

2 April 2013

Ministry for the Environment
RM Reform
PO Box 10362
Wellington 6143

To whom it may concern,

A discussion document: *Improving our resource management system*

Please find attached the McGuinness Institute's submission on the Ministry for the Environment's discussion document: *Improving our resource management system*.

Please note we have attached two documents: Think Piece 16: *New Zealand King Salmon: Was it a good decision for New Zealand*, and the supporting Working Paper 2013/01: *Notes on the New Zealand King Salmon Proposal*. Both of these publications can also be found on our website, www.mcguinnessinstitute.org.

We welcome the opportunity to provide comment on proposed reforms and would like to register our interest in speaking to our submission. Our contact details are provided below.

Kind regards,



Wendy McGuinness
Chief Executive

Submission

The protection of unowned, or hard to own, resources – think of the air – requires regulation; there will always be incentives for governments to secure loopholes in international treaties, and for polluters to ignore regulations in countries where government is corrupt or ineffectual. Nonetheless, there are more than enough international regulatory bodies to create the required regulatory mechanisms, and what they are is obvious in outline, however complex in detail. What is lacking is a consensus on an equitable distribution of the burdens of effective regulation, willingness to comply with them, and in some parts of the world capacity to enforce them. The notion that global government would solve such problems, as distinct from better local governance, and a stronger sense of urgency across the globe, is utopian. The ignorance and corruption of local officials will not be remedied by imposing a layer of authority even more remote than a central government that is already failing in its task. Nor would the forcible displacement of that central government by well-intentioned outsiders be a plausible route to environment health. There is nothing worse for the environment than war. Only the slow implementation of better governance by weeding out corruption and ignorance will save us, if anything can.

Alan Ryan, *On Politics: A History of Political Thought from Herodotus to the Present*, 2012, p. 1010

Alan Ryan, previously a Professor of Political Theory at Oxford, reminds us that the challenges of managing resources globally will only intensify. Hence good governance should build on shared values and knowledge. Regulatory changes need to be considered as part of the whole system and in such a manner that they can be complied with and enforced through the creation of penalties for poor behaviour. His reference to slow implementation by weeding out corruption and ignorance underlies this submission; the Institute believes a considered approach is the only way forward. The discussion document should be the start of a much longer and deeper conversation, therefore any changes to the resource management system should be assessed in terms of the purpose of the whole system and based on sound research and analysis – anything less is likely to deliver worse outcomes in the short to medium term and more significant change in the medium future, creating even more uncertainty.

The following submission is in response to the Ministry for the Environment's discussion document, *Improving our resource management system*. It takes a three-fold approach, but at its core this submission argues that the protection of unowned, or hard to own, resources requires regulation. Ryan (quoted above), in his recent book tries to answer the question: *How should human beings best govern themselves?* He acknowledges that what is lacking is a consensus on an equitable distribution of the burdens of effective regulation, willingness to comply with them, and in some parts of the world, capacity to enforce them. He concludes, only the slow implementation of better governance by weeding out corruption and ignorance will save us.

Today, the government is again reviewing New Zealand's resource management system. We support this initiative. It is timely to review the outcomes from the legislative changes in 1991, and the more recent changes in 2009 and 2011.

Our approach is three-fold: (1) we make a number of broad high-level observations about the Ministry's discussion document (this covers the question at the end of Chapter One), (2) we briefly answer questions related to each of the six proposals (this covers questions for proposal 1-6), and (3) lastly we make our own recommendations based on our findings from our assessment of the New Zealand King Salmon decision (based on our Think Piece 16 and our supporting Working Paper 2013/01).

