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COMMENTARY ON

BIO-WHAT?
the preliminary report of
the Ministerial Advisory Committee

February 2000

Submitted by
Federated Farmers Northland (inc)

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Commentary on part 1 – Background

- 1. GENERAL**
- 1.1 Biodiversity**



Biodiversity is an international term and is appropriate in places like Europe where the notion of indigenous species makes little sense.

In New Zealand the thrust of the campaign to maintain “biodiversity” is to sustain our “at risk” indigenous species .

We believe that this position, which is surely legitimate, be made more overt. Otherwise there is risk that limited energy and resources will be diverted into pointless arguments about what biodiversity means in New Zealand. Once we have addressed the threats to indigenous species we may then enjoy the luxury of other concerns.

1.2 Habitat is the key

Habitat is surely the key issue for sustaining our indigenous species. If species are in decline it is likely to be because their habitats are in short supply or they are overrun with pests.

We cannot address the issue without providing suitable habitats.

1.3. Habitats can be “natural” or “farms”.

Habitats can be “natural” or “man-made”. New Zealand has a remarkably large percentage of its area in “natural habitat” and a huge area in “conservation estate.’ The area of the conservation estate should be sufficient to provide habitat for many indigenous species but fails to do so because it is not properly managed.

1.4 Protecting private land from pests on public land

There is a strong feeling among many of our members that before DoC or other government agencies start making demands on private landowners they should get their own house in order. One of our submissions to the Far North District Council relating to their proposed District Plan is that DoC be required to fence its own boundaries to protect adjoining owners from pest invasion.

1.5 Communally owned Maori Land

The communal ownership of large areas of Maori land poses a major problem both for the owners and their neighbours. Landowners, whether Maori or Pakeha, who live between Maori land on one side and Conservation Estate on the other, have a real problem with both neighbours. As fast as the landowners wipe out pests or weeds on their own land, their land is invaded by pests and weeds from their neighbours.

Eventually they are tempted to give up.

These are both problems for government to address. It is beyond the powers of our members to do anything about either problem. But until these problems are addressed private landowners will be aggrieved if they find they are subject to a host of regulations and deprivations of property rights.

1.6 Build on the Positive

The text box 2: “Biodiversity in Decline” sets the theme and pattern of the whole document. In our opinion this paints a picture of past failure and a failing present. The problem is seen to



be “halting decline” or “stopping this” or “preventing that”. Problems can be made so large that people give up the idea that they can be solved. We believe that the long term picture is much more positive, for indigenous species at least.

The population explosion is over. During the next century New Zealand will see much slower growth and the total population will probably go into decline before the middle of next century.

At the same time increased agricultural productivity will free more land from productive use. This pattern is already established and the impact on the environment is evident to anyone who actually travels through the countryside. The country is reforesting at a remarkable rate. Contrary to text box 2, the pasture is not being converted into pine trees alone. Much is reverting to bush, while many small holders are actively planting native wood lots and creating habitats for fauna and flora.

The major garden centres are selling over 5,000,000 native plants per year and the host of smaller nurseries throughout the countryside means that total sales are probably double this number.

Most reforestation of this kind is occurring on private land. Thousands of private land owners are spending many hours each day trying to control pests and weeds – and they are generally doing a good job.

They deserve to be encouraged – rather than blamed, and even punished, for the supposed sins of their forefathers.

1.7 Summary

The general position of the document seems to be that the government is doing everything right and that the next job is to whip the private landowners into line.

We disagree.

Certainly, the public sector science community is doing a magnificent job. The public sector’s record of land management is much less commendable.

We submit that government policy should now emphasise making the findings of public sector research, and general knowhow, available to the private sector, so that the private landowners can do an even better job than they are doing now.

Our main concern is that many interventions and regulations serve to turn “assets” into “liabilities”. If the presence of kiwi on a farm means that the landowner loses property rights without compensation do not be surprised if the landowner will be less than overjoyed by their presence.



No farmed animal has ever gone extinct. We need to investigate means of “farming” our indigenous species.

2. COSTS AND BENEFITS

2.1 The general dilemma.

The Far North is one of the poorer regions in the country. Furthermore some of the most valued species habitat is owned by the poorest families within the poorest communities.

