhibit industry's stated aims of "utilisation".  

On 31 July 1996, Doug Kidd moved "That the House take note of the report of the PPC on the Fisheries Bill". The Bill underwent its second and third readings during the course of the same day, with minimal discussion and even fewer amendments. In truth, almost the only people interested were the Minister and the members of the PPC when "In Committee" after the second reading.

To conclude this chapter, aside from the rather unnerving implications for the legislative process in general, much can be learned from the particular case of the Fisheries Bill 1994 and its outcome, the Fisheries Act 1996. In the first instance, it shows that a powerful interest group, in this case the NZFIA, has sufficient clout, when it also has the ear and the wholehearted cooperation of the appropriate ministries, to practically write the legislation in advance and entirely for its own ends. These ends can be argued to include the goals of the rationalization and corporatization of the industry, the privatization of fisheries management, and the capitalization of Nature via the ITQ QMS. It next shows that, arguably, the inclusion in policy discussion of other interest groups, like recreational fishers and greens, can be seen as merely a ploy to lend respectability in an age of patently bogus environmental sentiments and minimal concerns for community. However, from the narrowly economistic viewpoint so clearly articulated by Goodin the goals and the method of attaining them are both reasonable and appropriate.

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82 Ibid. Industry: 1. wished to delete reference from the Bill's purpose to future generations, life-supporting capacity of the aquatic environment and the need to avoid, remedy or mitigate adverse effects of fishing; 2. supported measures which would see fish stocks being maintained below that which would support even the highly problematical MSY; 3. argued that the Bill should not bind fishing by international legal obligations entered into by NZ, e.g., the Biodiversity Convention; 4. advocated a reduction in the application of the RMA to fisheries. See also SeafordNZ, May 1996, p. 7-11.

83 Weekly Honsard, 21, 30 July to 1 August 1996, p. 14021. Kidd would claim that, "The Bill is a very substantial rewrite of the Fisheries Act 1983. In addition to the extensive restructuring and simplification necessary, after a number of amendments over the ten years since 1986, there are a number of important policy changes. I am very satisfied with the result, which I believe will provide NZ with the best institutional framework for fisheries management in the world. This may seem a tall claim, but NZ established an early lead with the introduction of the ITQ system in 1986. This Bill will refine and modify this arrangement. The Bill incorporates advances in international law, including those established in the UNCLOS agreement relating to the conservation of straddling fish stocks and highly migratory fish stocks, with which I have been personally involved abroad; the CBD; the Rio declaration on environment and development; and the code of conduct for responsible fishers. This thesis will in due course demonstrate both the shortcomings of the ITQ QMS and NZ's failure to meet its commitment to international compacts."

84 For the record of the full proceedings, see Ibid., pp. 14021-14052.
Arguably, the saga of the fisheries legislative review process also provides another reminder that democracy in New Zealand in matters of policy consultation tends not to extend, beyond a cosmetic, to ordinary people as represented by non-commercial interest groups. The experience of the environmental groups and recreationalists in the fisheries legislative review consultations was largely an exercise in frustration in the face of yet another fait accompli on the part of officialdom and industry. The PPC hearings merely confirm the purpose of select committees, which is to refine already determined policy. Hence their immunity to importuning on the part of the public for policy change.\textsuperscript{85}

The whole fisheries legislative reform process, from the discussions leading to the framing of the Bill, through its passage through the House and Select Committee, to the emergence of the Fisheries Act 1996, bears the ideological brand of the New Right who since 1984 have dominated the public and the private sectors.\textsuperscript{86} The historical record plainly shows legislation in general has favoured the material ambitions of the few, at the expense of the majority and of the environment. For the environment this pattern is only too apparent not only in the Fisheries Act 1996, but also in such legislation as the RMA and the host of amendments to the Forests Act 1949, particularly the Forests Amendment Act (FAA) 1993.\textsuperscript{87}

Just as the stated intent of the Forests Act 1949\textsuperscript{88} is the sustainable utilization of forests, so

\textsuperscript{85} Whilst excerpts of the sights and sounds of select committees have several times been televised for all to see in recent years, it is a considerable shock to the nervous system to actually be present amidst such proceedings. The hearings quoted in this instance did not include the submissions made by individuals. Those rendered by groups were sufficiently traumatic to turn the researcher away in embarrassment from the spectacle of even such collective humiliation wrought by those who, arrogantly perceiving themselves entitled to do as they like despite their positions of authority, presume to treat people like cattle. The furious pace of event the most pukka of English regiments' "Orderly Room" ritual had nothing on the high-speed revolving door routine of the PPC hearings. The Proceedings conducted in such indecent haste hardly achieve the best results is obvious. The one saving grace was the consistently high level of expertise and erudition displayed by the individual members of the group petitioners. The pity is that the wisdom so readily found in people among the community at large, despite the arguably growing superficiality of environmental awareness of the majority, is not reflected in the actions of elected representatives.

\textsuperscript{86} For an apparently unbiased opinion, and an unequivocal "thumbs down", from without, on the Fisheries Act 1996, see Sharon Mascher, 'Taking a "Precautionary Approach": Fisheries Management in New Zealand', \textit{Environmental and Planning Law Journal}, 1, 14, February 1997, pp. 70-79.

\textsuperscript{87} In order to illustrate the sad fact that policy conflicts and bad natural resources legislation are not simply some unfortunate aberration occurring in an aquatic vacuum and confined solely to fisheries, but rather are the rule, it might be instructive to the otherwise unconvincing to compare the background, genesis, enactment and effectiveness of the Forests Act 1949 and its amendments, with that of the Fisheries Bill 1994. Unfortunately, this thesis lacks the space in which to conduct such an exercise. However, it is probably sufficient to note that if more than 20 years of massive protest action, intensive lobbying and extensive media coverage finally ended in the damp squib of the FAA 1993, and the prospect of endless struggle ahead for indigenous forest conservationists, it is hardly surprising that the much shorter and decidedly more low-key action on behalf of fisheries should have resulted in the commercially biased Fisheries Bill 1994 and its equally grim progeny the Fisheries Act 1996.

\textsuperscript{88} The Forests Act 1949 is the Act. Just as the Fisheries Act 1983 was the Act for fisheries, regardless of subsequent Amendment Acts, until the enactment of the Fisheries Act 1996, so, too, is the Forests Act 1949 the Act, the Forests Amendment Act 1993 merely amending, i.e.,
also is the stated intent of the Fisheries Act 1996 the sustainable utilization of fisheries. However, such utilization, by which is meant commercial utilization under whatever modern extraction methods employed, is a contradiction in ecological terms. It can be shown that neither is being sustainably managed even according to the artificial criteria of the commercial forester and fisher. Thus, it can be argued New Zealand’s renewable natural resources are not being managed in a manner that will ensure their renewal for future generations in accordance with Goodin’s futurity criteria. That the Fisheries Act 1996 and all the other ostensibly environmentally-friendly legislation, like the FAA 1993 and the RMA 1991, are demonstrably failing to protect New Zealand’s natural resources, is one of the arguments to be offered in the case studies of Part Three.

This chapter has continued the task of Part Two of the thesis, which is to demonstrate the nature of fisheries related policy and legislation. Specifically, Chapter Seven has analysed the fisheries structural reform process that gave rise to legislation enabling the privatization of fisheries management under the narrowly economistic regime of the NZFIA. The provisions of the Fisheries Act 1996 emphatically do not meet Goodin’s criteria for the successful maintenance of natural resources in accordance with his green theory of value.
Chapter Eight

Policy Pertaining to Fisheries and the Aquatic Environment

In the Wake of the Fisheries Act 1996

And

Into the New Millennium

Such programmes [as private property rights] have had some success in Australia and New Zealand, but there is heartfelt opposition from environmentalists and small-scale fishermen. Both fear the quota rights will end up in the hands of giant conglomerates, just as family farms in mid-America were absorbed by big agribusiness. The result could be oceans as controlled, subdivided, fenced and farmed as the American Midwest – a place where whales are as rare as bison, where cod have gone the way of the passenger pigeon, where salmon are grown like chickens. Bountiful, perhaps. But tame, constricted and human, a place Rachel Carson could not love.

James O. Jackson¹

The world cannot afford to sustain the environmental view that fish have an equal right to live on the planet.

Peter Talley²

Chapter Seven continued the task of Part Two, which is to review fisheries legislation in New Zealand and to demonstrate the flawed nature of the policy that gave rise to it, a policy that fails to meet Goodin’s criteria for the maintenance of natural resources. Chapter Seven particularly highlighted the role of environmental groups in their attempt, unfortunately thwarted by the essentially undemocratic nature of the so-called consultation process, to affect such change. Chapter Eight completes the task of Part Two by conducting a critical analysis of New Zealand’s fisheries policy in the wake of the Fisheries Act 1996. This analysis is set against a background of the current world fisheries crisis, fisheries policy, fisheries conflicts, and the status of the machinery of ocean governance established to address the crisis.

History of the Global Fisheries Crisis


² New Zealand Herald, 10 August 1996, p. 15.
For more than a century, scientists, governments and fishers have been aware of the problem of overfishing in the marine environment. The first scientific evidence of declining catches came to light in the early 1890s in the cod, plaice and herring fisheries of the southern North Sea. However, only a few years earlier the great Victorian biologist T.H. Huxley had proclaimed the resources of the oceans inexhaustible, and urged fishermen to fish when and where they liked without let or hindrance. As this was the kind of message fishermen liked to hear, it is hardly surprising that the early warning signs of depletion were ignored. Instead, as fisheries anthropologist David Symes describes, "A contagious diffusion of overfishing spread northwards and westwards to embrace almost all of the key stocks of demersal foodfish throughout the North Atlantic by the late 1930s." The pattern of declining stock abundance eased temporarily during and after the two world wars when fishing had been severely curtailed, providing evidence, should it have been heeded, that increased fishing effort was at least a contributing factor to stock depletion.

With the onset of increased fishing effort after World War II, declining stock abundance became once more apparent both in the North Atlantic and its adjoining waters and elsewhere. In California, the commercial fishery based upon the harvest of the California sardine or Pacific pilchard (Sardina caerulea) was wiped out by 1951. This species had undergone dramatic natural fluctuations which had been measured over a time span of 1,800 years inferred from the numbers of fish scales in anaerobic deposits off the Californian coast. However, there was also overwhelming evidence that extreme overfishing in the early decades of the 20th Century had been the ultimate cause of its demise. Fish like anchovy, herring and pilchard, which have a short though prolific lifespan, have been shown to be highly vulnerable to environmental changes, such as those wrought by El Nino. Whereas the prodigious but grossly over exploited Peruvian anchovy fishery would manage to survive such a natural event in the early 1970s, albeit in a much-reduced size, the smaller Californian fishery did not.


3 Milner B. Schaefer, 'Some of the dynamics of populations important to the management of the commercial marine fisheries', Inter-American Tropical Tuna Commission Bulletin, 1, 3, 1954, pp. 5-54; "Smithsonian Ocean Planet", Discovery Channel, 17 August 1995.


Unfortunately, the world's fishing industries still adhere to Huxley's well-meaning but ultimately disastrous advice. In the face of massive evidence, gathered from more than a century's scientific endeavour, industry continues to treat the resource as if it were not only renewable but also inexhaustible. Occasional abundant catches only serve to perpetuate this myth and are interpreted by industry as proof positive that the scientists are mistaken in their pessimism. The problem is exacerbated by the fact that industry, as will be amply demonstrated, is always able to obtain support for its own apparently optimistic outlook from supposedly reputable scientific advisers. Yet even the most detached among the scientific community are not universally agreed upon the reliability of their own data and its applicability to stock estimation. Furthermore, at the most fundamental level chaos theory challenges the very premise upon which scientific fisheries management is based. 8

However, the problem lies elsewhere. Essentially, fisheries policy in general assumes that there is a basic numerical equation underpinning the relationship between fishing activity and fish stocks. It does not take into account those factors that reside outside the realms of biological science and the need to create something more than limitations on effort or output. Fisheries policies in general ignore broader environmental and institutional issues. Accordingly, greens and social scientists want a new diagnosis of the fisheries crisis that goes beyond the superficial facts to reveal the underlying socio-cultural conditions. 9 This thesis has already demonstrated that the fisheries crisis is merely a part of the overall environmental crisis that is itself the outcome of an economical, mindset among policy makers. The underlying socio-cultural conditions are also a product of that same myopic mind set.

In his classic 1975 work, W.E. Ricker lists the subdivisions of mortality in fish thus:

There can be several causes of death among the fish in a population: removals by man (fishing), predation, disease, accident, etc., each with its own rate. In practice we

8 Ibid. See Ilya Prigogine and Isabella Stengers, Order out of Chaos, Bantam Books, Toronto 1984, p. xv, p. 142, pp. 175-176. According to Prigogine and Stengers, order and organization, as found, for example, in life, arise spontaneously out of disorder and chaos, through a process of "self-organization".

usually consider a division into only two types: fishing and natural mortality (which includes everything else). 10

This thesis will demonstrate that, unsurprisingly, governments, corporate fishers and their "scientific" consultants, both overseas and in New Zealand, prefer to ignore the effects of removals wrought by industry. Instead, unwilling to acknowledge a fisheries crisis for which they are chiefly responsible, corporate fishers tend to employ biologists who proffer the argument that there is no crisis. Instead, what has been witnessed on a global scale for most of the latter part of the 20th Century has merely been a series of temporary natural fluctuations in the size of fish stocks. 11 Yet, even allowing for temporary fluctuations in unstable species, the condition of overfishing is shown to be endemic throughout most of the seas and oceans. It is highly significant that catches of the much more stable traditional foodfish species like cod have dwindled to the point of commercial extinction in at least one fishery. 12 The Food and Agriculture Organisation (FAO) estimates that more than 70% of the world's fishstocks are overfished, and has confirmed the findings of the Worldwatch Institute that many of the traditional fishing grounds have suffered serious declines. 13

The statistics on total world commercial landings in the second half of the 20th Century show an approximate 100% increase after 1950 to around 100 million tonnes in 1992, from which time landings have "stagnated" despite increased fishing effort. However, what makes these statistics horrendous rather than merely worrying is the fact that world landings have been maintained only by the introduction of new and much lower value species. Many of these low value species are not directly consumed by humans. Instead they are first converted into oil and fishmeal and fed to livestock. Furthermore, commercial landings from wild fisheries and aquaculture represent only the recorded removals by man. Aside from recreational and subsistence removals, unrecorded removals also include fish caught and


11 Professor Ray Hilborn of the University of Washington's School of Fisheries was employed by the NZFIB to tout this argument during the protracted public debate preceding and following the introduction of the Fisheries Bill 1994. "Kim Hill; Nine Till Noon", RNZ National Programme, 15 March 1995.


discarded and fish not caught but killed in the removal process. These non-landed removals constitute a vast and incalculable biomass.14

Overfishing is not the sole form of mismanagement of the aquatic environment contributing to the global fisheries crisis. Degradation of the world’s freshwaters and seas and interference with ecosystems through pollution, resulting from both deliberate and unconscious use of the aquatic environment for waste disposal, together with habitat destruction from development in riparian and coastal zones, are increasingly important factors in the decline of aquatic productivity. Extinctions, reduced yields and the contamination of the food chain by toxic chemicals and life threatening pathogens characterize the status of rivers and streams, lakes, wetlands, estuaries, coastal waters, and large areas of the oceans and seas. For example, 90% of the Black Sea has been pronounced "dead", as have 16,000 square kilometres of the Gulf of Mexico.15 In New Zealand, 160 years of environmentally heedless land use and energy development has led to massive degradation of the aquatic environment from mountain streams to the ocean floor of the continental shelf. Estuaries and harbours, particularly those draining the Auckland region, have suffered irreparable damage from stormwater contaminated by heavy metals and hydrocarbons derived from vehicles. Raw sewage contamination of waterways and coasts adjacent to built-up areas is a common feature.16

Both components of the global fisheries crisis, namely overfishing and degradation of ecosystems, can be attributed to the exponential growth of human population during the period of the development of the crisis to over six billion at the end of the millennium.17 However, whilst humans in general can be blamed for the degradation of ecosystems, the bulk of the human population either eats fish only occasionally or not at all, with fish providing less than six percent of directly edible world protein. As this thesis will show, the global fisheries crisis cannot be attributed to corporate industry’s allegedly altruistic efforts to feed the world’s hungry, as envisioned in the 1970s.18 China’s 1.2 billion people are the largest consumers of fish. However, China’s per capita annual consumption of 12.2 kilograms is

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15 Time, 30 October 1995, p. 68.
16 The State of New Zealand’s Environment, Chapter Seven: The State of Our Waters.
17 World population is expected to reach 6 billion in October 1999. RNZ News, 23 September 1999.
small. Japan, the second largest consumer, is by far the greatest per capita consumer at 66.6 kilograms. Japan is also the largest harvester and the largest importer of fish. US annual per capita consumption is 20.4 kilograms, while that of New Zealand is less than 10 kilograms.