PART ONE: High-level observations about the Ministry's discussion paper

This is best discussed in terms of the following seven observations:

1. The discussion document lacks the analytics necessary to describe the problem at hand. This paper would have benefited from data on the number of applications under the RMA between the time periods of interest. This could align to changes in the legislation; for example from 1991 to 2009, 2009 to 2011 and from 2011 to today. Further, it would be useful to know the nature of those applications, in order to understand what applications for resource use are causing what problems. For example, it would have been useful to separate applications into items such as the resources in question (e.g. land use, coal, water, wind etc), the jobs/wages resulting from implementation, the cost of the proposal to the applicant, the cost to the public, the length of time of the process, the regional council/region in question, the decision maker (e.g. the Board of Inquiry), the outcome of the decision, what problems have been identified and by whom and whether there was an appeal (including whether the appeal was successful). We appreciate the case studies are used to try and fill this gap, but they remain descriptive, and do not provide an overview of resource management decisions since 1991. If this information is not readily available, we recommend that the Ministry collect this data, hence we support proposal six.

Another important area of research we believe the Ministry for the Environment should be undertaking is work in benchmarking sustainable protein. Where should our priorities be in terms of supporting one industry over another? The Institute is currently doing an explorative study into this.

2. The discussion document fails to provide transparency over who is raising concerns; in fact concerns are often stated without any supportive evidence. For example the following broad statements are made:

It is a particular concern that the RMA has failed to provide the kind of clarity and predictability that is necessary to foster investment certainty, and appears to be discouraging both strategic planning and innovation. (*Discussion document*, p. 9)

Despite the changes already made, New Zealanders tell us they want more action to make resource management simpler, less costly and more effective. (*Discussion document*, p. 15)

If the RMA has failed to provide clarity and certainty, in what way and to whom? And, if it appears to discourage strategic planning and innovation, in what industries has planning being reduced and innovation minimised? We appreciate that resource management is complex, but without understanding the problem in terms of who is voicing what concerns, it will be extremely difficult for the Ministry to make considered recommendations to the Minister. If this information is not readily available, we recommend that the Ministry survey industry and regions to find out if concerns are industry or region specific.

3. The discussion document discusses resources in terms of natural and built resources, and frames this in terms of deciding where and how to use, sustain or protect a resource. This is a useful approach and may be worth exploring in more detail. Is there a way of mapping resources in terms of whether they are to be used, sustained (e.g. cap) or protected. If this review is about lowering the bar so that some resources can be used (rather than sustained or protected), there may be better ways of achieving this goal than trying to manipulate a resource management system. If the

problem is about coal, the discussion should be about coal, rather than trying to lower the bar on all resources.

4. The discussion document fails to outline what success looks like. What are the criteria that government is aiming to achieve and where do trade-offs exist between competing criteria? It is implied in the text that the right decisions are being made, but they take too long. For example, page 9 states:

While the RMA often gets to the right outcome in terms of environmental protection, its processes can be long, cumbersome and inefficient. (*Discussion document*, p. 9)

Does this mean that decisions are effective (comes to the right decision), but not efficient (are too long and costly)? Or is the discussion document saying that the wrong decision is being made? This difference is critically important. Are there decisions that have been made under the RMA that the government believes are the wrong decision? If so, these should be identified and examined. Using all three quotes from the discussion document listed above, the criteria for success include:

- ease of use (meaning the current system is lacking clarity, is not simple and is cumbersome)
- predictability (meaning the current system is not providing investors certainty)
- speed (meaning the current system takes too long to process applications)
- cost effectiveness (meaning the current system costs the applicant/government too much)
- effective sustainable outcomes (meaning the current system produces decisions the government thinks should not have been approved or declined)

If our interpretation is correct, this means that the Ministry believes the current system is failing the people of New Zealand in all of the above. However, more importantly, this discussion document provides little transparency over the criteria that the Ministry is using to assess the current system. For example, should it not also be assessing the current system in terms of transparency and accountability, risk management, intra- and inter-generational equity (meaning equitable access to resources within the current generation, as well as between current and future generations) and well-written decisions. Although transparency is mentioned in page 16, this is brief, not high-level and not linked with accountability. Further, although accountability is discussed in proposal six, this is discussed in terms of national monitoring systems of authorities, not accountability in regard to quality information and decision-making.

Further, are there areas (e.g. resource type, region or industry) under the RMA where decisions are working well? If yes, what are the lessons that can be learnt?