Yet these are the landowners who are all too often expected to carry the burden of all the costs to provide public benefit. It is difficult to see why the individual farmer should absorb all the costs to help protect the habitat of a national icon. Compensation may be expensive. But failing to compensate does not avoid the cost – it simply imposes all the costs on the individual landowner.

Rules which attempt to do this should not survive any Section 32 test of the RMA. They may have survived the cursory Section 32 analysis of many plans in the past but the development of case law which is giving more due to the imperatives of both Section 32 and section 7(b) means that the failure to compensate may no longer be accepted by the Courts.

2.2 Rules can Impose High Costs.

We note that the Far North District Council submissions recommend a simple rule which would require every resource consent application in a “biosecurity” area, be a discretionary activity. This represents exactly what we believe should be avoided. A discretionary activity exposes the applicant to the costs of an environment court hearing and a time delay of up to two years before the consent is finalised.

Also council is not required to grant the consent. Given that this rule applies even to a normal dwelling this means that a property governed by such a rule has hardly any value because there is no guarantee that the owner can build a house on it. Such properties are frequently used as security for borrowings and the financial consequences on a landowner can be quite simply catastrophic.

Such an approach will do nothing to foster good relations with government or with the objectives of the Biodiversity programme.

Making consents a controlled activity at least ensures that consents will be granted and encourages a better bargaining relationship between the applicant and the consent authority.

A major complaint from landowners all around the country is that the administration of District and Regional Plans seems to throw every landowner into an adversarial relationship with their Councils.

This has to change if habitats are to be created, enhanced and preserved by private landowners. Bullying and seizure does not work.



2.3 High compliance costs are counter-productive

Regulators consistently fail to appreciate that high compliance costs come out of the “environmental” or “biodiversity” account. Everything costs money. If we want people to plant trees, control pests and weeds, give up acreage, and maintain esplanade reserves and wetlands then we need to leave them with as much money in their pockets as possible.

Extracting \$150,000 in compliance costs simply reduces the funds available to do “good works” by \$150,000. And a two year delay on a decision means that two planting seasons are lost. And yet we are told the need to enhance habitat is urgent.

Nothing makes our members more angry that to see their hard earned savings transferred into the accounts of consultants, planning staff, and lawyers, all in the name of promoting amenities and landscape character. We are confident that these transfers do much for the amenities and landscape character of the wealthy suburbs of our main cities. We are less confident that they do anything for the habitats of endangered species.

2.4 Perceptions of Property Rights

2.4.1 Property rights are a bundle of existing rights

We submit that the discussion on the merits of property rights misses the point. The document couches the debate as though the key issue is whether private property bestows an unfettered right to the use of land or not. It never has and never will.

We also agree that the polluter should pay. But the issues which arise under attempts to promote new habitats are quite different.

First, when people purchase a property they pay a price (and then pay rates) based on a bundle of presumed rights. They may have paid the price twenty years earlier or only last week. Then without making any application or proposing to carry out some activity which may have an environmental effect they can wake up and find half of their property has been “taken” for the public good.

Present District Plans allow that land may be “taken” because someone likes looking at it from some distant point, or because someone has decided that it provides a useful habitat for kiwi.

Our landowners have never claimed an untrammelled right to use the land – but they have made a purchase and made investments on the basis of an assumed “bundle of rights”. When these rights are suddenly reduced, to provide a benefit for others, or for the public good, then owners have a just and lawful claim to some form of compensation.

How many of the people who endorse such takings on rural land would endorse a rule saying that all poor people should have access to their private swimming pools? Of course this would



involve trespass but many of these pool owners are now claiming the “right to roam” over rural land.

2.4.2 Property rights ensure stewardship

The second issue is that secure property rights ensure stewardship. The tragedy of the commons is a tragedy because there are no secure private property rights and hence there is an incentive to over-graze. The New Zealand government has recognised this principle in its radical and highly regarded management of the fisheries by creating tradeable property rights.

As land owners feel less secure in their property rights the less inclined they are to invest their time, money and labour in the land. A few foolish people may believe that this is good because the land will then revert to its “natural” state – in reality the land reverts to weeds and pests.