Globally, since the 1980s, corporate industry, represented by the high-tech fleets of the rich nations, has bought into the fisheries of the poor nations. Corporate industry supplies the Western and wealthy East Asian markets with the best fish, while local markets in the poor nations sell, at grossly inflated prices, the inferior fish that now constitute the minuscule portion of the harvest available for local consumption. Corporate industry is not, as its New Zealand component ceaselessly claims, feeding a hungry world. It is merely adding to the range of “consumer choice” in the rich countries, by offering, albeit with increasing difficulty, acceptable substitutes for those most preferred species it has already made commercially extinct in some areas. The Japanese demonstrate ecological ruthlessness by increasing their harvest of the seriously endangered bluefin tuna for the Tokyo luxury market, where a single specimen has fetched U.S. $83,500. Meanwhile, traditional subsistence fisheries, typically those in West Africa, are destroyed and their dependent peoples further impoverished.

Fisheries Policy, Economics and Management

Probably the most quoted, if not the work most influential upon the formulation of fisheries management policy, is Garrett Hardin’s The Tragedy of the Commons, which is a brief but brilliant analytical summary of human population problems. Hardin’s thesis is that as the human population has increased, so has the commons had to be abandoned in one aspect or another, from the commons in terms of common lands used for food gathering and waste disposal, to the commons in matters of pleasure, personal freedom, and population. However, whilst the common lands have largely been enclosed, there has been a dismal failure to close

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20 E.g., Governments in several of the small West African states have unwisely let in the corporate fishers of the EU. BBC World, Horizon Pacific ATV, 6 August 1996.
the commons to material and noise pollution, or to abandon the commons in human breeding.25

Hardin’s ingenious recycling of the fate of an ancient institution for a pressing modern purpose would trigger an ongoing research mini-industry pro and con the concept and Hardin’s use of it. Fisheries economic theorists, long aware of what they perceived to be the common property problem in fisheries, were quick to see that the positive impact of *The Tragedy* could be extended to embrace their domain. Therefore, like Hardin, they made the oceans analogous to the old commons, or common property, of the land, and signalled their demise in the near future as open access venues for fishing. Legal authorities point out that, whilst the common lands were *res communis*, the community’s property, the oceans were *res nullius*, nobody’s property. However, a range of fisheries literature employs the term “common property” to refer to fish stocks (assets) as yet not subjected to a private property regime.26

The tragedy-of-the-commons model has become the best known of all the major theories explaining why problems have beset most of the world’s fisheries. It lays the blame on the common property status of most fisheries and insists that when tenure to aquatic resources is unspecified, a tragic situation will be the inevitable result as more and more competitors enter a commercially profitable fishery. The theory provides a convincing and easily understood model that explains the overexploitation and overcapitalization in a fishery. Furthermore, the theory has global application in so far as most of the world’s commercial fishing management systems have been, at least until very recently, common property systems. However, as will be demonstrated, *The Tragedy* can also be viewed as a prime example of an innocent idea coopted by those of a narrowly economistic bent, and as a theoretical misstep in fisheries science.

The notion that the common ownership of natural resources is not necessarily conducive to harmony and well being in the *oikos* has long prevailed. In the 4th Century B.C., Aristotle made the sadly accurate observation that “That which is common to the greatest number has

25 Ibid., p. 1248.
the least care bestowed upon it”. It is a phenomenon that has exercised thinkers to this day.\textsuperscript{27} In 1833, W.F. Lloyd articulated the basic general dynamic of common property situations in terms that typify the idealized model.\textsuperscript{28} In 1954, H. Scott Gordon described the developmental process in an open access fishery that leads to the fishery’s collapse.\textsuperscript{29} However, it was Hardin’s poetic encapsulation of an apparently inexorable sequence of events into an unforgettable title that would give the phenomenon such immediate and popular appeal and a prominent place in the literature.

In explaining what he meant by “tragedy”, Hardin quoted A.N. Whitehead’s observation that “The essence of dramatic tragedy is not unhappiness. It resides in the solemnity of the remorseless working of things”.\textsuperscript{30} It is this very remorselessness that gives to the idea of the tragedy of the commons its otherwise strange fascination. Consequently, it is hardly surprising that Hardin’s model became, in McGoodwin’s words, “so paradigmatic”\textsuperscript{31} that it remains, at least among its supporters, what R.K. Godwin and W.B. Shepard describe as “the dominant framework within which social scientists portray environmental and resource issues”.\textsuperscript{32}

The tragedy of the commons that Hardin describes is the destruction of “a pasture open to all” and the impoverishment of its human exploiters as a result of competition, overcapitalization and depletion of the resource. Hardin’s model requires humans to behave as “rational beings”, that is, to be acting as individuals pursuing their individual best interests to the ultimate ruin of all, within a specific set of circumstances, namely, a hypothetical unmanaged commons. The tragedy lies in the fact that each man is locked into a system that compels him to increase his herd without limit even though he is aware that this will result in the destruction of the ecosystem within which he operates. As Hardin observes, natural selection favours the forces of psychological denial. The individual benefits in the short term

\textsuperscript{27} Quoted in McGoodwin, p. 89.
\textsuperscript{31} McGoodwin, p. 90.
\textsuperscript{32} R.K. Godwin and W.B. Shepard, ‘Forcing squares, triangles and ellipses into a circular paradigm: the use of the commons dilemma in examining the allocation of common resources’, Western Political Quarterly, 32, 1979, p. 265.
as an individual from his ability to deny the truth that in the end society, including the individual, will suffer. Whilst Hardin’s herdsman provide the perfect human examples for his theory, they are, from a Western viewpoint, examples taken from a remote past. However, fishers operating almost everywhere within marine fisheries instituted as common property are still very much a part of an ongoing fisheries crisis. It is therefore unsurprising that fishers have displaced herdsman as the main exemplars for Hardin’s theory. Behaving in the same rational manner as the herdsman, fishers can be expected to compete, overcapitalize, and deplete the resource to the point of commercial extinction.

Out of this direct application of Hardin’s theory from herdsman to fisher there has arisen generations of fisheries management professionals who take for granted the general validity of the tragedy-of-the-commons model and the view of human nature upon which it is based. These managers have ideas that, as McGoodwin observes, “exemplify classic positions in a grand-scale philosophical debate concerning the best way to organize human societies and economies”. Most fisheries management professionals have tried to halt the apparently inexorable process of the tragedy in common property fisheries by imposing government-run management regimes that draw rein on fishing effort. Aside from subscribing to the idea that fishers behave like Hardin’s rational beings, that is, in accordance with Professor Tim Hazledine’s “selfish shit” model, these managers believe for a variety of reasons why fishers are unable to exercise self-restraint. Such reasons, quite valid in some cases, include the “rugged individualism” demonstrated by some fishers, low levels of education, and isolation and provincialism. In the view of most managers, all of these common characteristics render fishers incapable of successfully managing the resource. Government-run management regimes would prevent the fishers, who merely acted according to their nature, from destroying their own livelihood. In reality, the matter is far from being so clear-cut. The snapper case study will demonstrate how, in New Zealand, whilst government-run management regimes had once quite effectively conserved the inshore fishery, with the blessing of most fishers, a subsequent change in policy, initially condemned by responsible fishers, almost wiped out the resource.

33 Hardin, ‘The Tragedy of the Commons’, p. 1244.
34 McGoodwin, p. 91.
35 Hazledine, p. 203.
36 Ibid.
From around the late 1960s, some managers were becoming increasingly unimpressed with the performance of state-imposed regulatory regimes that were seen to be signally failing to halt the trend toward the fulfilment of what soon would become thought of as the tragedy in so many of the world’s fisheries.37 These dissenters from the idea of government regulation proposed instead the privatization of hitherto common property, open-access fisheries. It was felt that privatization would both restrain the destructive urges of fishers and make them more amenable to funding the management of a resource that they would actually own. The proponents of privatization also associated common property fisheries with “open access”, which is still widely considered to be a characteristic of most common property regimes. Those who espouse privatization are convinced that there will be no tragedy of the commons if common property fisheries are converted to private property.

Some managers avoid the two extremes of absolute government control of a common property fishery and absolute privatization, and opt for solutions somewhere in between. An example of the latter recommends managing a fishery as common property but limiting its use by conferring a range of access rights.38 However, the trend is toward privatization. As early as 1955, Anthony Scott posited that a “sole owner” who can collect an economic rent from a fishery has a considerable incentive toward the conservation of its future well being. Unhindered by the need for “ruthless” competition with other producers, he will feel constrained to harvest the resource at relatively low levels of capitalization and operating costs.39 In 1979, Scott, after determining that a survey of the economic literature of fisheries showed little of analytical value for the comparison of alternative regulatory techniques had emerged, nevertheless produced eight criteria from it. These criteria were applied to the choice between two systems of restricting entry to a fishery, namely, a tax and a quota. Scott found in favour of a quota system on the grounds that it would have “lower overall transaction and administration costs than a fee (or royalty) system”.40 Also in 1979, J.A. Crutchfield, after


38 McGoodwin, p. 91.


40 Anthony Scott, 'Development of Economic Theory on Fisheries Regulation', Journal of the Fisheries Research Board of Canada, 36, 1988, pp. 361-372. The eight criteria are: Directness; Stock and catch uncertainty; Progressivity; Interception: Allocation of fishing within the season; Divisibility; Complexity; Joint action, collusion and interest groups; Flexibility.
examining the economic and social implications of the main policy alternatives for controlling fishing effort, recommended economic rationalization of the fishing industry in the US, and tended to favour a system of “individual fish quotas”.41

Whatever the desired management method, a majority of fisheries scientists and management policy makers subscribe to the general validity of the tragedy-of-the-commons model. Commitment to the model means that managers have been loath to entertain the idea of adopting management regimes that let the fisher look after the resource, that is, allowing user groups or local communities unhindered management of their own fisheries. Given the vital role of the tragedy model in determining fisheries policy, its validity needs to be tested. Accordingly, when subjected to simple historical scrutiny, it is apparent from the outset that there was no tragedy of the commons. In most cases local people managed the traditional commons on a sustainable basis for mutual benefit.42 Hardin acknowledged this fact by pointing out that his 1968 article was about an unmanaged commons and therefore should have been titled The Tragedy of the Unmanaged Commons.43 Modified in such a manner, Hardin’s parable remains useful in highlighting the “free rider” and prisoner’s dilemma problems in public choice theory, where market rationality creates outcomes that are worse for all agents.44

Ideologues of the New Right have found it extremely convenient to quote The Tragedy when touting their particular message of privatization rather than state control. In 1960, Ronald Coase had argued that, in many cases, the State itself rather than capitalism in general was responsible for such negative “externalities” as pollution and resource depletion. In New Zealand this has certainly been the case, as was shown in Chapter Three. However, Coase’s answer to negative externalities was to internalize them, that is, to bring them into the market system, by creating a set of property rights.45 The New Right has used this idea to promote individual property rights over communal rights. Unsurprisingly, Roger Kerr of the BRT sees


43 Hardin, ‘Commons Failing’, New Scientist, 22 October 1988, p. 76.

44 See Heap and Varoufakis, Game Theory, Chapter 5, The Prisoner’s Dilemma.

and control of the physical yield and the conditions of the stocks." This thesis will demonstrate how such a requirement was met in the case of the New Zealand orange roughy fishery.

For all the popularity of the tragedy model, a popularity that McCay and Acheson tartly suggest "may be related to its ability to generate both liberal and conservative political solutions", there is a body of work in the social sciences, particularly in maritime anthropology, that clearly indicates its many defects. For example, scholars criticise the model for its assumption that open access and common property are either one and the same thing or are found in tandem when, in fact, this is usually not the case. By lumping common property together with open access, the proponents of the tragedy-of-the-commons model disregard important social institutions and their function in managing the commons. When, through their combination of historical ignorance and cultural elitism, aficionados of the model ignore local management regimes and replace them with either government control or privatization, the result can be catastrophic for both the community and the resource that supported it.

Measures ostensibly meant to prevent the tragedy can actually bring it about. As will be discussed, in New Zealand, the northern inshore snapper fishery began as a common property fishery managed by the tangata whenua. Pakeha, upon their arrival, regarded it as an open access fishery in accordance with common law. It was subsequently subjected to a series of forms of government control involving first, licensing, then delicensing, and finally rationalization. The end result, before the imposition of privatization, was the wholesale impoverishment of small communities and the near destruction of the fishery. As will be shown, after thirteen years of a privatization regime the largely corporatized fishery continues to decline.