5. Related to defining the criteria or the lens of what success looks like, is reviewing best practice on a global scale. What countries should New Zealand try and emulate, and why? The discussion document mentions Scotland, Tasmania and Canada, but it does not explain why these countries are discussed and not others. A broad statement made on page 17 comparing the number of planning documents within New Zealand and Scotland does little to provide the necessary information to the reader.

Collectively, New Zealand's 78 local authorities have more than 170 resource management planning documents covering 2272 different zones, management areas or policy overlays. By comparison, Scotland, with 5.2 million people, has just 37 comparable planning documents. (*Discussion document*, p. 17)

Scotland has numerous pieces of legislation covering resource management (see www.legislation.govt.uk), whereas New Zealand has the comprehensive Resource Management Act 1991. Knowing this, it becomes difficult to determine which planning documents are taken into account in the above comment. This brings us to the questions of why these two countries were compared to argue this point. Is there a paper that outlines why these two countries are chosen for comparison?

We would have thought countries with similar natural resources, environmental ethics, cultural commitments (such as commitments to first nation peoples) and branding (i.e. 100% pure) would have provided a more useful country of comparison. This being the case we would have expected Nordic countries, or a more in depth examination of the Canadian system, to be a useful gauge to measure success and learn from. It seems that there is relevant background information missing from the discussion document.

6. The Ministry may benefit from revisiting the original design of the 1991 system. What was the problem it was trying to resolve and were all aspects of the design implemented? This latter question is very important. Our understanding is that National Policy Statements (NPS) and National Environmental Standards (NES) were envisaged in the 1991 framework but none were implemented before 2004 (excluding the coastal policy statement, the first of which was issued in 1994.) The first NPS was not implemented until 2008. There are now three in force and two in the process of being developed. This was designed as a fundamental aspect of the process for decision-makers intended to inform the strategic and operational levels of resource management, and yet more than 10 years passed before even the first of these standards came into force. This seems inadequate.

There is a criticism implied that the process has not delivered, but so much of it seems to be centred around good guidance. If central government has not been able to provide this guidance with the existing instruments, then it appears it is more a problem of central government than local government. If these statements and standards could be designed and created appropriately, many of the other initiatives suggested in the discussion document may no longer be needed.

These high level directives need to exist for the different levels of the RMA to work. It presents us with an opportunity to bring this high level thinking together and potentially work towards a National Sustainable Development Strategy. This exercise has been attempted before. In 2003, a report titled *Sustainable Development for New Zealand: Programme of Action* was published by the Department of Prime Minister and Cabinet. The report included ten principles that intended to align 'whole-of-government' policy and decision-making:

Principles for policy and decision making

The government recognises that its decisions should ensure the wellbeing of current and future generations. It will take account of the economic, social, economic, environmental, and cultural consequences of its decisions by:

1. considering the long-term implications of decisions
2. seeking innovative solutions that are mutually reinforcing, rather than accepting that gain in one area will necessarily be achieved at the expense of another
3. using the best information available to support decision making
4. addressing risks and uncertainty when making choices and taking a precautionary approach when making decisions that may cause serious or irreversible damage
5. working in partnership with local government and other sectors and encouraging transparent and participatory processes

6. considering the implications of decisions from a global as well as a New Zealand perspective
7. decoupling economic growth from pressures on the environment
8. respecting environmental limits, protecting ecosystems and promoting the integrated management of land, water and living resources
9. working in partnership with appropriate Māori authorities to empower Māori in development decisions that affect them
10. respecting human rights, the rule of law and cultural diversity. (DPMC, 2003)

These principles could form the basis for the development of further NPSs. This government report is discussed in more detail in the McGuinness Institute’s Report 1 and Report 1b, both published in August 2007, see www.mcguinnessinstitute.org.

Table 1: Current National Policy Statements

(Source: National Policy Statement on Electricity Transmission 2008; National Policy Statement on Renewable Energy Generation 2011; National Policy Statement on Freshwater Management 2011)

Current National Policy Statements (NPS)	Status	Objective/ Preamble
Electricity transmission	Came into effect 2008	<p>To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:</p> <ul style="list-style-type: none"> • managing the adverse environmental effects of the network; and • managing the adverse effects of other activities on the network.
Renewable electricity generation	Came into effect 2011	<p>To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand’s electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government’s national target for renewable electricity generation.</p>
Freshwater management	Came into effect 2011	<p>To recognise the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources to meet the needs of present and future generations, while:</p> <ul style="list-style-type: none"> • managing the adverse environmental effects of the network; and • managing the adverse effects of other activities on the network.