2.4.3 Secure property rights create wealth

Economic historians now agree that secure property rights are the key to wealth creation. Only wealthy people, communities and nations have the economic surplus to care for the environment. Protecting indigenous species is a genuine luxury. Maintaining the life preserving properties of soil, water and air is a legitimate productive investment. But if three species of snail go extinct it will never affect the GDP. We all miss the moa, but it is difficult to argue that this massive extinction has restrained economic growth in New Zealand in recent years. (The effect on the Maori population of the time was catastrophic. The moa were a major source of high grade protein in their diet. See Flannery, *The Future Eaters*.)

2.5 Bio-what? gets it wrong

As we read it, the document tends to favour the view that private property rights are the problem and that private property rights stand in the way of biodiversity. We submit that a **lack** of property rights is the problem.

On the one hand, we cannot afford to destroy the wealth of the community because this has a negative impact on our ability to spend time money on promoting biodiversity.

On the other hand, if we create secure property rights over many threatened species (as we have done with the fisheries) then they will be farmed and become plentiful.

If “exploitation” and property rights were the problem, sheep and cattle would be endangered species.

They are not.

2.6 Text Box 7 – Property rights

2.6.1 Missing the Point

This summary reminds us that there is a long tradition of requiring contributions of land to roads and reserves. And of course there is. But there is a clear nexus between those actions and the enforced “takings”.



When a District Plan claims as a reserve half a farmer's land without compensation, when the farmer has not changed his activities, or made any application to exercise his rights, compensation should be paid because there is no nexus between his activities and the takings.

Suddenly a large bundle of the landowners' rights in the land have been taken. Furthermore the landowner may suddenly find someone has imposed a whole new set of obligations – to keep stock off wetlands, to fence large areas of bush, to control a new list of pests and weeds, all of which cost money, time and labour.

This situation has no relationship to the requirement for land for roads and reserves as part of the construction of a subdivision.

2.6.2 The commentary is misleading and selective

This summary overlooks the fact that while the *Magna Carta*, and the *Statutes of Westminster* grant the power of eminent domain, these same documents guarantee that such takings by the Crown require compensation.

The claim that arguments about *Magna Carta* are irrelevant is quite remarkable. This is our founding document and its general principles regarding private property have been endorsed in treaties, constitutions and bills of rights ever since.

2.6.3 Sir Geoffrey Palmer's Opinion

We refer to Sir Geoffrey Palmer's submission on the proposed Maori Reserved Lands Bill and its effect on West Coast Leases in Taranaki, of 26th October 1995. This lengthy opinion shows that the rights to property, and the right to compensation when property rights are taken in the public interest, are well established in all civilised countries.

This opinion quotes sources from *Magna Carta*, numerous decisions of the House of Lords, the New Zealand Bill of Rights Act 1990, the Universal Declaration on Human Rights, the European Convention, the US Constitution, the *Habeas Corpus* Act 1640, the French 1789 Declaration of the Rights of Man and the Citizen, and many others.

The commentary in Text Box is trivial and misleading and, on critical matters, is downright wrong.

2.6.4 The Maori perspective

The claim that the Maori concept of land tenure was almost identical to the traditional English system is also nonsense, unless we are referring to the Saxon tribal systems which predate the *Magna Carta*. The key to private property is that the property can be freely traded. The essence of tribal land is that it is owned by the community and cannot be freely traded. Who writes this stuff?

2.6.5 Rights and obligations of owners.

This paragraph makes the interesting claim that "Objects cannot have rights or duties or be bound by recognised rules." We agree. Rights and duties can only be associated with higher sentient beings - such as humans. The same is true of values.



But this statement undermines a key purpose of the Department of Conservation and the RMA which is to have regard for the **intrinsic values** of ecosystems.

Many who make the claim that objects cannot have rights or duties then claim that indigenous species have an equal **right** to exist. And that humans have no **rights** to use them and so on.

You cannot have it both ways. If objects (and ecosystems) cannot have duties then they cannot have rights, and they cannot have values either.

2.7 Who Pays? Who Benefits?

We refer to the paper, presented to the Nature Conservation Conference in Taupo, 1997, by Peter Davis and Chris Cocklin, titled *Who Pays? Habitat protection on private land*.