As earlier noted, the trend in fisheries management is toward privatization, largely as a result of the perceived and frequently actual failure of government, or, as in the case of the

50 Clark, p. 634.
51 McCay and Acheson, 'Human Ecology of the Commons', in McCay and Acheson, eds., p. 5.
52 McGoodwin, p. 92.
EU common fisheries policy, supragovernment\textsuperscript{54} management policies. Unsurprisingly, the New Right have enthusiastically espoused privatization. Both the proponents of government control and of privatization have themselves tended, wrongheadedly, out of an unholy mix of historical ignorance and cultural arrogance, to subscribe to the tragedy-of-the-commons model, which, upon analysis, is fatally flawed. Historically, there has been no tragedy of the commons. Tragedy has only occurred where a previously managed commons has, for one reason or another, become unmanaged. Historically, and to use Maori as a model, indigenous peoples, after an initial archaic period during which species were fished out in decreasing order of accessibility, practiced effective fisheries management based upon common property.\textsuperscript{55} Colonizing peoples have tended to confuse common property with open access, or to have imposed open access upon a hitherto carefully managed common property fishery, thereby causing it to become unmanaged. In New Zealand, this thesis will show that privatization has simply meant open access for a limited number of quota holders who are allowed to catch as many fish as they can.\textsuperscript{56}

If fisheries managers so clearly misunderstood the dynamics of the managed commons, in the form of the common property fishery, and seriously misjudged the behaviour of its human husbanders, they have fared little better in their understanding of the biology of the resource. Yet, as Symes and others point out, biological principles have long dominated the basic concepts of fisheries management.\textsuperscript{57} After the work begun in 1894 by Petersen in Denmark, and subsequently refined and consolidated in the 1930s by Russell and Graham, the idea of biological modelling of fish stocks underwent its ultimate institutionalization in Beverton and Holt’s 1957 masterwork.\textsuperscript{58} The latter was considered to be “a crowning achievement in the scientific theory of fisheries management”, and allowed for a simple, no-nonsense approach,

\begin{itemize}
  \item \textsuperscript{54} See: Michael Leigh, \textit{European Integration and the Common Fisheries Policy}, Croom Helm, Beckenham, 1983; Rognvaldur Hannesson, \textit{Fisheries Mismanagement}, Chapter Eight.
  \item \textsuperscript{57} Symes, p. 5; Hersoug, p. 20; Rognvaldur Hannesson, \textit{Bio-economic Analysis of Fisheries}, Blackwell Science Ltd, Oxford, 1993.
\end{itemize}
namely, that fish stocks are inherently stable, behave predictably under moderate levels of exploitation and tend toward a state of equilibrium.59

For a given equilibrium, the manager simply had to calculate the proportion of the adult stock that could be removed through fishing without imperilling its sustainability, that is, he established a TAC based upon the maximum sustainable yield (MSY). MSY is the maximum tonnage of “surplus” individuals that can be taken from a stock while still leaving a theoretically constant population of breeding individuals. It is a production-driven approach to fishery management, rather than an ecologically driven one, requiring fish stocks to be kept well below their natural size so that a large number of surplus offspring can be continually generated.60 The idea of MSY became the basic reference point for fisheries management. To accommodate the requirements of economists, MSY was subsequently augmented by another measurement, namely, maximum economic yield (MEY). The resulting Gordon-Schaefer bio-economic model, based upon the work of the previously mentioned H. Scott Gordon and Milner B. Schaefer, has governed the basic parameters of fisheries management for over forty years.61 Finally, when the economic objective was found to be too narrow, because it did not take into consideration the social effects of fisheries management, the objectives of maximum social yield (MSocY) or simply optimum yield (OY) were introduced.62 However, in New Zealand, the basic biological reference point of MSY remains the yardstick when establishing a TAC.

The world’s oldest intergovernmental organisation for marine science is the International Council for the Exploration of the Seas (ICES), which was established in 1902 as a result of current concerns for the effects of overfishing. The ICES remains the source of biological advice in the north east Atlantic region and is historically associated with the idea of TACs. However, there have been changes in the way these TACs have been arrived at. Essentially, between 1953 and 1977, development of the theory behind the measurement of stocks was based upon the work of Gordon, Schaefer, Beverton and Holt, and provided for the setting of specific catch recommendations for individual species, using biological reference points

58 Symes, p. 5.
60 See The State of New Zealand’s Environment, 9.77.
61 Symes, p. 5.
62 Hersoug, p. 20.
Symes notes that, "Thus, unwittingly and unwillingly, the scientists began to assume the responsibility for framing management objectives for the industry". In order to avoid this "blurring of the roles of objective scientific advice and policy making", after 1977 the ICES changed to offering a range of options in which TACs were set within the parameters of "safe biological limits", which today rest on the idea of minimum levels sustainable spawning biomass (SSB) and which includes an element of risk analysis.63

Writing in 1995, Symes states that, "recently", fundamental weaknesses in the bio-economic model for fisheries management have come to light. However, as early as 1977, P.A. Larkin had published his amusing, albeit, deadly serious essay which had consigned the very basis for fisheries management, MSY, to its rightful place in history as a formerly useful tool, because it had at least prescribed harvest limits. It was now well and truly obsolete, and downright dangerous to boot. Larkin acknowledged that, whilst MSY had undoubtedly been useful as an extremely rough guide in curbing many fisheries problems after World War II, its crudeness and inherent misconceptions had become only too obvious by the 1970s. The idea that any species each year produces a harvestable surplus *ad infinitum* was shown to be simplistic in the extreme.64

Larkin notes that European based limnologists (students of lakes) had worked for almost a century on developing holistic schemes of trophic (nutritional) status, in which fish were seen as part of a complex community. Today, informed people call this the ecosystems approach to the management of natural resources, and, unsurprisingly, it is simultaneously espoused by ecologists and excoriated by exploiters in equal degree. Unfortunately for the timely world wide acceptance of such a sound premise, there had meanwhile arisen in North America a movement, dating from the 1940s, toward the fatally flawed theory of MSY. This theory was based upon the doctrine of population dynamics, and its supporters had no doubts about the futility of the "old fashioned" limnological approach. As Larkin observes:

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63 Symes, p. 6.

The believers in MSY had little patience for the systematics of zooplankton or the subtleties of lake classification. The fish, they argued, were the integrators of their environment and the object of our crass interest. "Study the fish" was the motto.65

The theory of MSY fails to take into account the tendency toward instability within the aquatic environment. It also oversimplifies the behavioural traits of different fish stocks and ignores the highly complex and little understood interactions between species. Its greatest failing is that it deals with each species in isolation. Finally, it "fails to recognize the disruptive effects arising from the complex dynamics of scarce resources, technological development and human behaviour".66 Despite the denials of industry and its friendly consultants, there is accumulating evidence that, although resource depletion may be triggered by natural events such as in the case of the Peruvian anchovy and El Niño in the early 1970s, overfishing compounds the effects.67 Nevertheless, industry has tended to hold to the idea of an equilibrium theory. After all, there are recent examples in which both an unstable species fishery and a stable species fishery have achieved a degree of recovery after a combination of natural events and heavy fishing pressures caused "environmental perturbation". Such is the case with the Peruvian anchovy fishery, and of the Barents Sea cod fishery which had undergone a serious slump in the late 1980s. Furthermore, it is half a century since the total and permanent commercial loss of the California sardine fishery, and this tragedy from the increasingly distant past can be conveniently forgotten or easily dismissed as a most unusual phenomenon.

However, the equilibrium theory is being severely tested in the case of the north west Atlantic cod fishery. Here, unlike the case of the Barents Sea cod, there is no sign of recovery. The north west Atlantic cod fishery provides an excellent example of a centuries-old and thriving common property fishery destroyed, while under government management, from a combination of conditions produced by a "cold water anomaly" and the excesses of open access. Whilst the case provides yet another example of the contradictory evidence offered by fishers and scientists, the situation is unique in the circumstances generally prevailing. Uncharacteristically, on this occasion the government's scientific advisers were

65 Ibid., p. 2.
66 Symes, p. 6.
mistakenly predicting increasingly abundant stocks while local fishers were warning of an intense and deep-seated disturbance to the cod stock which was becoming increasingly apparent from their low catches and the small size of the fish caught. Historically, scientists rather than fishers sounded the warnings.

The situation regarding the health of fish stocks can only become more clouded in future with the onset of climate change. Global warming will cause some commercially exploited populations to expand while others will decrease and probably collapse. However, the real test lies in whether fisheries biologists and managers can take on board the implications of the previously mentioned chaos theory. The idea that Nature is non-random but unpredictable is clearly not compatible with the theory of equilibrium. In fact, chaos theory fits well with what fishers have known for eons, namely, that Nature, whether in the guise of fish or the weather is notoriously unpredictable. Symes suggests that “fisheries management systems born of chaos theory are likely to involve less regulation and allow greater flexibility of response, much more in keeping with traditional fishing strategies”.

In New Zealand, less regulation and greater flexibility of response would be fine if industry could be relied upon to act responsibly and adopt the circumspect and highly precautionary approach to fisheries management that a system based upon chaos theory would obviously demand. However, this thesis will show that, in view of industry’s record to date and as it continues to operate, ostensibly, according to bio-economic theory, such behaviour is entirely unlikely. Whilst bio-economic theory has been “challenged in theory and discredited in practice”, it still remains the basis for the best available management system. Fisheries management has been described as management under conditions of extreme uncertainty, and it is obvious that a system based upon the prediction of the health of a single species studied in isolation is going to be far from certain in its accuracy. Yet, even Larkin acknowledges the worth, albeit limited, of the bio-economic model as a crude method of setting harvest limits. However, this thesis will show that, in New Zealand, both Government and industry tend to ignore the bio-economic model even as they claim to abide by its predictions.

69 Symes, p. 7.
70 McGoodwin, pp. 68-73.
Globally, just as industry is undergoing a crisis of management, so, too, is it in the throes of what Symes calls “institutional turbulence”. This turbulence is characterized by three broad tendencies of modernization that are not unique to fisheries but are found, for example, in agriculture. These tendencies are, firstly, the penetration of capital through industrial modes of exploitation through all fishing sectors. Secondly is the takeover of fisheries management from local, industry-based institutions and its “relocation in the corridors of bureaucratic power in central government departments and supranational authorities like the European Commission.” with its disastrous Common Fisheries Policy (CFP).71 Thirdly is “the globalization of the food system as a result of which local fisheries no longer enjoy a monopoly in local or national markets but are increasingly engaged in competitive competition with sources of supply across the world”.72

In New Zealand, institutional turbulence has long subsided. The fishing industry has largely become corporatized, Fisheries management is being placed in the hands of this corporatized and increasingly foreign owned industry.73 New Zealand is not a fish eating nation, and exports 90% of its catch. Institutional turbulence has been succeeded by outrage on the part of greens and the non-commercial sectors over industry’s capitalization of Nature and its denial of the “public right of fishery”.

Ocean Governance

Each year a non-governmental organisation (NGO) called the International Ocean Institute (IOI), holds a conference known as Pacem in Maribus (PIM). The report of PIM XIX held in Lisbon in November 1991 was published in 1994 by the United Nations University. The 1991 conference adopted for its theme “Ocean Governance: National, regional, global institutional mechanisms for sustainable development in the oceans”. Papers presented for discussion during the conference reflected this theme by examining the existing framework for ocean governance and projecting the institutional implications for sustainable development at the

71 “Panorama”, BBC World, Horizon Pacific, ATV, 6 August 1996.
72 Symes, p. 8.
73 Seafood NZ, February 2000, Editorial, pp. 5-6.
national, regional and global level. In its conclusions and recommendations, PIM XIX calls on all States to ratify and adhere to the 1982 UN Convention on the Law of the Sea (UNCLOS) as "the most significant initial step they can take for the benefit of the marine environment". It also urges action at the national, regional, and global levels.

Professor Elisabeth Mann Borgese is the founder of the IOI. In her preface to the report of the PIM XIX, written in 1993, she observes that the environmental concerns had reached "an apex" in Rio but had since declined, "under the impact of economic recession and turmoil and crisis management in too many places". Borgese concludes that there has been no real integration of environment and development concerns in people's minds. Neither has such integration been reflected in institutions, whether national or international. Borgese does concede that the Rio Conference has made an impact upon the restructuring of the UN system, in that a whole new division has been created with the task of taking care of sustainable development. This consists of a Commission for Sustainable Development (CSD), a Secretariat headed by a new Under-Secretary-General, and mechanisms for integrating the policies of all the specialized agencies involved have been strengthened in the Administrative Committee for Coordination (ACC) and its Inter-Agency Committee.

However, despite the increasing plethora of agencies, to date UN commissions and UN-sponsored agreements have signally failed to bring about the sustainable use of fisheries resources. Neither the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) nor the lengthy titled United Nations Agreement for the Implementation of the United Nations Convention on the Law of the Sea 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, have made any discernible impact upon the heedless slaughter of seabirds and the ruthless pillage of the fisheries on the high seas adjacent to the New Zealand EEZ.

75 PIM XIX, 'Conclusions and recommendations', in Peter Bautista Payoyo, ed., xxiii.
76 See Elisabeth Mann Borgese, 'Preface', in Peter Bautista Payoyo, ed., pp. ix-xii.
77 The Fisheries Amendment Bill (No. 2) 1998 merely formalizes New Zealand's right to protect the interests of its fishing industry on the high seas. See Seafood NZ, August 1999, pp. 5-6.
In November 1996 the outgoing Minister of Fisheries, Doug Kidd, made the rueful observation that "New Zealand fishers are no different from their peers elsewhere when they cross the 200 mile line and venture forth onto the high seas". For example, they eagerly join in the general melee to scoop up the orange roughy of the Louisville Ridge, a high seas fishery some 100 nautical miles outside New Zealand's EEZ and so not subject to any TAC. New Zealanders also appear to be more anxious to harvest as much Patagonian toothfish (Dissostichus eleginoides) as they can for the highly lucrative US market, rather than lead by example, as the self-proclaimed exponents of sustainable fishing, and refrain from targeting this endangered species. Appropriate behaviour should consist of something more than a highly publicised one-off token patrol of the Ross Sea Dependancy. It should include continuous lobbying within CCAMLR, urging the application of enforcement measures that will squeeze out illegal fishers, many of whom operate via companies in CCAMLR member states, and stop the annual bycatch slaughter of an estimated 100,000 seabirds.

The existing framework for ocean governance is provided by the 1982 UN Convention on the Law of the Sea (UNCLOS). Christopher W. Pinto describes UNCLOS as having been designed to reflect elements of the "New Economic Order" and to establish the legal content of the concept of the "common heritage of mankind". In its "conclusions and recommendations", PIM XIX notes that the UNCED:

...builds on the substantial achievements represented by the UNCLOS as the most advanced legal instrument for international cooperation in the management and development of resources, the protection of the environment, and the reservation of large parts of the globe for peaceful purposes.

The 1982 Convention is indeed an impressive document. It gives expression to all of those elements that are also inherent in the concept of "sustainable development," a term which had appeared in the World Conservation Strategy published in 1980 and would subsequently be

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79 Ibid., p. 7.
80 Seafood NZ, August 1999, p. 64.
81 ECOlink, March 1999, p. 5.
83 PIM XIX, 'Conclusions and Recommendations', p. xxiii.
adopted by the WCED in its famous 1987 report. As Pinto observes, the Convention also plainly adopts a holistic approach to marine resources in its recognition of the fact that “the problems of ocean space are closely interrelated and need to be considered as a whole”. The Convention is replete with provisions that call for States and international organisations to cooperate in achieving the objective of conservation for optimum utilization. For example, the rights of coastal States within their respective EEZs are balanced by their responsibilities there. In its provisions for the living resources of the high seas, conservation is the dominant theme. Unfortunately, coastal states tend to assiduously maintain their rights and neglect to attend to their responsibilities, while the high seas resemble nothing less than a vast and frenetic free-for-all.

There are about a dozen conventions either specifically or indirectly affecting marine mammals, and three, including the International Convention for the Regulation of Whaling, that deal directly and specifically with marine mammal protection. Only one convention, the CCAMLR, allows for the protection of seabirds. Article 65 of the 1982 UNCLOS provides the following guideline for the protection of marine mammals:

> Nothing in this part restricts the right of a coastal state or the competence of an international organization, as appropriate to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this part. States shall cooperate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organisation for their conservation, management and study.