Table 2: Proposed National Policy Statements

(Source: MFE, n.d.[a]; MFE, n.d.[b])

Proposed National Policy Statements (NPS)	Status	Proposed objective
Urban design	<p>In 2008 views on the scope of a NPS on urban design were called for. 120 submissions received and a background paper was published.</p> <p>In 2009 the second phase was approved.</p>	<p>In August 2008 the Ministry for the Environment sought the views of a wide range of parties on the scope of a National Policy Statement (NPS) on Urban Design. To guide feedback a background paper was prepared which attracted 120 submissions.</p> <p>In April 2009 the government approved the second phase of resource management reforms, including a work stream centred on urban planning issues. As this work stream will investigate new approaches to the planning and design of our towns and cities the government has decided not to proceed with a specific report back on the scope of a NPS on urban design at this stage. Instead, consideration as to whether to continue with an urban design NPS (or an alternative approach), and in what form, will comprise part of the policy advice that will be reported back to the government as part of the urban planning work programme.</p>
Indigenous biodiversity	<p>Consulted publicly on this proposed NPS between Jan and May 2011.</p> <p>426 submissions were received.</p>	<p>The proposed NPS is intended to provide clearer direction to local authorities on their responsibilities for managing indigenous biodiversity under the Resource Management Act 1991. The proposed NPS contains a list of criteria for identifying areas of indigenous vegetation and habitats of indigenous animals that have been recognised as being rare and/or threatened at a national level. These criteria are based on the Government’s Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land. The proposed NPS requires district and relevant regional plans to identify these areas of significant biodiversity within five years of the NPS taking effect.</p> <p>Local authorities would be required to manage the effects of activities through district and regional plans and resource consent decisions (or be satisfied that effects are managed by other methods) to ensure there is no net loss of significant indigenous biodiversity.</p> <p>The proposed NPS seeks to promote the maintenance of indigenous biodiversity while recognising the rights and responsibilities of landowners and the interests of Māori.</p>

Table 3: Current National Environmental Standards

(Source: MFE, n.d.[c])

Current National Environmental Standards (NES)	Status	Notes
Air quality statements	Came into effect in 2004	This is made up of 14 separate but interlinked standards
Sources of human drinking water standards	Came into effect in 2008	
Telecommunication facilities	Came into effect in 2008	
Electricity transmissions	Came into effect in 2010	
Assessing and managing contaminants in soil to protect human health	Came into effect in 2012	

Table 4: Proposed National Environmental Standards

(Source: MFE, n.d.[c])

Proposed National Environmental Standards (NES)	Status	Stage of development
Ecological flows and water levels	Discussion document was published 2008	On hold pending advice
Plantation forestry	Proposed 2010	Currently in the redesign stage - presented to a NES working group in December 2012.

7. The discussion document would have benefited from a more detailed description of the current process. This may be worth considering in future discussion documents. From our experience the system is large and complex, an expert in one area of the system is unaware of the other aspects of the system and how they interface. For example, the role of a planner is very different than that of a community group, an expert economist, legal counsel, or an applicant. Defining the system under review in more detail would have enabled a more useful response from parties and arguably a broader range of feedback.

PART TWO: The six proposals

The discussion document presents six proposals for reform. We believe the framework outlined in the Figure 2 diagram is a useful framework for discussing the issues. Chapter 3 is very well set out and is easy to read, although in places we are confused over the intent and the mechanism that aims to improve the system. We outline these below, when discussing our responses to the questions below (in blue box).

Please note when looking for the TAG document, referred to in text as dated June 2012, all we could find was the February 2012 document. Further, the list of stakeholders that engaged with the process is missing, and in the interests of being transparent in developing public policy, we believe this information should be added as an appendix as an Addendum. This may simply be an error (the date) and omission (the list of stakeholders invited to comment) in the discussion document on line.