This paper addresses the ethical problems inherent in present policy and proposes some radical solutions. The author's final analysis is based on case studies in Northland. The abstract includes the statement:

*The paper argues that reducing habitat loss by placing additional responsibility on habitat owners penalises the very landowners who are providing the desired public good. **Instead of construing the problem as habitat loss, it needs to be reframed as being one of habitat scarcity.** It then follows that the responsibility for protecting remaining habitats should be related to cleared land not the land that is still in habitat.*
(our emphasis)

The paper's conclusion includes the statement:

The current approach to reducing the loss of habitats on private land is based on the premise that those with habitats on their properties have obligations to provide public environmental benefits, obligations which owners of cleared land avoid. By penalising those who, intentionally or otherwise, provide conservation benefits, the current approach create injustices, provokes unnecessary conflict and undermines the potential of achieving the desired goal. The fact that income levels and habitat levels tend to show opposite trends, at both the individual and aggregate scale, exacerbates these inequities and undermines the potential to achieve the goal of no net habitat loss.

We are surprised that this paper is not included in the bibliography, and that the paper does not appear to have been used as a source for the ideas presented in the discussion document. It puts the case against present practice in a nutshell. Their radical approach is to impose the "tariffs" on those who own cleared land rather than on those whose hand is covered with habitat.

Commentary on Part 2: Approach



3 PRINCIPLES

3.1 Maori and their relationship to the land. (5.2)

We recognise that many Maori, like members of all tribal cultures, have special relationships to the Maori land which is a focus for their cultural activity. Most Maori reject the idea that such land should enjoy the normal tradable rights associated with private property. Non-Maori share this view to a large extent – cemeteries, war memorials and major cathedrals are not normally regarded as being as freely traded as houses.

However, this “special relationship” is frequently expanded to the view that all Maori are somehow superior in their environmental management of land and flora and fauna. There is no evidence that any pre-industrial society had any such “environmental” ethic. Constant claims that Maori were somehow special runs up against the common knowledge that the most significant species losses occurred under Maori stewardship. This is no criticism of Maori – they were simply behaving as humans have done everywhere. But these claims, which are repeated in the “*Bio-what?*” simply induce cynicism in most readers. Such statements may be politically correct but they are historically incorrect. (See Ridley *The Origins of Virtue*; Diamond, *Guns Germs and Steel*; and Flannery, *The Future Eaters*.)

The document insists that in many other matters relating to land management and property rights there is a consistent, definable and **uniform** Maori point of view. This is not so.

Maori are individuals. Some hold certain beliefs and others do not. It makes no more sense to say that Maori have a special relationship to the land than to say that Chinese or Americans do. While there might be slight differences because of culture and history there is more divergence in such beliefs between individuals within those classes than there is between the classes as a whole. In our experience the relationship between Maori landowners and their land is mainly determined by whether their land is in European title in single ownership, or in European titled Maori land held in communal ownership. When people observe that “Maori land” is covered in gorse or is lying idle they are almost always referring to land held in communal ownership. When individual Maori own their own land in individual title their attitude to stewardship and economic activity is no different to the rest of our members.

The problem of the inadequate care of multiple title Maori land is a major problem which the document fails to address. Such land is becoming a major source of infestation of adjoining properties by weeds and pests. The fact that most Local Authorities find it impossible to collect rates off such land adds to the tensions among landowners and ratepayers.

Unless this problem is openly confronted and addressed it will prove difficult to gain the full co-operation of landowners in rural areas where large areas of Maori land have large numbers of multiple scattered owners.

3.2 Encourage the Positive (5.3)

We repeat our submission that the aim should not be to “halt the decline” but to build on what we have. This is a better description of reality. Sound public policy is built on reality and public confidence is soon lost if the claims are found to diverge from the facts.



There is now plenty of evidence that species extinction reached its peak in the first half of the last century. Extravagant claims about species loss in the tropical rain forests are now backfiring on those who made them. (See *Greenspirit* page on the Internet).

Over the last few decades many more people care a great deal more about native flora and fauna, and it is this concern which has created the intensity of the issue. We need to encourage the existing trends and avoid interventions which halt the reforestation and habitat enhancement which is presently taking place.

3.3 Text Box 8 – the Wai 262 claim.

It is surely time that someone called a halt to this claim. There is no way that anyone or any group can make any useful claim to flora and fauna, native, exotic or otherwise. The international rules governing the registration and trading of intellectual property rights have been developed over several hundred years. Maori can make no useful claim to ownership of indigenous plants because intellectual property implies the normal rights associated with any property.