Unsurprisingly, Article 65 has been criticized as an “deficient and imprecise” endorsement for marine mammal protection. It lacks, for example, any criteria as to when coastal states or the international organisations should determine it is appropriate to take marine mammal protection measures. Neither in 1982 UNCLOS nor in any other convention does protection

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84 Pinto, p. 7.
85 1982 UNCLOS, art. 56, quoted in Pinto, p. 7.
86 Ibid., arts. 63-67, quoted in Pinto, p. 7.
88 Quoted in Wang, p. 150.
of species extend to ensuring that their share of the resource is included in TAC calculations.\textsuperscript{90} Such narrow anthropocentrism invariably results in the well-documented starvation of pinnipeds and seabirds.\textsuperscript{91}

When UNCLOS III began its work in the 1970s, a study was prepared under the auspices of the Congress of Micronesia, in part to illustrate the long history the Micronesian people's use of the surrounding sea, and in part to address questions of governance.\textsuperscript{92} The result, in 1979, was a cooperative effort in tuna conservation and management for the South Pacific known as the Convention on the South Pacific Forum Fisheries Agency (CSPFFA). Consisting of 17 members, including New Zealand, the agency has no regulatory powers. It merely provides a service in the form of data collection and assistance in fishery access agreement negotiations with major fishing nations like the U.S. and Japan.\textsuperscript{93} Aside from this early link with a particular group of indigenous peoples, 1982 UNCLOS, the outcome of UNCLOS III, deals with coastal states rather than indigenous peoples. Instead, international recognition of the rights of indigenous peoples with regard to fisheries resources is based upon two principal fora, namely, the International Labour Organisation (ILO), and the Working Group on Indigenous Populations of the UN Human Rights Commission's Sub-Committee on Prevention of Discrimination and Protection of Minorities.\textsuperscript{94} Indigenous peoples in many places have begun to restate their claim to their traditional rights in offshore waters. In New Zealand, Maori, armed with The Treaty, and invigorated by the Waitangi Tribunal, have probably been the most successful. However, this very success has meant that Maori have joined the ranks of the corporate fishers who represent the greatest threat not only to the world's fisheries, but also to the livelihoods of indigenous peoples.

Institutional support for 1982 UNCLOS continues to be provided by those UN organisations already in place before the Convention's inception. These include the Food and Agriculture Organization (FAO), the International Maritime Organisation (IMO) and the United Nations Environmental Programme (UNEP), and those established by the Convention,

\textsuperscript{90} Wang, Chapter 5.
\textsuperscript{91} See, for example, Kurlansky, Cod, p. 200.
\textsuperscript{92} Jon M. Van Dyke, 'The Role of Indigenous Peoples in Ocean Governance', in Peter Bautista Payoyo, ed., pp. 60-61.
\textsuperscript{93} Wang, pp. 166-167.
\textsuperscript{94} Van Dyke, p. 66.
namely, the International Seabed Authority (ISA) and its affiliate, The Enterprise.\textsuperscript{95} The FAO established six regional fisheries bodies that provide secretarial services.\textsuperscript{96} New Zealand comes within the ambit of the Indo-Pacific Fisheries Commission. However, it is the non-FAO-affiliated, albeit UN-sanctioned, bodies that chiefly concern this country, particularly the CCAMLR and the tripartite Convention for the Conservation of Southern Bluefin Tuna (CCSBT). Disputes are settled by the International Tribunal for the Law of the Sea (ITLOS), which, in 1999, found in favour of New Zealand in a case against fellow CCSBT member Japan, over its unilateral decision to harvest an extra 2,000 tons for “scientific” purposes.\textsuperscript{97} Whilst the outcome is satisfactory, in that Japan has agreed to abide by the Tribunal’s decision, it also serves to highlight the fact that the UN has no enforcement agencies. Japan could have chosen to ignore the Tribunal’s ruling, and suffered nothing more than a continuation of the ban of her tuna longliners from New Zealand ports. However, by bowing to the Tribunal, Japan can be seen to be returning to more responsible behaviour within the CCSBT even as she continues to make great use of “flag of convenience” longliners.\textsuperscript{98}

PIM XIX recommends that ocean governance should be examined as a “possible pattern for the governance of other global concerns such as energy, food, atmosphere, outer space, environment, climate, and science and technology”.\textsuperscript{99} At the national level, PIM XIX recommends that nations should integrate sustainable ocean development and the supporting research into their “general development strategy”.\textsuperscript{100} New Zealand, a country generally, if mistakenly, considered to be the world leader in sustainable development legislation,\textsuperscript{101} has failed to do this very thing, by deliberating omitting the seas from the provisions of the RMA. Another recommendation at the national level is that there should be broad representation in the policy making process.\textsuperscript{102} Again, this thesis has already demonstrated that quite the opposite situation obtains in New Zealand, which has long been touted as a democracy of the

\textsuperscript{95} Pinto, p. 8.

\textsuperscript{96} Satya N. Nandan, ‘Existing institutional framework and mechanisms’, in Peter Bautista Payoyo, ed., pp. 28-44.

\textsuperscript{97} RNZ News, 2 June 1999; 31 August 1999.

\textsuperscript{98} Ibid., 2 June 1999.

\textsuperscript{99} PIM XIX, ‘Conclusions and recommendations’, p. xxiv.

\textsuperscript{100} Ibid., p. xxv.

\textsuperscript{101} This thesis will demonstrate that, with regard to the fisheries resource, such a perception is based upon the blatantly misleading propaganda promulgated by industry at international fora. As for Government, the forests section of the 1995 National Report to the UNCED, was described by Forest & Bird as a “chapter of lies”. F&B, Conservation News, No. 91, May 1995.

\textsuperscript{102} PIM XIX, p. xxv.
first order. At the regional level, PIM XIX points out that integrated water management and the protection of the marine environment from river-borne and atmospheric pollution "require the participation of hinterlands".103 However, when it is recalled that such participation cannot be obtained even at the national level in a small country like New Zealand, such international cooperation, and, moreover, from countries that are not even coastal states, appears utopian in the extreme. At the global level, PIM XIX calls for a global forum to be established within the UN "where all ocean issues may be discussed periodically, with the participation of all governments and relevant international bodies". Such a forum should, according to PIM XIX, involve "the economic and non-governmental sector".104 This thesis suggests there is little point in establishing yet another UN forum. Instead, what is clearly required, whether in peacemaking/peacekeeping or in ocean governance, is the institution of UN-sponsored enforcement agencies.

1982 UNCLOS anticipates the idea of sustainable development as elaborated in the WCED report. However, it is well to recall what the report actually says about the requirements for sustainable development, namely, that the poor get their fair share of the resources required to sustain economic growth, and that "those who are more affluent adopt life-styles within the planet's ecological means". The report concludes that, "in the final analysis, sustainable development must rest on political will",105 and that

...physical sustainability cannot be secured unless development policies pay attention to such considerations as changes in access and in the distribution of costs and benefits. Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation.106

The Convention has signally failed to generate the political will among nations to address sustainable development in the manner prescribed by the WCED. As previously noted, the poor in the so-called developing world do not get their fair share of the fisheries resource, and the lifestyles of the more affluent continue to exceed the planet's ecological means. Generally,

103 Ibid., p. xxvi.
104 Ibid., p. xxvii.
106 Ibid, p. 43.
the only aspect of the Convention that has ultimately received universal support among coastal States has been the institution of the EEZ. While the Convention adopts a holistic approach to marine resources, its attitude is totally anthropocentric in that there is no provision for the needs of the non-human harvesters of those resources beyond the requirement for marine mammals to be conserved. This lack leads inevitably to the spectre of widespread starvation among pinnipeds and seabirds. Even within its narrowly anthropocentric parameters, the Convention has done little to promote ocean governance, other than formalize and legalize the division of the spoils. In a marine environment subjected to the worst excesses of human greed and heedlessness, where pillage and pollution is the norm, the term “ocean governance” must be presently seen to be as utopian as is the notion of “world peace” among the peoples of a perennially strife torn planet.

**Fisheries Conflicts**

Fishery conflicts, or at least ethical debate over fishing practices, go back a long way. In the 2nd Century A.D., the Roman scholar Oppian was mulling over the morality of catching dolphins. Later, in Western Europe, where today fellow members of the EU clash over the harvest from the fast-disappearing biota of the North Sea and adjacent waters, the English and the Dutch quarrelled in 1618 over the conflicting jurisdictional doctrines of *mare liberum* and *mare clausum*, which concerned right of access to the then rich herring fishery. More recently, between the 1950s and 1970s Iceland and Britain engaged in three highly publicised “cod wars”. 1990s fishery conflicts, of which the EU example is but one of many observable worldwide, reflect the growing stresses under which the aquatic environment and its resources everywhere have been subjected since the burgeoning of fishing effort after World War II.

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111 E.g., the highly publicised 1995 clash between Canada and the EU over the seizure of a Spanish trawler, 28 nautical miles outside the Canadian EEZ but within the perilously endangered Greenland halibut fishery that Canada is attempting to save, *New Zealand Herald*: 11 March 1995, p.9; 15 March 1995, p. 9; 16 March 1995, Editorial, p. 6; p. 9.
New Zealand’s fisheries conflicts, which, unsurprisingly, share many features with those overseas, can conveniently be analysed within the anthropocentric/ecocentric spectrum. At or near the anthropocentric pole might somewhat arbitrarily be placed Right Wing parties, policy makers in Treasury and MFish, the BRT, the WFC, and the corporate members of industry. The last named include Sanford, Sealord and Sumonovitch. All the corporates were formerly members of the NZFIA, and, since August 1997, have become the most powerful component in the New Zealand Seafood Industry Council (SeaFIC), which has assumed all but the statutory functions of the NZFIB. Aside from the corporates, SeaFIC consists of companies and “stakeholder groups” the latter defined by industry as those groups having a commercial stake in the fishery. Typical of the stakeholder groups are the Orange Roughy Management Company (ORMC), the New Zealand Rock Lobster Industry Council (NZRLIC), and the New Zealand Aquaculture Federation (NZAF).

Whereas the NZFIA is now in abeyance, its junior partner in industry, the NZFCF, whilst also a member of SeaFIC, has opted to remain extant in order to see what the future has in store. The NZFCF consists of small owner operators who retain a residual toehold in the inshore fishery, and dominate the paua (abalone) and rock lobster fisheries to the extent that they harvest the resource but increasingly tend to lease rather than own the quota. The New Zealand Fishing Industry Guild (NZFIG), formerly the New Zealand Fishing Industry Union, which consists of skippers and crew and appears to be chiefly confined to the tuna fishery, remains outside SeaFIC, its position in the restructuring “still under negotiation with the parties involved”

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112 Another way might be to employ Anthony Charles’ integrated framework that is based upon a typology of fishing conflicts and a set of three fishery worldviews, namely, the conservation, rationalization, and social/community paradigms. See Anthony T. Charles, ‘Fishery Conflicts: a Unified Framework’, Marine Policy, September 1992, pp. 379-393.

113 Based upon party responses to ECO’s ‘Vote for the Environment’, The Greens and The Alliance were awarded 5 out of 5 points for their environmental management policy; Labour 4; NZ First 3; National 1; and ACT less than one half. Within Labour, former fisheries spokesman Jim Sutton and his avowedly redneck West Coast backbencher colleague Damian O’Connor have subscribed to an anti-environmental agenda that has had them actively co-operating with Right Wing parties in promoting the privatization of fisheries management and policies of “marine pillage”. However, based upon their enlightened forest policy, Labour shows every sign of controlling this anti-environment element. See ‘Vote for the Environment: Elections ’99’ Supplement, ECOLink, November 1999. The Alliance, whose membership includes parties not traditionally green, is nevertheless kept at the eco-centric end of the spectrum through the efforts of its two dedicated greens Sandra Lee and Phillida Bunkle. Unsurprisingly, The Greens have impeccable ecocentric credentials. See The Greens, Green 2000: Framework for an Eco-Nation: A Policy Paper of the Green Party of Aotearoa New Zealand, Third Edition, The Greens, Wellington, 1999.

114 H.P. Nuttall, Member of the Executive, NZFCF, ‘Stakeholder Groups’, Seafood NZ, October 1996, p. 69.

Potential for conflict within SeaFIC lies not so much by reason of the dichotomy between the proponents of unrestrained exploitation at the anthropocentric pole and those favouring resource conservation a la Gifford Pinchot, both of which are represented. Rather is it between those of the corporates and the catching sector as represented by the owner operator. Hence the reluctance of the NZFCF to lose its separate identity. The aggregation of quota into fewer, corporate hands under the QMS ITQ system is, in the opinion of the NZFCF, reducing the status of the owner operator to that of “sea-going serf”, fishing corporate and increasingly foreign owned quota.\textsuperscript{116} The owner operator is not so much opposed to the QMS on conservation grounds as he is to the manner in which it is evolving away from his ownership and control. Such things as fishing quota have ceased to represent physical and biological realities and have merely become commercial transactions in a finance-dominated market.

In fact, the New Zealand ITQ QMS is an allocation system and emphatically not a management system. It is an arrangement whereby property rights based upon catch history, are allocated by Government to fishers. These property rights can subsequently be sold or leased to others by means of the quota market. As earlier noted, ITQs are favoured by factions such as the BRT, albeit, for entirely instrumental reasons. Firms, that is, fishers, together with corporates, conglomerates, banks or other non-fishing investors, buy and sell the rights to harvest certain quotas of fish. Such market-based systems are viewed as the answer to the “open access dilemma”, allegedly allowing fishers to “choose their own level of operation, minimize their fishing costs, and maximize economic efficiency”. ITQs are an old idea that took on new life as “theoretical constructs” in the fishery economics literature during the 1960s and 1970s.\textsuperscript{117} ITQs were recommended in the comprehensive 1982 Kirby report for adoption in Canada as a counter to the decades-long turmoil in fisheries there. In the event, the scheme was not adopted because of strong resistance from Canadian fishers, who objected to schemes granting property rights and allowing for their accumulation, and who remembered attempts in the past by large processors to monopolize the Atlantic fishery.\textsuperscript{118} However, as Anthony T. Charles observes, “real world examples have been increasing regularly, due in part to their vigorous promotion by rationalization advocates”.\textsuperscript{119}

\textsuperscript{116} SeafoodNZFebruary 2000, Letters, p. 7; Editorial, pp. 5-6.
\textsuperscript{117} Crutchfield, p. 748.
\textsuperscript{118} Gustafson, p. 37.
\textsuperscript{119} Charles, ‘Fishery Conflicts’, p. 387.
Zealand’s ITQ QMS, established in 1986, is now the best known example among many of a “quota fishery” largely because of a continuous campaign of exaggerated and unsubstantiated claims by Government and industry as to its efficacy in promoting aquatic resource sustainability.¹²⁰

Overseas, there are two levels of conflict to the property rights debate. Firstly, there is the dichotomy between traditional government intervention and property rights schemes. Second, in cases where the latter is to be adopted, the dichotomy exists between the market-oriented and community-based methods. Whereas many fisheries remain government or supragovernment-regulated open access fisheries, recent historical trends indicate the ascendency of market-oriented property rights. With the inevitable economic rationalization of ocean fisheries, it is also inevitable that these property rights will be held by a small number of players.¹²¹ In New Zealand, the bulk of property rights as represented by quota, are indeed held by a relative few, chiefly the corporates. Banks, with one small exception foreign owned, are exempt from the 40% limit on foreign ownership provision of the Fisheries Act 1996.¹²²

As earlier established, in New Zealand, the growing trend toward the capitalization of Nature, a process involving the rationalization of industry, the privatization of the resource, and the privatization of fisheries management,¹²³ generates considerable conflict. Consequently, the most basic disagreements do indeed concern the matter of ownership, access, and control. These issues appear to be lumped together by industry, with Government’s blessing, into the notion of its outright ownership and management of the resource. Hence is heard the recreational fisher’s outraged cry of “commercial fishers think that because they have quota they own the bloody fishery”.¹²⁴ Hence, also, is encountered the phenomenon of the commercial fisher’s unwillingness to share the bounty of what he

¹²⁰ See Duncan, ‘Closed Competition’.
¹²² MFish, Briefing Document for the Minister of Fisheries, MFish, Wellington, 1996, p. 54.
¹²³ Among other things, the Fisheries Amendment Bill (No. 2) enables the transfer of 16 management functions from MFish to industry.
¹²⁴ Bill Cooke, ‘Cookie’s Column: What the Hell’s Going On?’, NZ Fisherman, January 1996, p. 14. Recreational fishers represent humankind in all its forms, and may be encountered anywhere within the anthropocentric/ecocentric spectrum. They vary from greedy mindless thugs not averse to commercial poaching, at the anthropocentric pole, to contemplative subsistence-fisher deep ecologists at the other. As for the environmental groups, membership includes individuals subscribing to any of the environmental streams except that of the anthropocentric pole itself. However, members of the Right Wing Maruia Society (latterly Ecologic) are biased toward the purely instrumental end of the spectrum.
traditionally and mistakenly refers to as his “farm”\(^{125}\) with recreational fishers and marine mammals, or to relinquish some of its acreage to MPAs. However, this latter aversion is shared with many recreationalists who thus join their enemies the commercial fishers in conflict with environmental groups over the institution of marine reserves.