Furthermore, the discussion document references a proposed reform to section 32 to improve ‘the evaluation of objectives, policies and rules in achieving the overall sustainable management purpose of the RMA’ but never specifies what exactly that would entail. We believe section 32 should more clearly spell out alternative future uses of the resource being considered. In other words, the resource is the core of the legislation and as such, alternative uses of the resource must be assessed. See Note 14 in the working paper.

3.1 Proposal 1: Greater national consistency and guidance

QUESTIONS FOR PROPOSAL 1: GREATER NATIONAL CONSISTENCY AND GUIDANCE

- Do you agree with the proposals in 3.1.1–3.1.4? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?
- Beyond the suggested additional matters in section 6 and 7, are there any matters of national importance that should be covered in Part 2 of the RMA?
- What matters should additional NPSs and NESs cover?

3.1.1 Change the principles contained in sections 6 and 7 of the RMA

Our approach has been to strike through and rewrite how we would approach the changes suggested below. Please note they are based on the following assumptions:

- a) Effects includes economic effects and therefore does not require to be independently identified as a principle.
- b) Terminology should be consistent. For example; resources are either natural or built (therefore natural landscapes are simply another resource; therefore we do not see the need to add the word natural in advance). Further resources can, as stated in the discussion document, can take three forms: use, sustain or protect (preserve is not therefor necessary as it means the same as protect).
- c) Principles are high level and should not detract from the method. We believe the definition of principle implies it is about values and beliefs that underlie the system. If the intent is to ask the decision makers to refer to specific aspects when making a decision, this should come under method. Hence a number of those issues in the proposed section 6 below should go under method. For example, the weighing of effects should be in method, they are not a principle in the true meaning of the word.

As a consequence, we have made the following changes to Section 6 and 7. The dark grey boxes indicate where we have taken the changes recommended in the discussion document and tracked our changes. We

have then rewritten these changes in the lighter grey boxes which represent the Institute's suggested version of the proposed new sections.

Current Section 5 Purpose (proposed to stay the same)

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Please note we are pleased to see that the sustainable management of natural and physical resources would remain the overriding purpose of the RMA, however we would recommend that the word *physical* be replaced by *built* resources throughout the legislation or the term *built* be redefined as *physical*. Clarity over this term would be useful across all aspects of public policy, providing clarity for all parties. At the present time, *natural and physical resources* is defined in the legislation together and includes structure, whereas *structure* is defined as what we understand is meant by built infrastructure. This review seems an ideal opportunity to make this distinction clear within the RMA.

Revised MFE Proposed Section 6: Principles

- (1) In making the overall broad judgment to achieve the purpose of this Act, all persons exercising functions and powers under it ~~in relation to managing the use, development and protection of natural and physical resources~~ shall recognise and provide for the following matters:
 - (a) kaitiakitanga ((reinserts 7(a), as it is a principle)
~~protect the natural~~ character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
[new] sustain our oceans;
[new] sustain our native flora and fauna and the ecosystems that they live in; (reinserts 7(d))
 - (b) ~~protect specified~~ outstanding natural features and landscapes from inappropriate subdivision, use and development;
 - (c) ~~protect the protection of specified~~ areas of significant indigenous vegetation and significant habitats of indigenous fauna;
 - (d) ~~value of public access~~ to and along, the coastal marine area, wetlands, lakes and rivers;
 - (e) value the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, taonga species and other taonga ~~including kaitiakitanga~~ (included separately above);
 - (f) ~~the protection of~~ protect customary rights;
 - (g) ~~the benefits of the efficient use and development of natural and physical resources;~~ (move to section 7 as it is about method)
 - (h) protect historic heritage;
(i) ~~consider the impacts of climate change;~~ (move into risks (L) below)
 - (j) ~~the benefits of efficient energy use and renewable energy generation;~~ (move to section 7 as it is about method)
 - (k) use natural and built resources effectively ~~the effective functioning of the built environment~~ including the availability of land for urban expansion, use and development;
 - (l) consider all risks, in particular impacts of natural hazards and climate change;
 - (m) ~~the efficient provision of infrastructure;~~ (move to section 7 as it is about method)
 - (n) protect areas of significant aquatic habitats, including trout and salmon;
 - (o) [new] consider the *alternative future use* of the resource (see Note 14 in Working Paper 2013/01)
 - (p) [new] consider the amenity value to the community (reinserts 7(c))
 - (q) [new] equity (in terms of intra- and inter-generational equity)
- (2) For the avoidance of doubt section 6(1) above has no internal hierarchy.