For example, if someone wants to purchase or pay for such rights, who do they deal with? The flora and fauna are in the public domain and the plants in particular are growing in thousands of gardens throughout the country and even around the world. If a group of Maori lay a claim to some genetic material in rimu then interested parties can easily find the genetic material in some private garden in England or the United States.

Also international regimes prohibit the patenting or other protection of natural plants and animals. These naturally occurring species must be modified in some way and those modifications must have been made by individuals whose names can be attached to the statements of claim.

It is difficult to see why such an ill-founded claim should deter the development of public policy while we wait for the Waitangi Tribunal decision.

4 PROPOSED APPROACH – (Chapter 6)

4.1 General

We support the general approach in this section which recognises that the strategy needs the co-operation of private landowners if it is to succeed. We need to recognise that rules which turn native flora and fauna on private property into liabilities rather than assets must be counter productive in the long run. Many people have moved away from cities and regions with strict vegetation controls precisely because they wanted to plant large numbers of trees and then manage them. The rules in many cities create massive compliance costs for those who plant large numbers of trees and plants.

In Oneriri Road, in Northland near Kaiwaka, three landowners have planted close to 100,000 trees and plants over the last few years. They selected Kaipara District because it has few vegetation regulations. Such plantings were simply not possible in Waitakere, North Shore or



Auckland City. But even here none of those landowners has received any encouragement for their efforts. In fact their efforts seem to have generated only extra demands that they do even more, and pay more. When landowners offer to covenant land they receive a letter which demands that they do so, pay their own legal costs, and which also imposes a host of obligations to fence and manage the land so offered.

It hardly encourages further protection of private habitat.

4.2 Guidance, support and flexibility. (Chap 3)

We endorse the early paragraphs which promote a voluntary approach. We particularly support the paragraph which reads:

Integral to this approach is an emphasis on voluntary measures as a way of encouraging behavioural change within regulatory authorities and by landowners.

We endorse this statement because it places an equal emphasis on **regulatory authorities** and landowners.

Our experience is that the landowners are now ahead of the regulators. “We are all environmentalists now” is no longer a pious catch phrase – it fairly reflects reality. There are of course those who trail the field, or form the lagging tail of the bell curve. But equally there are those at the leading edge of the bell curve who are setting new standards for us all. In the middle of the bell curve are the great majority who can be persuaded to move even more rapidly in the right direction if we send them the right signals.

Unfortunately, drainage inspectors live in a world in which all drains are blocked. Hence they have a jaundiced view of the world’s plumbing. This seems to be true of the RMA regulators and plan writers. They assume that the people and communities they serve are a bunch of land rapists who are determined to slash and burn every piece of property they own or manage.

Our experience is that landowners now place a value on biodiversity for its own sake and in many cases recognise that flora and fauna add value to their properties.

We believe that Government needs to spend as much time, (indeed maybe more) educating the regulators as well as the landowners. We have too many case studies of landowners who do the right thing and their only thanks is to be treated with indifference or positively punished for their efforts. (We can supply detailed case studies on request.)

Commentary on Part 3: Specific Measures

5 ACCORDS – Chapter 7

5.1 A National Accord

The idea of a national accord has some merit. However, the name may be unfortunate. The recent experience of the West Coasters who found that the government simply cancelled an accord which had been negotiated in good faith between the parties does not serve to promote public confidence in any accord negotiated with the government.



5.2 Aotearoa Accord

5.2.1 Opportunity for Commercial Return

The Far North District Council submissions on this proposal concerns us. Page three of the council submission reads:

Council notes that under the heading “Treaty Relationships” (page 50) the MAC has developed five principles to “Acknowledge that an Accord consistent with these Treaty Principles will provide for, in regard to Maori land:

- 1 Retention of ownership*
- 2 Retention of control*
- 3 Retention of management*
- 4 No compromise to the benefits or rights of owners or future generations*
- 5 The opportunity for commercial returns*

Council accepts that Maori land has to be provided for and the ownership protected in a manner consistent with the Treaty of Waitangi. Council does not support point five, as we believe it unfairly advantages Maori land and the ownership beyond the scope and intent of the other four points.