Whatever industry, as personified by the commercial fisher “farmer”, may think about its rights in the matter, the legal position is clear, at least to those who retain a respect for common law. Historically, in the group of islands that became New Zealand, after the initial archaic period of semi-nomadism Maori iwi established permanent settlements and jealously guarded their territorial ownership of fisheries. At least as far as Maori were concerned, this ownership was subsequently guaranteed in colonial New Zealand by the British Crown under the provisions of the 1840 Treaty of Waitangi. However, Pakeha had brought with them from Britain the ancient public “right of fishery”, under common law. This was automatically made applicable in tidal waters within the territorial limits of New Zealand, and would perpetuate the belief that nobody “owned” the fisheries, that is, “the foreshore and the sea were common to all for the purposes of getting fish”.\(^{126}\) In due course, the Crown, as represented by the Colonial Government in New Zealand, began to impose its own rights, derived principally from legislation, which the Crown initiated on its own behalf through Parliament. This legislation produced regulations on such matters as conservation and licensing that subsumed traditional Maori ownership practices and altered, that is, regulated the ancient untrammelled public right of fishery. The rights of the Crown in general relate to the management and conservation of fisheries, but do not, however, confer on the Crown a property right in the fish resource itself. What these rights do do is enable the Crown to regulate the activity of fishing through fisheries legislation. Thus, the QMS introduced a property right to take a specified quantity, later proportion, of a TACC. The concept of a property right to take fish is to be distinguished from a property right in the fish themselves. Fish in their wild state are not the property of any individual, including the Crown. The Crown has the right to regulate the activity of fishing but not on the basis that it “owns” the fish.\(^{127}\)

\(^{125}\) Both NZ Professional Fisherman and its successor Seafood NZ are replete with such references.


The legal position of Maori apropos fisheries is codified in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. The Act, apart from authorizing the MFC (later WFC) to purchase 50% of Sealord Products Ltd and to disburse pre-Settlement assets, also guarantees Maori 20% ownership of all quota allocated to species as they come under the QMS. Finally, Article (1)(iv) promises legislation to empower Maori to manage their customary fisheries in a guardianship role. Whilst all this represents a considerable diminishing of the original claim to 100% ownership of the resource, what remains to Maori is at least guaranteed in statutory law, however impermanent. Pakeha, whether recreational fisher or Nature lover, are afforded no such protection. Aside from being consistent with the Settlement Act and “with New Zealand’s international obligations relating to fishing”, the Fisheries Act 1996\(^{128}\) neither effectively respects the right of access of Pakeha to the resource nor affords effective protection to the resource itself and the non-human biota dependant upon it. The Fisheries Act 1996 and its two amendments are primarily vehicles for the commercial “utilization” of the resource, that is, for the capitalization of Nature, and for the privatization of its management. As a result, recreational fishers are in conflict with Government and industry over access, while both recreational fishers and environmental groups are concerned over Government’s policy of relinquishing its traditional regulatory role and handing control of fisheries to industry.

For its part, industry appears to interpret a property right, that is, a catching right, in a fishery as the right to catch what it regards as its property, rather than its quota, represented as its proportion of the current TACC. Thus, when in 1995 and again in 1996 the Minister of Fisheries, Doug Kidd, who, in the course of his stewardship would undergo something of a conservation epiphany, set the TACC for the northern snapper fishstock area at 3,000 tonnes, industry was outraged. The reduction from the 1994 TACC level of 4,900 tonnes was long overdue and, under the circumstances, a modest conservation measure designed to show that Government was at least addressing the problem of a fishery reduced, through industry depredation, to less than 10% of virgin biomass (Bo). However, on each occasion industry obtained a High Court injunction against the reduction and then proceeded to legally harvest 4,900 tonnes of snapper. Inescapable inference is that industry was fixated upon catching 4,900 tonnes, rather than resting content, as it should, with harvesting the amount for which it held quota under the current TACC and in accordance with the legislation that had so

\(^{128}\) 1996, No. 88, An Act- (a) To reform and restate the law relating to fisheries resources; and (b) To recognize New Zealand’s international obligations relating to fishing; and (c) To provide for related matters.
generously bestowed quota upon it, gratis, in the first place. In the event, Kidd's successor, the unabashedly industry-oriented John Luxton, would set subsequent TACCs at an industry-approved and reprehensibly high 4,500 tonnes.\textsuperscript{129}

Industry is encouraged in its ill-founded belief by the attitude of MFish and Government, and was particularly emboldened by the outgoing Minister, John Luxton, who was a fervent proponent of deregulation and the privatization of natural resources.\textsuperscript{130} Furthermore, Luxton had told the NZRFC, during the deliberations of the joint Recreational Fishing Rights Working Group (RFRWG), that he believes the public of New Zealand had "no priority right of access to the inshore ocean fishery ahead of commercial interests".\textsuperscript{131} This runs counter to a tradition of a de facto hierarchy, acknowledged by the 1993 MAF Officials Steering Committee's (OSC) paper, which states that "non-commercial interests have in practice been given priority of access".\textsuperscript{132}

The OSC paper, after first naming the fisher "stakeholders" in the fishery as Maori, recreational, and commercial, next notes that "the hierarchy of stakeholders is not clear". It offers two interpretations, one based upon the traditional view of non-commercial priority, compatible with both Maori aboriginal rights and the public right of fishery, and the other providing a convenient lead-in to industry dominance by disclaiming such a priority.\textsuperscript{133} Having posited this alternative point of view totally at odds with tradition, and one, moreover, bound to lead to public alienation and legal challenge, the OSC paper proceeded to pursue

\textsuperscript{129} ECOlink, October 1997, p. 7.
\textsuperscript{130} See Gordon Campbell, 'Creepbuster', \textit{Listener}, 13 June 1998, pp. 32-34.
\textsuperscript{131} NZRFC President's Report, 1 June 1999, p. 4.
\textsuperscript{133} Thus: "One interpretation is that recreational and Maori interests take priority over commercial interests. This could mean, for example, that there would be no grounds to restrict non-commercial take until all commercial fishing had ceased. The only restriction on their collective take would be the sustainability of the resource as encapsulated in the setting of the relevant TAC". OSC Paper, p. 2. Such a situation obtained in the toheroa fishery in the 1960s and 1970s. The NZRFC delegation pointed this out during their verbal submission on the 1994 Fisheries Bill presented before the Primary Production Committee (PPC) hearings held at the Airport Travel Lodge, 22 March 1995: "The toheroa story is the ideal. When the fishery becomes stressed, first to go is the commercial sector. Then, if the fishery doesn't recover, as in the toheroa case, you stop the private and customary take". As for the other interpretation: "At the other extreme it could be argued that there is no inherent difference in the strength of rights by the three stakeholder groups: the current system is merely the result of operational and management constraints. These constraints include insufficient information by which to base an explicit share for non-commercial fishers, and not having the resources to ensure compliance with a non-commercial TAC." OSC Paper, p. 2.
industry's line in terms of loss of jobs and income as a result of a reduction in commercial take.\textsuperscript{134}

In fact, there is no history of restrictions in commercial take to accommodate increased activity from non-commercial fishers. In the case of the toheroa fishery, commercial operations were terminated because they ravaged the resource and could not be sustained.\textsuperscript{135} Increased activity from non-commercial fishers has resulted, in the case of the two most preferred species, namely, snapper and blue cod, in non-commercial bag reductions at the behest of the non-commercial fishers themselves.\textsuperscript{136} In sharp contrast, each year industry fights for the highest possible TACCs across the entire commercial species range, no matter the weight of scientific evidence proffered in support of reductions. Historically, unemployment has resulted from the destruction of certain fisheries caused by commercial over exploitation. Otherwise, the only recorded loss of jobs and income among commercial fishers has been, in the first instance, as the direct result of the initial rationalization of the inshore fishery in 1983, with the wiping out of the part-timer. Subsequently occurs the loss of jobs and income among the ever-thinning ranks of the small owner-operator in the rationalization process throughout industry. As discussed, conjuring up the spectre of unemployment is a favourite ploy of the policymaker when bent upon the unsustainable "utilization" of a natural resource.

The demonstrable goal of Government and MFish has been a rationalized, corporatized and privatized fishery, with industry entirely autonomous in its management of the resource except for a minimal governmental regulatory role. Industry is particularly favoured because it is the fourth-largest generator of export income. In the public domain, whilst as many as one third of New Zealanders are nominally recreational fishers, they certainly do not vote as recreational fishers, and to this extent can be safely discounted as a political force.\textsuperscript{137} The pursuit of aforementioned policy apropos the aquatic resource can therefore proceed apace without undue fear of an electoral backlash. At the same time, Government is required under

\textsuperscript{134} "In deciding on the priority of commercial interests relative to that of other stakeholders, it is important to realize that restrictions in commercial take to accommodate increased activity from non-commercial fishers will be reflected in a loss of jobs and income to the fishing industry (the impact being far wider than just the profit accruing to the fishing companies)." Ibid., p. 3.

\textsuperscript{135} NZRFC verbal submission before PPPC.


\textsuperscript{137} Whilst relatively large numbers of New Zealanders go fishing occasionally, only some 10\% of these belong to an organized body such as the NZRFC, whose assessment of public attitude to fisheries issues is "apathetic". NZ Fisherman, 6, 11, 1994, Editorial, p. 14.
the law to favour Maori customary fishing interests. However, abuse of customary rights is endemic, and this situation quite naturally raises the ire not only of the other two extractors, but also that of the environmental groups. The latter have a deep and genuine concern that the resurgence of Maoritanga, which brings with it a demand for restoration of customary rights over all the wild biota of New Zealand, at the same time signal fails to provide the traditional culture of guardianship needed to protect it. Thus, to many anxious ecologists, an already tattered conservation estate is about to be subjected to even more pressure at the hands of a tangata whenua armed with state-of-the-art extractive technology but largely bereft of any effective caretaker ethics.

The initiation of the process of governmental disengagement from fisheries management was publicly signalled by the Minister of Fisheries, Doug Kidd, when, introducing the 1994 Fisheries Bill on 6 December 1994, he announced that, “Broadly, all services except for enforcement and prosecution, allocation of harvesting rights, and liaison and dispute resolution, will be contestable.” Of particular concern to both recreational fishers and environmental groups is the matter of fisheries research. Formerly a function of MAF Fisheries, fisheries research is now, together with the former NIWA, part of a new CRI, also called NIWA. Since 1998, NIWA has had to bid against private rivals for work. Unfortunately, industry has the wherewithal to easily outbid NIWA, and there are no other viable private rivals. It is axiomatic that fisheries research exclusively in the hands of industry will invariably come up with findings biased in favour of maximum extraction, to the ultimate detriment of both the aquatic environment in general and target species, together with their associated by-catch species, in particular. In explanation of this apparent recklessness, it cannot be overstated that industry demonstrably operates on economistic notions regarding irreplaceability, as discussed in Chapter One. Thus, destruction of a target species, in pursuit of maximum economic rent, merely represents loss of an “option value”.

Globally, examples of intergovernmental conflict have already been remarked. New Zealand is largely spared such conflicts. Joint venture arrangements have been in place in the deepwater fishery of the NZ EEZ since the 1970s, and such arrangements are set to continue,
with the addition of European vessels operating under a bilateral agreement with the EU. The only fishery for which foreign licensed access to the NZ EEZ is still considered is the surface longline fishery for southern bluefin tuna (SBT). The offer of foreign license access is limited to Japan as part of an obligation within the CCSBT to offer access only to members.

That Japan bowed to the ruling of the ITLOS and promised to harvest only her 6,075 tonnes share of the 11,750 tonnes TAC agreed in common with fellow members Australia (5,265 tonnes), and New Zealand (420 tonnes), should not be interpreted as a return to a well managed fishery. Aside from the fact that Japan makes extensive use of flags-of-convenience vessels to help meet the insatiable demands of the Tokyo market, and the depredations of such non-CCSBT players in the SBT fishery as Indonesia, the Republic of Korea, and Taiwan, the CCSBT TAC can reasonably be described as a macabre joke. Calculated in 1999 to have dropped to as little as 2% of Bo since commercial fishing began in the 1950s,¹ the fishery has long been subjected to a TAC that its managers admit has been based since the 1980s upon something not even as crudely realistic as MSY. According to marine biologist Robert Kearney, the SBT fishery is one of the very few that has a catch and effort database of sufficient length and reliability to enable comparison with classical fisheries management models. From this information:

It is readily apparent that for southern bluefin we are now operating on the extreme right of the yield curve, with effort at least four times that necessary to produce MSY. These with other relevant data are sufficient for scientists to give reasonable estimates of the normally accepted goals of MSY or MEY and be reasonably confident of being right. In fact, our previous estimates of these two variables have been proven correct. But we are now so far removed from that part of the yield curve that these assessments, correct though they may be, are irrelevant. Consequently biologists are not at present asked the questions they spent years learning how to answer. No, the question we now get asked is “Bearing in mind that the Japanese and Australian catches must remain as high as possible and be approximately equal, and that New Zealand must get a fair share, how much southern bluefin can we take without the probability of extinction being so high as to be non-defensible?” I know of no fisheries text where one could find a model for this new term of MNY, Maximum Non-extinction Yield. Any estimate of such a catch will have an extremely high probability of being wrong and any

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¹ The Evening Post, 2 September 1999, p. 6.
biologist who tries to answer it will be putting his/her reputation on the line in doing so.142

Thus, rather than intergovernmental conflict there is instead something of a conspiracy of miscreants, in the guise both of the signatories to the CCSBT and to the previously mentioned Agreement for the Implementation of the Provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stock and Highly Migratory Fish Stocks.

With regard to fisher/government conflicts, Charles notes that these arise in two major forms. The most common involves complaints of excessive government enforcement exacted upon a particular commercial user group, and the opposite based on complaints by one group of users that enforcement is overly lenient when applied to competing users.143 In New Zealand, enforcement conflict tends to arise from what industry perceives as Government’s strict regulation of its activities and lenience in dealing with recreationalists. In addition, industry illogically derides “a policy which requires an industry to pay to protect its own property right”,144 while recreational fishers and environmental groups are appalled at the carnage wrought upon the fishery as a result of an enforcement policy that falls so short of its task.

Industry complains that government imposes the strictest control upon allegedly innocent commercial fishers but not upon recreationalists. The latter, according to industry, are the real villains of the piece. Industry bristles at contributing to the cost of enforcement, calls the recreational sector “shamateurs”, and claims, rather too stridently, that these, rather than industry, are the “burglars” of the resource. Recreational fishers and the environmental groups complain, with justification, that government allows the commercial sector to flaunt the rules and make a mockery of the QMS by indulging in fraudulent and criminally wasteful practices. These include “high grading”, that is, landing quota consisting, suspiciously, only of optimum-sized fish, and those in perfect condition. The remainder, frequently the bulk of the catch, has been discarded at sea, a practice known as “dumping”. Commercial fishers also routinely target species for which no quota is held, and land them under the protection of the “deeming” system. Whilst a charge per kilo, calculated on a “deemed value”, itself based

upon the "port price" of the particular species, is incurred, a profit is nevertheless made and the QMS circumvented. Both recreational fishers and environmental groups are outraged at the relatively minor penalties imposed upon the commercial sector in the wake of successful prosecutions by the over-stretched enforcement arm of MFish.