Revised MFE Proposed Section 7: Methods

All persons performing functions and exercising powers under this Act must:

(1) In the case of information:

(a) Ensure applications contain complete, accurate and relevant information.

(b) Ensure applications outline areas where effects are contested. (this is to speed up the process by identifying hot issues for further inquiry)

(b) Use best endeavours to ensure timely, efficient and cost-effective resource management processes (NB: this statement needs more clarity – what does this mean in practice regarding the method? perhaps provide additional information in a timely manner?);

(c) Be transparent about where information has been sourced

(2) (new) In the case of identifying and assessing effects, ensure the following effects are taken into consideration: (from section 6)

(a) the efficient and effective use and development of natural and physical resources;

(b) the renewable nature of a resource;

(c) the use or waste of by-products;

(d) the efficient use of energy;

(e) the source of renewable energy generation;

(f) the provision of infrastructure for future generations;

(3) (new) In the case of identifying and assessing risks:

(a) using commonly agreed language to report levels of risk in terms of magnitude, probability and time frames;

(b) where possible rank risk

(c) where possible identify who will bear the risk versus who will benefit from the risk being taken

(4) In the case of making judgements:

(a) Weigh all risks, costs and benefits

(b) Adopt best practice methods, tools and techniques appropriate to the proposal

(c) Be transparent in regard to assumptions used and experts relied upon

(5) In the case of policy statements and plans:

(a) include only those matters within the scope of this Act;

(b) use concise and plain language; and

(c) avoid repetition;

(6) Have regard to any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c);

(7) Promote collaboration between local authorities on common resource management issues; and

(8) Achieve an appropriate balance between public and private interests in the use of land. (delete or include water or oceans)

McGuinness Institute Proposed Section 6: Principles

(1) In making the overall broad judgment to achieve the purpose of this Act, all persons exercising functions and powers under it shall recognise and provide for the following matters:

a) Kaitiakitanga [as in guardianship for future generations]

b) protect the character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;

c) protect outstanding features and landscapes from inappropriate subdivision, use and development;

d) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;

e) protect customary rights;

f) protect historic heritage;

- g) sustain our oceans and waterways, in particular salmon and trout waterways;
- h) sustain our native flora and fauna and the ecosystems that they live in;
- i) use natural and built resources effectively, including the availability of land for urban expansion, use and development;
- j) consider all risks, in particular impacts of natural hazards and climate change;
- k) consider the *alternative future use* of the resource (see Note 14 in Working Paper 2013/01)
- l) consider the amenity value to the community;
- m) consider equity (in terms of intra- and inter-generational equity);
- n) value public access to and along, the coastal marine area, wetlands, lakes and rivers; and
- o) value the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, taonga species and other taonga.

(2) For the avoidance of doubt section 6(1) above has no internal hierarchy.

McGuinness Institute Proposed Section 7: Methods

All persons performing functions and exercising powers under this Act must:

(1) In the case of information:

- (a) Ensure applications contain complete, accurate and relevant information;
- (b) Ensure applications outline areas where effects are contested;
- (c) Use best endeavours to ensure timely, efficient and cost-effective resource management processes [NB: this statement needs more clarity – what does this mean in practice regarding the method?, perhaps provide additional information in a timely manner?]; and
- (d) Be transparent about where information has been sourced.