(our emphasis)

We find its astonishing that Council would imply that allowing Maori the opportunity for commercial returns provides an **unfair advantage** over others. This equally implies that non-Maori are to be deprived of any opportunity for commercial returns on their properties in the name of biodiversity.

If this is to be the case then compensation must be due. Why should anyone accept responsibilities for owning land, which includes paying rates, controlling pests, and repairing flood and other damage if there is no opportunity for commercial return? Land which has no opportunity for commercial return is a liability. If it has been turned into a public park then the public should own it.

Our submission is that either all five of these provisions are in both accords or they are all excluded from both.

5.2.2 Rights and Responsibilities

We are concerned that the discussion promoting the Aotearoa Accord does not make it clear whether the Accord refers to Maori as people, or to Maori land. This must be clarified.



Maori land is not defined. We understand that Maori land can have three meanings, as follows:

1. Land in European title, which happens to be owned by a Maori landowner or by Maori landowners.
2. Customary Maori land - which is land which has not entered the cadastral system. There is little such land which is typically occupied by marae, cemeteries and other tribal activity.
3. Maori freehold land which is a statutory creation of the original Native Land Act of 1865. Such land is identified by clear title but typically has multiple owners. Normal property rights are constrained by the statute so that such land is difficult to subdivide and lease or sell. Councils can not force the sale of such land to recover unpaid rates etc.

The term Maori land most typically refers to the third class of land but this needs to be defined or otherwise clarified. Any accord or other policy document should clearly establish what kind of “Maori land” is being discussed at any time.

We endorse the concerns of the Far North District Council on this and related matters when it says:

It is not made clear in the report whether it was Maori people as a whole, over all lands, or the Maori landowners of Maori land, which would underpin the principle of those statements.

These critical distinctions require clarification.

6 NATIONAL POLICY STATEMENTS – Chapter 8.

6.1 Support for Carter Holt Submission

We generally support the submissions of Carter Holt Harvey in the matter of National Policy Statements.

Any National Policy Statement must be methodological, and highly focused. Otherwise a NPS becomes a means for District and Regional Councils to avoid their duties and responsibilities.

Long complex policy statements (many Regional Policy statements fall into this category) provide so many conflicting objectives, policies and methods, that they do little other than provide further revenue for the legal profession and more difficult tasks for the Environment Court.



Too many Regional Policy Statements appear to have been written by magazine astrologers who have developed considerable skill in writing “statements” which can be “cut and pasted” to cover all possible outcomes and support any argument. National Policy Statements too easily become even more vague and all encompassing. Pseudo scientific theories explain everything and hence explain nothing. Many policy statements take a position on everything and hence have a position on nothing.

Such documents have no utility.

6.2 Do not undermine Section 5 of the RMA.

We oppose any National Policy Statement which undermines Section 5 of the RMA. Indeed we believe that the Purpose of the legislation governing DoC should be changed to bring it into line with the RMA. Hartley argues the case for this and other reforms to DoC in *Conservation Strategies for New Zealand*. (See the Summary of Recommendations, Chapter 10).

We agree that until DoC’s charter is brought into line with those principles of sustainable management, which underpin the Resource Management Act, then the whole area of conservation and resource management will remain riddled with conflict and general confusion.

It is difficult to see why 70% of the land in New Zealand under private or local government ownership should be subject to the principles of Sustainable Management, while the 30% controlled by DoC is subject to legislation whose purpose is driven by “conservation purposes”. The empowering legislation defines conservation as:

The preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.

This puts the whole operation of DoC on a collision course with those administering the RMA. Hartley argues convincingly (and we agree) that “intrinsic values” is an oxymoron given that the normal definition of an intrinsic property of is a property which is independent of human value.

Hence the intrinsic property of a square is its four sidedness because its four sidedness is independent of any human judgment.

“Intrinsic value” is about as useful to public policy as “married bachelor” or “round square”. We agree. Hartley’s discussion leads him to conclude that the meaning of the term is so obscure as to be meaningless – which is not a good start for legislation which is so central to biodiversity and related topics.

Hartley then proceeds to argue that biodiversity itself has little, if any, utility as a definitive term. (See discussion in his Chapter 3) However, we are prepared to accept the term on the



grounds that it is no more than a current and rather faddish synonym for preserving threatened indigenous species. We hope that one day this fad too will pass, and this particular spade will be called an honest spade once more.