Enforcement in fisheries is required for the same reason that it is required ashore in the public domain. Just as enforcement of the law of the land requires an effective police force, so too does enforcement of fisheries regulations require an effective enforcement agency. However, MFish's enforcement arm, known as "Compliance", is demonstrably unequal to the task. MFish attempts to account for its ineffectiveness in this area by pointing to the difficulties inherent in compliance, thus: "Measurement and assessment of compliance is difficult because illegal activity is generally not observed or recorded". However, illegal activity is generally not observed or recorded for reasons not peculiar to fisheries. Essentially, the Ministry is now "a skeleton of its former self", reduced, as a result of the application of agency theory and TCE to the public service, to a staff of managers overseeing a disproportionately minimal team of inspectors in the field. Whereas, within MAF, the MAF Fisheries group employed 500 staff, MFish, upon its inception on 1 July 1995, employed 292, 50% of whom were based in Wellington. Allowing for the 170 Marine Research staff transferred to NIWA, this represented a loss of 40 personnel. By July 1999, few senior staff with fisheries experience remained with MFish, and these were steadily being absorbed into the private sector. As the privatization process continues, especially in the wake of the passage in September 1999 of the Fisheries Amendment Bill (No. 2), which gives industry control of the catch and effort databases that determine TACs, so too will MFish further contract into a "lean strategy policy machine" and a minuscule compliance unit.

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145 MFish, Briefing Document, p. 6.
146 Burstall, NZRFC President's Report, p. 5.
147 MFish, Briefing Document, p. 42.
149 Burstall, NZRFC President's Report, p. 5. However, just as the politics of fishing cannot be analysed in isolation from politics in general, so must the inadequacies of MFish's enforcement arm be viewed within the larger context of law enforcement in NZ. Fisheries enforcement has apparently been rationalized according to the same philosophy and reasoning that was applied to policing ashore, that is, personpower replaced by the magic of mobility and the wizardry of electronics. A Treasury which in 1996 wanted to cut $46 million from the 1997 police budget, by, among other things, selling off the police vehicle fleet in a move contrary to the idea of mobility long used as justification for staff cuts, and closing down the Porirua Police College, would scarcely baulk about depriving MFish of the wherewithal for all but the most cursory and token surveillance over its fiefdom. Just as the entirely predictable result upon the police force of such plans, albeit somewhat modified in the execution, still left its members disenchanted, despairing and resigning in droves, and consequently law enforcement in whole geographical areas almost a nullity, so too was fisheries compliance equally ill served. New Zealand Herald, 3 March 1997, p. A5; "Holmes", TVNZ TV1, 3 March 1997.
New Zealand’s vast coastline, arguably the eighth longest, is, therefore, left largely unmonitored. Unsurprisingly, the outcome of such a lack is the virtual stripping of all readily accessible littoral recreational and customary fisheries, and the illegal removal of an incalculable tonnage of paua, scallops, and mussels from adjacent inshore and estuarine waters. When added to the conservatively estimated illegal annual removal of 1,800 tonnes of snapper and 400 tonnes of rock lobster, the scale of the total pillage is astronomical. Yet the situation was entirely predictable. For example, with the post-World War II urbanisation of Maori, there has long been a general breakdown of kaumatua (elder) caretaker authority over customary fisheries. Other post-War demographic trends have resulted in immigrant cultures, unfamiliar with or heedless of conservation practices, gaining ready access to littoral fisheries adjacent to urban areas. The likely results of changes in fisheries allocation were also known. For example, the history of poaching throughout the ages plainly shows that it is often carried out by those who have felt aggrieved over the inequitable allocation of fish and game resources. However, poaching is not confined merely to the quota have-nots, it being equally prevalent among quota-holding commercial fishers.

Examples of the range of conflicts between coastal States and domestic fishers on one hand, and distant-water fishing nations and their fleets one the other, have already been noted. Likewise has been discussed the matter of destructive high seas fishing in the form of drift nets, mercifully redressed to some degree. Japan’s contravention of the admittedly farcical CCSBT, and the ongoing pillage of the Louisville Ridge and in the Southern Ocean in which New Zealand’s fishing industry is an active participant even as it objects to the behaviour of others, have been remarked. However, within the NZ EEZ, an absence of conflict obtains. Fisheries agreements with the governments of distant-water fishing nations entered in the

150 The State of New Zealand’s Environment, 7.25.
152 Listener, 10 August 1996, p. 20. It should be noted that the widely publicised 1995 Antares paua prosecution came about only as a result of a highly fortuitous sighting by DoC personnel of poaching activity off Codfish Island.
155 Duncan, ‘Closed Competition’, p. 102.
156 Which, together with other illegalities, constitute the “corporate crime” alluded to by “MAF officials and crown prosecutors”. New Zealand Herald, 1 June 1995, p. 16. However, as noted earlier, The recreational and subsistence sectors also, unfortunately, contain more than their share of shabby, money-hungry miscreants who would not be entirely out of place, apart from a general lack of sartorial elegance, among Tim Hazledine’s “selfish shits” at the BRT. Whilst for its part the NZRFC, as represented by its conciliatory outgoing president Bob Burstall, insists that the poachers are neither commercial fishers nor recreationalists but “simply thugs, no different to bank robbers and should be treated as such”, all extractive sectors, together with a policy based upon a cost-cutting philosophy, must bear responsibility for both non-compliance and enforcement conflict. See Burstall, NZRFC President’s Report, p. 5.
1970s and subsequently renewed have held good, and bilateral arrangement similarly advantageous to the domestic industry have been entered into with the EU. However, whilst satellite tracking and occasional RNZAF patrolling are useful in tracking FFVs and detecting overt illegal activity, onboard monitoring is token at best. Thus, Government and industry are largely unaware of any illegal foreign activity that could generate conflict.

Disputes between fishers and competing interests have long been a feature of New Zealand’s aquatic environment. Historically, conflict has involved the following: destruction and degradation of rivers and streams caused by mining and hydro-electric development, and their effect upon the eel, whitebait, trout and salmon fisheries; the effects of harbour, urban and suburban development upon estuarine fisheries; the effects of pollution, eutrophication, and other degradation on inland and coastal waters caused by sewage, industrial waste, farming, forestry, mining and tourism; the encroachment of aquaculture upon coastal recreational areas and the attendant debate concerning the institution of property rights over such areas; the maintenance of riparian zones and The Queen’s Chain; the effects of shipping on coastal ecosystems, for example, the Marlborough Sounds fast ferry dispute; the “locking up” of traditional fisheries in MPAs; utilization v. maintenance of biodiversity; ecotourism v. traditional exploitation; philosophical differences, for example, utilization v. intrinsic value, or sea “farming” v. “wilderness” and/or “wildness”.

To conclude and summarize this section of the chapter, conflict is a common attribute of most fisheries. Whilst New Zealand is at present spared the conflict between fishing nations so prevalent overseas, domestic conflict is endemic. This conflict chiefly arises from a Government policy that has promoted the capitalization of Nature, thus depriving recreational and Pakeha subsistence fishers of their “right of fishery” under common law. Such a policy is also of particular concern to environmental groups who have first hand experience of industry’s failure to conserve the resource and to protect non-target species and the aquatic environment.

Fisheries Policy in New Zealand
Chapters Four through Seven of the thesis traced the evolution and explained the nature of fisheries legislation and fisheries structural reform, culminating in the Fisheries Act 1996. This section of the present chapter will analyse New Zealand fisheries policy in general to 1999, with particular reference to MFish and its publication *Changing Course – Towards Fisheries 2010*,157 and the apparent inconsistencies between this document and the Ministry’s subsequent behaviour together with the Fisheries Amendment Bill (No. 2). Fisheries policy, long based on the “tradition” of an export-oriented fishing industry, has, since the post-1984 reforms, been one of rationalization, corporatization and privatization. For the reason that this process involves the progressive application of property rights to an ever-widening range of the biota of the aquatic environment, it has been aptly named the capitalization of Nature. As discussed in Part One, given a business/bureaucratic milieu dominated by New Right beliefs, it is highly unlikely that there will be any immediate significant policy change in the wake of the Labour-Alliance win in the 1999 general election. However, whilst Labour’s last fisheries spokesman in opposition, Jim Sutton, certainly supported devolution of fisheries management to industry even as he expressed concern for the rights of recreational fishers,158 it can be hoped that the incoming Minister of Fisheries, the conservation minded Pete Hodgson will act on behalf of the non-commercial aspects of New Zealand’s fisheries and aquatic environment.159 The greens among The Alliance and The Greens will certainly promote their green agenda.

Whereas policy ideas and overall general policy direction tend to emanate from Treasury, if not necessarily originating therein, and policy decisions are made in Cabinet Committee, fisheries policy, which accords with policy in general, is produced in the Policy Business group of MFish. Fisheries management can be seen to have originally operated within a strict conservation regime, as the Fisheries Division and Fisheries Research Division of the Marine Department. In 1972 as part of the ongoing process of developing an export-oriented fishing industry, fisheries management was transferred to the new Ministry of Agriculture and Fisheries. Fisheries thereby became part of the unfortunate exploitative and unsustainable “farming” tradition of the old Department of Agriculture. In 1983 MAF rationalized the inshore fishery and in 1986 commenced the privatization process by instituting property rights

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158 ECOlink, July 1999, p. 1; Burstall, NZRFC President’s Report, p. 4
159 He has certainly made a good start by declaring a one year-plus moratorium on an industry takeover of research needed for the Minister’s decisions under the Fisheries Act 1996. See ECOlink, March 2000, p. 7.
in the form of the ITQ QMS. In 1992 MAFFish commissioned the Pearce report which set in train the devolution of fisheries management from government to industry which continues to the present.

As noted earlier, the stand-alone Ministry of Fisheries (MFish), Te Tautiaki i nga tini a Tangaroa (The Guardian of the multitudes of Tangaroa, God of the Sea), was established on 1 July 1995. The Chief Executive of MFish is appointed under the State Sector Act 1988. The performance of the Chief Executive, and hence of the Ministry, is guided and assessed by a Performance Agreement and an accompanying Purchase Agreement between themself and the Minister of Fisheries. This Agreement is re-negotiated and agreed to each year. The Chief Executive of the Ministry has statutory responsibilities in administering the following statutes:

- Fisheries Act 1996
- Fisheries Act 1983
- Maori Fisheries Act 1989
- Treaty of Waitangi (Fisheries Claims) Settlement Act 1992
- Marine Farming Act 1971
- Fishing Industry Board Act 1963
- Ministry of Agriculture and Fisheries (Restructuring) Act 1995

Responsibility for administering these various statutes and their subordinate legislation is delegated by the Chief Executive to Managers in the businesses and teams of the Ministry. The core businesses or teams consist of Policy, Service Delivery, Fisheries Services, and the previously discussed Compliance.  

The MFish strategies that indicate the Ministry’s priorities and methods of operating into the future are specified as being “to take leadership in building and maintaining the consensus for ‘sustainable fisheries in a healthy aquatic system’”. They are also “to provide services and the operational frameworks that maximize stakeholders (sic) contribution to achieving ‘sustainable fisheries in a healthy aquatic ecosystem’”.  

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161 Ibid., p. 39.
and methods is the inaugural Chief Executive, Warwick Tuck, who, in keeping with the theory of the generic manager, had no prior experience in fisheries management. Instead, Tuck, a former Treasury official, had previously been deeply involved in the reform of the Health, Education, and Welfare systems. However, the staff of MFish Policy Business, under the redoubtable Phil Major, were transferred virgo intacta, with exactly the same devolution task, from MAF. These persons provide the Chief Executive with not only the appropriate professional fisheries management expertise and advice but also bring with them the degree of fervour necessary for the successful completion of the exercise.

Shortly after assuming office, Tuck told the NZFIG’s seventh annual tuna conference that “Our focus is on the sustainable utilization of fisheries”. This statement accords with the stated purpose of the Fisheries Bill 1994. He also told the conference that MFish worked for the Government and that “We have a single client – the Minister of Fisheries representing the Government”. Tuck went on to emphasise that “We do not work for the industry, or for any other stakeholder for that matter”.\textsuperscript{162} However Tuck’s statements can be shown to be subsequently at odds, in one vital area, both with those of the Ministry’s own publication, \textit{Changing Course}, and with the Fisheries Amendment Bill (No. 2), drafted by the Ministry’s Policy Business group. The behaviour of the latter, it will be shown, is entirely consistent with overall government policy for the general devolution of the traditional responsibilities of the State to the private domain. The goal of transferring fisheries management to industry naturally requires the prior exclusion of dissident sector groups from the policymaking process. Thus, \textit{Changing Course}, with some subtlety, sketches such a scenario, whilst the Fisheries Amendment Bill subsequently “cleverly implies that only stakeholders (quota owners) as limited companies will be able to participate in managing core fisheries services”.\textsuperscript{163}

Whereas Tuck had stated that Government was MFish’s single client, \textit{Changing Course} indicates, by way of a diagram, that in fact the only clients are “Fisheries Stakeholders (Clients)”. MFish’s other relationships are indicated as being with “Government (Owner)”, “Government (Purchaser)”, “Maori (Treaty partner)”, “Employees (Contributors)”, and “Other Crown Agencies (Collaborators)”. Subtlety attends in the manner in which MFish

\textsuperscript{162} Seafood NZ. August 1995, p. 8.

defines the term “stakeholders”, of which there are said to be two types, namely, stakeholders in “Fisheries” and stakeholders in the “Ministry”. According to MFish, the former “means all those individuals or groups with an interest in the sustainable utilisation of fisheries”, whereas the latter “means all those individuals or groups with an interest in the Ministry of Fisheries”. Whereas stakeholders in the “Ministry of Fisheries” are the aforementioned “Fisheries Stakeholders (Clients)”, stakeholders in The Fishery are indicated as consisting of “Government”, “Recreational Fishers”, “NZ Public”, “Foreign Nations”, “Environmentalists”, “Fishing Industry”, and “Customary Maori (iwi/hapu)”.

In practice, an “interest” in MFish means at the very least the opportunity for active participation in fisheries policymaking. Given the organisation outlined above, it is therefore crucial to establish just what constitutes a fisheries stakeholder (client). Unsurprisingly, given the political implications, MFish are far from forthcoming with a definition that cannot be misconstrued. However, as discussed earlier, industry is certainly in no doubt that such a stakeholder is one holding a commercial interest in the fishery. Yet MFish’s Policy Business group did join with the NZRFC in establishing the RFRWG. Policy Business Group thereby appeared to acknowledge the NZRFC’s client status, yet otherwise proceeds on a course of action that would culminate in the effective exclusion of the non-commercial sector from participation in the management of fisheries. For example, Policy Business so drafted the Fisheries Amendment Bill (No. 2) that it allowed all the Minister’s powers to be devolved to industry. However, Policy Business assured ECO that such total devolution was not in fact intended and that the Supplementary Order Paper (SOP) to the Bill, SOP 164, would reflect the true intent. Notwithstanding such an assurance, in the event SOP 164 allowed for all ministerial powers, duties and functions to be so devolved. To further illustrate Policy Business’ modus operandi, the Bill contains a schedule that lists those few functions of the Chief Executive of Fisheries that are not to be devolved. Crucial in this list is the function of purchasing research. However, Policy Business decided to proceed with so-called “direct purchase” of a vast range of services, including research, using section 294 of the Fisheries Act 1996, “Use of outside agencies in performance of functions under Act”, thereby circumventing the very intent of the Bill they were charged with drafting.