(2) In the case of identifying and assessing effects, ensure the following effects are taken into consideration:

- (a) the efficient and effective use and development of natural and physical resources;
- (b) the renewable nature of a resource;
- (c) the use or waste of by-products;
- (d) the efficient use of energy;
- (e) the source of renewable energy generation;
- (f) the provision of infrastructure for future generations;

(3) In the case of identifying and assessing risks:

- (a) using commonly agreed language to report levels of risk in terms of magnitude, probability, and time frames;
- (b) where possible rank risk; and
- (c) where possible identify who will bear the risk, versus who will benefit from the risk being taken.

(4) In the case of making judgements:

- (a) Weigh all risks, costs and benefits;
- (b) Adopt best practice methods, tools and techniques appropriate to the proposal; and
- (c) Be transparent in regard to assumptions used and experts relied upon.

(5) In the case of policy statements and plans:

- (a) include only those matters within the scope of this Act;
- (b) use concise and plain language; and
- (c) avoid repetition.

(6) Have regard to any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c);

(7) Promote collaboration between local authorities on common resource management issues; and

(8) Achieve an appropriate balance between public and private interests.

3.1.2 Improve the way central government responds to issues of national importance and promote greater national direction and consistency where needed

See Proposal 2.

3.1.3 Clarify and extend central government powers to direct plan changes.

We believe this proposal is fraught with challenges in the long term and should only be instigated if it is a situation of last resort. This is likely to overload central government.

3.1.4 Make NPSs and NESs more efficient and effective.

See discussion in Part 1.

3.2 Proposal 2: Fewer resource management plans

QUESTIONS FOR PROPOSAL 2: FEWER RESOURCE MANAGEMENT PLANS

- Do you agree with the proposals in 3.2.1–3.2.4? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?
- Do you agree with our assessment that better quality plans and plan-making processes would significantly reduce costs and delays, including those associated with consenting and appeals?
- Who should be responsible for making final decisions on resource management plans?

3.2.1 Require single resource management plans using a national template that would include standard terms and definitions

Agree.

3.2.2 An obligation to plan positively for future needs including land supply

We are not sure if this is necessary, as guidance statements will probably resolve this issue.

3.2.3 Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court

We are not sure if this is necessary, as guidance statements and NPSs and NESs may resolve this issue.

3.2.4 Empower faster resolution of Environment Court proceedings.

We are not sure if this is necessary, as guidance statements and NPSs and NESs may resolve this issue.

3.3 Proposal 3: More efficient and effective consenting

QUESTIONS FOR PROPOSAL 3: MORE EFFICIENT AND EFFECTIVE CONSENTING

- Do you agree with the proposals in 3.3.1–3.3.11? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?

3.3.1 A new 10-working-day time limit for straight-forward, non-notified consents

No response.

3.3.2 A new process to allow for an “approved exemption” for technical or minor rule breaches

No response.

3.3.3 Specifying that some applications should be processed on a non-notified basis

No response.

3.3.4 Limiting the scope of conditions that can be put on consents

No response.

3.3.5 Limiting the scope of participation in consent submissions and in appeals

No response.

3.3.6 Changing appeals from de novo to merit by way of rehearing

No response.

3.3.7 Improving the transparency of consent processing fees

No response.

3.3.8 Memorandum accounts for resource consent activities

No response.

3.3.9 Allowing a specified Crown-established body to process some types of consent

No response.

3.3.10 Providing consenting authorities tools to prevent land banking

No response.

3.3.11 Reducing the costs of the EPA nationally significant proposals process.

See our Working Paper for an in-depth discussion of this issue.

3.4 Proposal 4: Better natural hazard management

QUESTIONS FOR PROPOSAL 4: BETTER NATURAL HAZARD MANAGEMENT

- Do you agree with the proposal in 3.4.1? How could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?

3.4.1 Learning the lessons from Canterbury

See discussion on risk management, in part 2, section 7(3) suggestions.

3.5 Proposal 5: Effective and meaningful iwi/Māori participation

QUESTIONS FOR PROPOSAL 5: EFFECTIVE AND MEANINGFUL IWI/MĀORI PARTICIPATION

- Do you agree with the proposal in 3.5.1? Could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?
- How flexible or prescriptive should the tools for iwi/Māori participation be?

3.5.1 Enabling more effective iwi/Māori participation in resource management planning

We have not answered this question, and leave we leave it to others with the necessary expertise to respond to this issue.

3.6 Proposal 6: Working with councils to improve practice

QUESTIONS FOR PROPOSAL 6: IMPROVING ACCOUNTABILITY MEASURES

- Do you agree with the proposal in 3.6.1? Could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?
- How flexible or prescriptive should reporting requirements be?

3.6.1 Improving accountability measures

We wholeheartedly support a national monitoring system, but believe that accountability should also be seen more broadly in terms of the quality of information (the applicant and experts) and decision-making (councils, Environment Court, and Boards of Inquiry). See Part 1, observation 1. See also working paper recommendations in Note 17 and copied in the Table 5 below.

Part Three: Lessons from the New Zealand King Salmon decision

The Institute believes that sound management and regulation of our resources is fundamental to New Zealand's long-term wellbeing. With the view that a discussion surrounding our resource management system would materialise in the next few years, the Institute identified this as an important research area. Initially, we intended to do some work retrospectively assessing a consent application and presenting this analysis as a case study. However, we never found an opportunity to make this the focus of our work programme.

A year ago, the New Zealand King Salmon application presented us with an opportunity to engage early and follow the process in its entirety.

We engaged in the submission process and as Chief Executive, Wendy McGuinness presented a submission and statement of evidence on behalf of the Institute and as an economic expert cross-examined witnesses during the Board of Inquiry hearing. McGuinness also submitted a personal submission with her husband Mark McGuinness, in her capacity as a part-property owner on the western side of Arapawa Island in the Queen Charlotte Sound. The attached think piece and working paper offer reflections on this experience.

In Note 17 within the working paper, we discuss 15 recommendations that relate to five high level opportunities which are listed in the Table 5 below. Refer to Working Paper 2013/01 for further discussion. The Working Paper and Think Piece can both be found on our website, www.mcguinnessinstitute.org.

Table 5: Recommendations underlying each opportunity

(Source: Working Paper 2013/01, p. 53)

Opportunities	Recommendations
Opportunity 1: Improve the quality of economic expertise and skills.	Recommendation 1: Establish a professional economics body to manage the industry
	Recommendation 2: Consider how best to assess all the effects of high impact proposals.
Opportunity 2: Improve guidance to applicants, submitters, experts and decision-makers.	Recommendation 3: Update the 2006 Guide to Preparing a Basic Assessment of Environmental Effects (AEE).
	Recommendation 4: Consider creating a National Significance Guide for Preparing a Cost-Benefit Analysis under the Resource Management Act 1991.
Opportunity 3: Improve transparency and accountability throughout the process.	Recommendation 5: Improve the EPA website.
	Recommendation 6: Keep a working register of changes to figures contained in the initial application and supporting evidence.
	Recommendation 7: Place guidance on the length of the initial application (say 50 pages), so that members of the public can read the application in one sitting.
	Recommendation 8: Processes should be set up to manage confidential information.
	Recommendation 9: Applicants should be disincentivised and where appropriate penalised for providing incomplete (fails to provide all relevant information), poor quality or misleading data.
	Recommendation 10: Processes should be set up to manage perceived conflicts of interest.
	Recommendation 11: The decision-making process must be clear at all stages: in the application (before the hearing), during the hearing, and in the decision (after the hearing).
Opportunity 4: Improve the quality of information on endangered taxa.	Recommendation 12: Improve alignment between Boards of Inquiry and Councils.
	Recommendation 13: As a matter of course DOC should prepare regional ecological plans, showing the location of species of interest for all applications considered under national significance proposals.
Opportunity 5: Promote the inquisitorial role of the Board.	Recommendation 14: DOC should redesign its threat classification system website so that it is easily searchable, along the lines of the IUCN website.
	Recommendation 15: The Board should be more proactive and inquisitorial, controlling the process throughout the hearing.

References

- Department of Prime Minister and Cabinet (2003). *Sustainable Development for New Zealand: Programme of Action*. Retrieved April 2, 2013 from: <http://www.beehive.govt.nz/sites/all/files/30199-med-susined-developm.pdf>
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