164 Changing Course, p. 23.
165 For example, MFish Communications Manager, Robert Brewer, ignored requests by the author for clarification on the matter.
If, as suspected, Fisheries Stakeholders (Clients) include only commercial stakeholders as stakeholders in MFish, this means that recreational fishers, environmental groups, and the public at large, are denied all but the proven cosmetic consultative status in fisheries management policy. Moreover, the right of fishery under common law of these stakeholders is not protected by statute. However, Customary Maori (iwihapu) are in the process of coming under such protection, as guaranteed in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Maori as “Treaty Partner” are of course commercial stakeholders in MFish. As for foreign nations, whilst these stakeholders in the fishery also are not, appropriately enough, stakeholders in MFish, they are at least able to exert considerable influence on fisheries policy through representation to the Ministry of Foreign Affairs and Trade (MFAT). For example, MFAT interceded on behalf of Japanese corporates to have certain provisions of the Fisheries Act 1996 relating to foreign ownership of quota, which they considered unfavourable, deferred until at least October 1999.167

The dichotomy between the sentiments expressed in Changing Course and MFish’s actual performance since its publication, leads to the inescapable conclusion that Changing Course is merely a domestic example of environmental “global spin”, a phenomenon that is spawning a growing volume of critical literature,168 rather than a genuine indication of policy direction. Indeed, MFish indirectly admits as much by linking Changing Course to MF’s 1995 Environment 2010 Strategy, discussed in Chapter Three. In his preface to Changing Course, Tuck states that, “To effectively manage our fisheries, we need to manage fish in the context of the environment in which they exist, that is, an ecosystem based management approach”.169 Yet industry, upon whom MFish would devolve such management, has an entirely opposite view, namely, that “The so-called ecosystem approach to fisheries management is not a scientific concept. Ecosystems are too complex for impacts of fishing to be addressed”170 Tuck claims that Changing Course “sets out the framework for developing the strategy to

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169 Tuck, Changing Course, p. 2.
manage the fishery into the future". This strategy, to be called *Fisheries 2010*, will, according to Tuck, "allow stakeholders – all those people with an interest in the fishery – to be involved in setting the goals for the fishery in the context of a healthy aquatic ecosystem and determining the way in which these goals will be achieved". 171 However, as has already been demonstrated, MFish’s treatment of ECO during the process of producing the Fisheries Amendment Bill (No. 2) has been arguably duplicitous at worst and at best cavalier. Policy Business and its predecessor MAF Fisheries Policy Group have a proven record of obstructionism in providing information.172

Further inconsistencies abound between the sentiments expressed by MFish in *Changing Course* and its subsequent actions. For example, whereas *Changing Course* proclaims “Intergenerational Equity” as the first of its “twelve founding principles” 173 the miserly allocation in 1998 of $4,000 to policy work on the needs of future generations was dispensed with altogether in MFish’s 1999 draft budget, *Proposed Nature and Extent of Fisheries Services for the 1999/2000 Financial Year 1999.* 174 As for the founding principles of “Biodiversity”, “Environmental Bottom Lines”, and “The Precautionary Principle”, generally, as noted with some disappointment by ECO, MFish “simply misclassifies spending on other matters and pretends that it is spending on environmental matters”. In fact, the processes of considering sustainability limits on fishing and developing research proposals are both cut savagely while lavish amounts of money are to be spent on “the Minister’s pet project of parcelling out fisheries management to the industry”. 175 An example of the deliberate misclassification of


172 It is difficult in the extreme for the present writer to achieve objectivity when examining this Group. 18 months of correspondence with Major and his MAF Fisheries Policy Group achieved very little in the way of information that might have assisted this thesis in arriving at a fair assessment of the Group. After being subjected to a farcical runaround by Major’s subordinate, Jane Willing, all that was achieved was the merest glance, grudgingly given, at files to which access had been firmly arranged months in advance and in accordance with established research protocols. Willing attempted the stonewalling tactic of diverting the author away from where the requested files had actually been set down for his inspection. Instead, she conducted him to a small room where one of her subordinates, in all innocence, presented for perusal a number of glossy MAF handouts. Upon the author’s objections, the bewildered young man fetched Willing who, with undisguised chagrin, resignedly escorted the author to another room where the requested documents had obviously earlier been laid out, and instructed him to take no notes and to expedite the exercise. Willing subsequently made frequent checks upon the author’s activities, on one occasion accompanied by Major who peered in at the researcher and wordlessly departed. Further attempts to view material met with a resounding silence until November 1996, when Major, having been asked for a copy of *Changing Course*, forwarded a complementary copy and expressed himself "...interested to know what input you had from MFish Policy, to your thesis. I look forward to hearing from you." A subsequent request to actively participate in the development of *Fisheries 2010*, in accordance with the instructions on p. 24 of that publication, was ignored, as was a request for clarification of the definition of stakeholder. Treatment meted out by MAF/MFish contrasted sharply with that accorded the researcher by Fortress Treasury, where access to a staggering volume of material was unhindered, and, indeed, welcomed. Recourse to the Official Information Act was not made in these early stages of the project for the reason that specific items of information could not be identified.

173 *Changing Course*, p. 10.

174 Quoted in ECOlink, March 1999, p. 4.

175 Ibid.
projects is the policy output of “Evaluating sustainability outcomes.” As ECO observes, “The innocent might think this was about considering whether fisheries management was environmentally sustainable”. However, this is emphatically not the case. In fact, all the spending under this heading was “to compile data to monitor and evaluate commercial fisheries policy in respect of economic outcomes”. Unsurprisingly, lavish spending to the tune of $2.7 million was allocated on the Fisheries Bill policy work and implementation of the rights based framework, compared with $32,215 on developing environmental indicators using 0.16% of a full time working person.\footnote{176} Apropos the founding principle of “Research, Science Technology”, whereas Changing Course proclaims that “research is crucial to gaining a better understanding of the environmental risks relating to the uses of fisheries resources”,\footnote{177} MFish allocates a trifling $569,000 for research into the aquatic environment out of a total of $28 million proposed for the total 1999 research budget.\footnote{178}

Changing Course proclaims that “Open Government is here to stay”.\footnote{179} This statement is completely at odds with the experience of environmental groups when attempting to obtain intelligence through the Official Information Act (OIA) on such matters as Timberlands’ activities in the public forests of Westland, or with that of the NZRFC when anxiously enquiring into MFish’s review of the Fisheries Act 1996, appropriately known as “Project X”.\footnote{180} Changing Course further states that “There will be increased participation in, and understanding of, the decision-making processes which relate to fisheries”.\footnote{181} However, the history of the Ministry’s effective exclusion of all but industry from the decision-making process has already clearly been shown to continue into the post-Changing Course era. For example, in 1997, complaints that MFish heeded only industry were underscored when it simply ignored the ideas of other players and reported only the views of the corporates to the Minister after a round of legally required consultation in January and March of that year on the implementation of the Fisheries Act. ECO discovered that MFish had not reported the views of recreationalists, environmental groups, scientists, and others, after several days of formal “consultation”. When ECO threatened the Ministry with judicial review for this blatant

\footnote{176} Ibid.

\footnote{177} Changing Course, p. 10.

\footnote{178} ECOlink, March 1999, p. 4.

\footnote{179} Changing Course, p. 14.

\footnote{180} Burstall, NZRFC President’s Report, p. 4.

\footnote{181} Changing Course, p. 14.
breech, MFish revised its reporting but recommended that “virtually none of the representations by those other than big industry players be adopted”. 182

*Changing Course* implicitly supports the view expressed by *Environment 2010* that “the market economy is a very efficient and flexible way to allocate many resources to meet individual needs and preferences”, and that “society benefits from the innovation and dynamism that the market secures”. *Changing Course* does acknowledge “not all the outcomes of a market economy are necessarily beneficial”, and that concern about sustainability has led governments to intervene to manage fisheries. *Changing Course* states that fisheries policy must recognize that markets “have some difficulty” with issues such as rights of future generations, the links between economic activity and ecosystem damage, the fact that “environmental effects and risks are not equitably spread and unforeseen impacts may be irreversible”, and the matter of intrinsic value. However, *Changing Course* insists that all this is not to say that government intervention would necessarily achieve better results than the market. “Governments are severely limited in the information available to them; they face difficulties in knowing the preferences of individuals, and may be unduly influenced by sectional interests”. Thus, “The Government’s task is to develop rules and institutions that promote good environmental outcomes within the framework of a pluralistic society and a market economy”. *Changing Course* suggests that this might mean “amending the rules governing property rights or the creation of new ones”, and might also require “introducing rules and regulations designed to protect environmental values that are not easily secured by market exchange”. 183

The outcome *Changing Course* suggests is a private property fishery that complies with a set of government-imposed set of rules. However, MFish is here proceeding on the proven false premise that industry is a poacher turned gamekeeper.

*Changing Course* insists that it is “essential” that the generation of New Zealanders born in 1996 “will inherit from us fisheries that are at least as good, if not better, than those of today”. This will be achieved by having an “overriding goal”, a “strategic intent” embraced by the community. The strategic intent for New Zealand fisheries to 2010 is “Sustainable fisheries in

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182 ECOlink, June 1997, p. 10.
183 *Changing Course*, pp. 8-9.
a healthy aquatic environment”. The strategy is based upon an “ecosystem based management of our fisheries” that “takes a more holistic approach to the resource and is explicitly focused on ecosystems”. This, according to MFish, is “an enhancement of a resource management approach, based on common management principles and the market-driven focus of sustainable management”. However, it should be recalled that, in fisheries, management continues to be based upon species, not ecosystems, and that the market approach is not one of sustainability but rather of replaceability and substitution.

In order to ensure sustainable fisheries in healthy aquatic ecosystems, the Ministry advocates its twelve fundamental principles, which it says are already “enshrined in environmental legislation such as the RMA and the Fisheries Act, in the Environmental 2010 Strategy, and in a number of international conventions which are recognized by New Zealand”. However, with regard to these objects of enshrinement, the international conventions have been shown to be chiefly honoured in the breach, the Environmental 2010 Strategy can reasonably be described as a fluffy irrelevance, and the Fisheries Act 1996 is so contentious that it was being subjected to review whilst under the process of implementation. As for the RMA, industry had insisted in 1994 that:

Sustainability management as defined in the RMA is not an appropriate purpose for new fisheries legislation because the fishery resource is already subject to the QMS property rights regime which largely addresses the issues of resource allocation and use, and together with the TACC process addresses the issue of sustainability.

It is clear that those among the twelve founding principles so far mentioned are hardly based upon firm ecologically friendly foundations. The remainder, namely, “Protecting our International Competitiveness”, “Sustainable Property Rights”, “Least-cost Policy Tools”, “Pricing of Infrastructure”, “Internalisation of External Environmental Costs”, “Defining the Limits of Fishery Resource Use and Substitution”, can easily be accommodated within the basic rationalization agenda without recourse to faux green subterfuge. Even the final “Social

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184 Ibid., p. 15.
185 Ibid., pp. 14-16.
Costs and Benefits” presents no problem if proffered in the economistic terms examined in Chapter One.

Having established the essentially politically correct character of Changing Course, there is little point in flogging a dead horse. However, it is probably useful to note industry’s reaction to what one of its officials describes as “a feel-good, warm-fuzzy effort” enjoyed by laypersons “who would find it an attractive decoration for their coffee tables.” However this official further opined that:

Industry members, however, read ominous messages in the title of the booklet, the choice of a map of New Zealand that does not show all the EEZ (nor does it show important fishing ports such as Nelson, the largest) and the repeated emphasis on the ecosystem rather than sustainable utilization. Of some 30 photographs, only nine are of commercial species, most of minor importance, there are no pictures of commercial vessels or premises nor is there any mention of these in the text. No facts or figures are presented, and the whole production is imbued with a greenish tinge that indicates an ambition by MFish to become a surrogate DoC. Like an ice-cream sundae studded with broken glass, this booklet comes across as a set of subliminal messages concealed in a glossy collage of bland generalizations and inconsequential trivia.187

It is quite apparent that this industry representative, one highly regarded among his peers in the NZFCF, had failed to grasp Changing Course’s intent. Unsurprisingly, Warwick Tuck was quick to allay any industry anxiety by insisting that Changing Course “puts an emphasis on the ecosystem, but not to the exclusion of sustainable development” which it embodied. Rather than becoming a surrogate DoC, said Tuck, the Ministry “sees its role as taking the lead to ensure that a collaborative approach to fisheries management is developed”.188 Changing Course had stated that policy advice from Ministries “will increasingly be across departments, requiring new ways of working and changes to the nature of influence”.189 This is interesting in view of the previously noted exclusion of MfE, DoC, and TPK from the fisheries legislative reform process. However, such apparently enlightened inclusiveness should be seen in the light of subsequent philosophical and organisational changes in those

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187 Lea Clough, ‘Changing Course – Changing Function?’, *Seafood NZ*, October 1996, Letters, p. 6. Clough is a member of the executive of the NZFCF.


portfolios. For example, as previously noted, MfE had proved its economistic credentials by producing a Resource Management Amendment Bill based upon the recommendations of the Right Wing McShane. DoC had undergone a massive BRT inspired restructuring that involved concentration upon a “sound business base and the dominance of a commercially focused Business Management Division”.

Finally, TPK had come under the aegis of a new, energetic, entrepreneur-oriented minister unlikely to raise concerns over conservation.

With *Changing Course* placed in proper perspective as an exercise in faux green propaganda rather than a true indication of policy direction, the task of MFish’s Policy Business remains that of devolving fisheries management to industry. Such devolution is not acceptable to a number of sector groups and to those members of the public interested in the fate of New Zealand’s natural resources. Recreational fishers object to the progressive loss of the public right of fishery. Environmental groups object to the capitalization of Nature and the narrowing of social/community considerations implicit in an economistic agenda. Both recreationalists and the environmental groups have little faith in industry’s ability to manage the resources of the aquatic environment, based upon industry’s historical record, its unswervingly extractive philosophy, and its almost unanimous insistence that the QMS guarantees a healthy fishery.

Industry’s attitude, together with that of its MFish mentors, is well illustrated in the proceedings of the 57th annual conference of the NZFIA, held in Queenstown in April 1996, an event which coincided with the tenth anniversary of the institution of the QMS. In his opening address, Vaughan Wilkinson, retiring president of the NZFIA, proffered a list of required “reforms” to the future Fisheries Act 1996. In the event, those reforms desired by industry but not included in the Act would ultimately constitute the Fisheries Amendment Bill (No. 2). The reforms included NIWA’s current monopoly as fisheries research provider, a situation “detrimental to our interest in pursuing open market efficiencies”, and such matters as contestability and cost recovery. According to Wilkinson, the six year of the fisheries reform process, which, at the outset, had “aligned comfortably with the industry’s own recommendations”, had gone considerably astray despite industry’s “energy and dynamic

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Whilst Wilkinson was here suggesting that government had become distracted by the importunate non-commercial sector groups, the genesis of the Fisheries Bill 1994 has shown that this was emphatically not the case. Government was merely attempting to extract maximum cost recovery from industry for fisheries services during the devolution process.

Wilkinson demanded that certain provisions of the Bill that "erode the current QMS property right" should be deleted. These deletions included the "removal of whole species and areas from the system by regulation and without reference to Parliament". Such a provision is of course a conservation safeguard that needs to be made swiftly in order to be effective. For example, should a particular species be found to be in sudden and serious decline, it is obviously necessarily for it to be immediately removed from the QMS by regulation, rather than waiting out the lengthy process of enacting an amendment to the Fisheries Act through Parliament. As for TACCs, Wilkinson insisted that these should be set "every three years, maybe longer, unless there were exceptional reasons to do otherwise, and have minimal reviews in the interim". Whilst it is perfectly reasonable that industry should strive for certainty of access to the resource, it also highlights its essentially short term goals, which in the case of a proven uncertain natural resource like the fishery, can lead to disaster. This is particularly applicable to the New Zealand fishery where scientific data is almost entirely lacking. For example, of the 151 stocks in the QMS in 1996, biomass estimates existed for only 12. Of the 91 stocks for which there were MSY estimates, less than 30 were based on anything more than catch-averaging formulae. Key biological data on fish size and growth rates was almost entirely lacking. Of the 51 species covered by the QMS, the age of the fish was known for only 19. Given this extreme biological uncertainty in the fishery, the fact that the leader of the fishing industry should promote such patently irresponsible management ideas does much to dispel the continuously circulated industry-propagated myth that its goal is the sustainability of the resource.

Wilkinson dismissed aggregation limits on quota holdings as "an economic idiocy", and disposed of research on stock assessment and other vital conservation measures as a "cycle of

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193 Ibid.
194 Barry Weel, "We eat them but how much do we know about them?" Forest & Bird, November 1996, p. 26.
activity as an end in itself”. Government was wasting money, levied from industry, on fisheries research and enforcement. More focus was needed on “the prospect of the big achievable goals”. These, predictably, consisted of resolving the matter of allocation disputes, “strategically” determining the catch setting decisions and intervals, and, finally, empowering “the QMS property rights administration with greater capability for industry to determine its own business compliance rules, and hasten the development of market contestability” for all manner of fisheries services”. With the exception of allocation disputes, the Fisheries Amendment Bill (No. 2) largely addresses all of Wilkinson’s concerns, doubtless to SeaFIC’s almost entire satisfaction. However, in the matter of allocation disputes, Wilkinson’s proposal for a tradeable property right between the commercial and non-commercial sectors, and to “let the market largely determine the utility of the catching rights”, was obviously too much in the “purposeful style” of the market for even a market oriented minister to contemplate. Wilkinson had proffered his proposal on the basis that, if the “economic value generated by the recreational sector’s is greater per unit of fish than that of the commercial sector, as they are wont to suggest, then the rights will naturally be acquired”. The very notion of what would amount to the total commercialization of a particular fishery is of course anathema to the non-commercial sector. In any case, except perhaps in the instance of a successful recreational charter operator taking advantage of Wilkinson’s “tradeable opportunity” environment to purchase quota, the idea of the recreational sector as a whole benefitting from a commercialized fishery is plainly preposterous. Much more likely, and doubtless a more pleasing prospect to Wilkinson, would be the complete acquisition of the property right by industry. Wilkinson’s address was followed by that of The Minister of Fisheries, Doug Kidd, whose task was plainly to facilitate passage of the Fisheries Bill 1994. Consequently, his words were largely placatory in tone and need not be here remarked.

This thesis cannot over emphasize the intrinsically unhealthy and dangerous reliance placed upon the QMS and ITQ system by industry and MFish, as reflected at the 1996 NZFIA conference, and on every recorded occasion before and since that event. With one notable exception, conferees were fulsome in their praise of the system, then entering its second

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195 It should be noted that “contestability” in the marketplace, as envisioned by Treasury, has absolutely nothing to do with fair competition, a term more readily understood by the layperson. Instead, contestability means ensuring, by means of “strategic behaviours”, that the most amenable bidder, rather than the best or most proper, gets the contract. See Kelsey, The New Zealand Experiment, pp. 90-92.


197 Ministerial Address to NZFIA, Seafood NZ, May 1996, p. 12.
decade of operation. Peter Talley, doyen of the fishing industry, set the tone for the eulogizing of the QMS environment by asserting that industry sees the fisheries as a renewable resource for the benefit of all New Zealanders. In contrast, Talley explained, Government views them as merely a lucrative source of revenue, while the environmental groups, otherwise, and unusually, hardly deemed worthy of mention at the conference, quite naturally see the nation’s fisheries as “food for seals”.

An elevated level of discourse having been established, other speakers added their contribution of what can fairly be described as paeans and panegyrics on the virtues of the QMS and ITQ system. NZFCF president Peter Jones claimed that the QMS was “wonderful”. Its benefits, he rhapsodized, included allowing New Zealanders to purchase a wide variety of fish. Whilst Jones failed to explain that this recently burgeoning expansion of choice occurs because the traditionally most preferred species are both in decline and overpriced, his sentiments were enthusiastically echoed by sundry fisheries consultants carried away in the climate of euphoria. Messrs Chris Horton and Ray Dobson, respectively president and CEO of the NZFIB, expressed total and unreserved happiness with the QMS, as did Sealord’s Jim Mace, incoming president of the NZFIA.

Whereas these gentlemen couched their praises in the most vague and general terms, Phil Major of MFish Policy Business employed a head-on, market-based argument in support of the QMS. The system must be working, Major earnestly explained, because big business is buying up most of the quota. “It’s become a land-based investment!” he enthused. Major set the tone for his CEO, Warwick Tuck, who lauded industry on its choice for the opening theme of the conference, “ITQ – The First Decade”. Tuck declared that industry, government and

198 This thesis eschews the habit of the previously noted economists and academics taken to task by Easton for writing without any tangible image of, among other things, people. After all, industry, like MFish Policy Business, consists of people, whose ideological convictions and behaviour determine policy. Accordingly, it should be noted that Peter Talley represents the greatest impediment to industry’s acquisition of an enlightened attitude towards the marine environment. A remarkably successful entrepreneur who succeeded his father in the ailing family fishing business at the age of 19 and built it into the largest privately owned seafood company in NZ, Talley’s is the most powerful and influential voice in the fishing industry. Furthermore, as the champion of New Zealandization and a fair dealer with his contract fishers, Talley’s mana among industry rank-and-file is enormous. Unfortunately, Talley has, most worryingly, a demonstrable ignorance of basic biology. For example, apropos predation mortality, according to Talley, “We need to determine what eats what and how much – then cut out the weeds”. This perceived need has led to an apparently pathological hatred of seals, which has seen Talley making something of a spectacle of himself through his outlandish media utterances, some of which are recorded in a subsequent case study. With regard to sustainability, Talley has claimed in contradiction of the facts that albacore, southern bluefin, and yellowfin tuna are all being fished sustainably in NZ. Unsurprisingly, Talley happens to be a partner in the bluefin-catching Solander Group. Finally, Talley’s hatred for seals is exceeded only by his contempt and loathing for members of environmental groups, whom he describes as “aging hippies who experience difficulty thinking and smoking at the same time”. DoC personnel are described as “Eco-Nazis”. Talley’s influence upon the thinking of industry in general, and upon its least reflective members in particular, cannot be overemphasized. See: “The Rich List 1996: A Special Publication of the National Business Review”, NBR, 19 July 1996, p. 31; Talley, ‘Interaction’, in Abel, et al, eds., p 157.; New Zealand Herald, 10 August 1996, p. 15, 15 August 1996, Letters, p. 6; Jenny Henderson, IRN Radio Pacific, 27 September 1996.

“other stakeholders” should be proud of what had been achieved over the preceding ten years “in terms of the ongoing management and health of New Zealand’s fisheries – and let’s face it, that’s what we are all vitally interested in”. Warming to his theme, Tuck opined that:

It is easy to forget how far the fishing industry has progressed in the last ten years – let alone the last 12 months. This is partly due to the intense period of change which has characterised the decade....This change has seen the industry move from a more casual and often family-based series of operations to a series of complex businesses involving major assets and property rights. None of us here today can argue that these changes have not been necessary for the ongoing health and sustainability of our fisheries resources.200

Informed critics might suggest that it takes a particular and peculiar mindset to decide that rationalization and corporatization, rather than conservation measures based upon the precautionary approach, holds the key to the health and sustainability of fisheries. As shall be amply demonstrated in the case studies, the snapper fishery has hardly benefited hugely by its conversion from “a more casual and often family-based operation”, and the orange roughy fishery, “involving major assets and property rights” almost from the outset, is neither healthy nor sustainable.

The sole critic of the QMS was Charles Hufflett, managing director of the Solander Group, a man noteworthy in the “charismatic megafauna” case study for his wildly anthropomorphic assessment of the intelligence, table manners and airmanship of albatrosses. However, when addressing the nature of the QMS, he was standing on much firmer ground. Hufflett must be given due credit for reminding his peers that the QMS, despite its name, is not a management system, but, rather, merely an allocation system. He supported the validity of this contention by pointing to the West Coast hoki fishery. There, the hoki have indeed been allocated, he said, but they are certainly not being managed. Hufflett was unequivocal in his assertion that “The hoki spawning grounds are being plundered”. Hufflett is not involved in the hoki fishery, being instead a catcher of tuna, so in a position to be critical of the hoki fishers if not of his own unsustainable activities. However, he was certainly correct when he concluded

200 Seafood NZ, p. 16.
with the observation, which strikes a chord familiar to the student of the New Zealand mythmaking process, namely, that the QMS has become an icon, "like the All Blacks".201

Finally, the 1996 NZFIA conference is noteworthy for the fact that, for the first time, a member of an environmental organisation, albeit one whose leadership can be fairly described neoclassical economic environmentalists, that is, those who operate within the economistic grand narrative,202 had been invited to address the delegates. Warwick Tuck had earlier expounded the importance to industry of "working in partnership with those organisations that see themselves as environmental protectors for the overall benefit of the fishery", so it is unsurprising that Guy Salmon of the Maruia Society (now Ecologic) should have been so honoured. Salmon, who had earned the ire of ECO, Forest & Bird, and Greenpeace over his espousal of the Antarctic Minerals Convention in preference to the Antarctic Environmental Protocol,203 and his support of Timberlands, was, for industry's propaganda purposes, the perfect choice.

Salmon did not let industry down. Instead, he proceeded to lavish praise upon industry and proclaim that, just as New Zealand is a leader in sustainable forestry management, so, too, is the New Zealand seafood industry a world leader in fisheries management. In fact, New Zealand is an acknowledged leader in economically sustainable exotic forestry management. This country has removed a greater percentage of its indigenous rainforests than has any other. It is agreed by all except the economistic among the scientific community, that such forests can only be sustainably "managed" in the narrow terms of sustainability of wood production, that is, economic sustainability.204 Ecological sustainability entails protection of ecosystems.205 As for fisheries, New Zealand can be lauded only to the extent that other nations' fisheries are generally in an even more parlous state than its own. Arguably, Salmon might have been less fulsome in his praise of industry had he, like ECO, Forest & Bird, and Greenpeace, been forced to endure the years of bruising encounters with industry during the

201 "Fishing Report" RNZ National Programme, 13 and 20 April 1996.
203 See ECOlink, June 1996, p. 5.
204 See Owen G. Lewis, 'Native forests can't live and be a harvest crop as well', New Zealand Herald, 11 December 1996, p. A15.
so-called consultation process and in the annual TAC rounds. Unsurprisingly, Salmon received effusive thanks from the delegates for his "wise and clearly delivered counsel".206

To summarize, fisheries policy in New Zealand accords with the prevailing philosophy of rationalization, corporatization and privatization. Its aim is the devolution of fisheries management to industry. However, such a policy is inappropriate for the reason that an increasingly corporatized, foreign owned industry is both intellectually and philosophically ill equipped to assume guardianship over such an important part of the commonweal. In general, industry regards the aquatic environment as a farm and its biota merely stock units and associated weeds. Industry, as the owner of the livestock will exploit it as the owner sees fit.

The latest step in the devolution process has been the passage of the Fisheries Amendment Act (No. 2), which hands over control of the catch and effort databases, upon which calculation of the TAC depends. However, the process is complicated somewhat by the political necessity of appearing to concede to the public right of fishery and appease environmental concerns. Hence the rather incongruous phenomenon that is Changing Course, and the contradictory, evasive and arguably duplicitous handling by MFish of the definition "stakeholder". For its part, industry is of the firm belief that a stakeholder is one who holds a commercial stake in a fishery. Recreational fishers, environmental groups and Maori customary fishers, who constitute the non-commercial sector, would vehemently disagree. However, whilst Maori customary fishers are promised protection by statute, no such protection is afforded the remainder who see the common law public right of fishery steadily eroded, via the allocation of property rights to industry under the ITQ QMS, in a process aptly dubbed the capitalization of Nature.

Fisheries policy in New Zealand shares characteristics with policy elsewhere, in that its prosecution generates conflict between the various environmental streams of the anthropocentric/ecocentric spectrum. Globally, fisheries are under unremitting stress from overfishing and pollution. In the closing decade of the second millennium, commercial catch volume remained static despite increased catching effort involving previously unexploited species, and pollution is increasing as a result of so-called economic development. On the high seas, ocean governance suffers from the same crippling deficiency as that which applies

on land among nations, namely, the lack of effective UN-sponsored enforcement agencies. Fisheries management is based upon a bio-economic model that has long been discredited as a guide to economic let alone ecological sustainability, which is in any case not possible in a wild fishery subjected to modern extraction methods. Attempts to reduce the problem of overfishing to “too many people chasing too few fish” has led to a rationalization policy that has largely ignored social issues and matters such as biodiversity. By reason of the fact that fisheries management is considered in strictly anthropocentric terms, consideration of the harvest requirements of non-human fishers has never been addressed.

Globally, fisheries management has long proceeded on a misinterpretation, or a misrepresentation, of the characteristics of a common property fishery. This led initially to government regulation of what had become, under the pressures of industrialization, open access fisheries. The result has almost invariably spelled disaster, both for artisanal fishers and for the fishery. Increasingly, with the perceived failure of governmental management, fisheries are undergoing a process of privatization through the allocation of property rights, together with self-management. Whilst an ITQ QMS and self-management arrangement can work well where the pursuit of economic rents is not the prime consideration, such is emphatically not the case in a rationalized, corporatized fishery where economic efficiency measured in terms of GDP prevails. To ensure the survival of a fishery, an ITQ QMS allocation system needs to be balanced in its management by community and conservation concerns.

Unfortunately, in New Zealand, with the increasing aggregation of quota into the hands of corporate managers and financial institutions, such considerations tend not to be entertained. Thus, whilst there is hope that Leopold’s “land ethic”, with its commitment to “doing the right thing”, might some day be found among secure and happy self-managing fishers, whether commercial, recreational, subsistence or customary, the idea becomes preposterous in a purely economistic environment. In such an environment the capitalization of Nature remains the chief fisheries policy goal. Accordingly, this thesis argues that the situation requires the intervention of The Greens, with an agenda similar to that arising from Goodin’s green theory of value. In the wake of the 1999 general election there exists a unique opportunity for The Greens to keep the Labour/Alliance coalition honest and persuade Government to initiate a change of policy for fisheries and the aquatic environment in keeping
with the avowed overall environmental policy of the ruling parties. Meanwhile, policy and legislation in place has been shown not meet Goodin’s criteria for the successful maintenance of natural resources.

207 The Alliance has long had a fisheries policy promoting the fair distribution of quota and community based management. See The Alliance, 1996 Alliance Manifesto for all Voters: Leadership You Can Trust, The Alliance, Auckland, 1996, p. 22. The degree of greenness of Labour and The Alliance’s environmental policies was earlier remarked.
PART THREE

Demonstration of outcomes: Five case studies