6.3 Key Submission

We have little faith in satisfactory outcome relating to conservation or biodiversity while DoC remains in its present form and is guided – or misguided – by current legislation.

7 ADDITIONAL ACTIONS. (Chap 10)

7.1 Control the Pests

We believe that threats to biodiversity are subject to the 80/20 rule or even, in this case the 90/10 rule.

If we can control the ten percent of the population which cause the real threats to native and natural habitat then we will achieve ninety percent of the goals of the biodiversity strategy. Possums, rats and rabbits, and several other pests and weeds are responsible for ninety percent of our biodiversity problems. Money spent on other matters while these remain unchecked is virtually money wasted.

For example DoC spent \$3 million on opposing developments on private land last year and yet claimed that it did not have sufficient funds to deal with the possum problem on its own land. The double irony is that many of these developments involved large scale habitat renewal programmes which would have promoted DoC's biodiversity goals.

We see a real risk that our limited resources will be frittered away on endless meetings, policy writing, data collection and other means of fiddling while Rome burns.

Hence we support the statement of pest management on page 64, but wish this sensible statement had been given higher priority and been repeated more frequently throughout the document.

7.2 An Uncomfortable Truth.

The worst location for anyone promoting biodiversity on their own land is to have a Maori Trust as one neighbour and DoC as the other. Pests and weeds will invade the land from both sides.

The reason is that both suffer the same problem – the Maori land is in multiple ownership so that no one takes responsibility for its care. Hence the land generates no revenue to fund the necessary stewardship of the land. Indeed the Trusts and similar entities spend much time attempting to depress the value of the land so as to minimise the rates burden. Maori who own their own title as individuals are as keen as anyone else to increase their property values because it is their major asset which can be used as security or sold for cash.



The DoC land is in the multiple ownership of “the public” and no individual is responsible for its care. DoC claims that it has insufficient funds to manage the conservation estate, but has no incentive to generate innovative means of increasing its revenue. Hence, it increasingly calls for “more resources”, which is bureaucratic code for demanding more money from taxpayers.

7.3 The RMA and the Farm Forestry Act.

Few of our members are involved in extracting timber from indigenous forests so we have little experience on which to base a submission. We can only say that one of the advantages of the RMA is that it is essentially a “one stop shop” for land use and resource management matters and provides a well established set of procedures for dealing with conflicting interests and promoting sustainable management. Another advantage of bringing indigenous forestry under the RMA is that the Environment Court would become better informed of the means of sustainable management of forest resources in general and would build up a more useful body of case law to assist in general policy making and direction.

7.4 The Resource Management Act 1991.

7.4.1 Section 5 of the RMA – Sustainable Management.

The Resource Management Act defines sustainable management (Section 5) in a manner which recognises that the environmental goals of the Act can only be served if people and communities are enabled to provide for their economic welfare. Poor people and communities simply do not have the economic surplus available to meet the costs of promoting biodiversity. As we have said “It’s hard to be green if you’re in the red.”

This fact must be faced, especially as it is frequently the rich urban communities who promote biodiversity goals which impose heavy costs on the communities of the poorest rural areas – such as our own. The voters of Auckland may be keen on biodiversity – but they can take a comfortable seat on the moral high ground because at present the poor communities such as Northland and the Far North will have to carry an unfair share of the costs.

7.4.2 District Plan Content

A policy statement or guideline should instruct local councils to incorporate clear statements about the merits of habitat protection and enhancement within their District Plans.

A Northland landowner, as part of a minor subdivision of his farm, offered 700 times the “maximum” land area required for reserve contribution, as covenanted native bush. A few years later when he applied for a further subdivision he was required to pay a reserve contribution. When he challenged this on the grounds that he had already provided a large area of significant native habitat he was told that this did not count because the protected bush was not readily accessible to the public.



Useful native habitat will of necessity have limited public access. Indeed this landowner was required to fence the bush area to keep people and animals out of the area. This landowner has now learned the lesson that only fools offer more land than required at the time of any subdivision, because, unless it is a public park, it will not count for anything in the future.

The wording of the District Plan allowed the Council, albeit with some difficulty, to ignore the contribution to habitat and focus entirely on the traditional perception that such contributions are intended for reserves.

7.4.3 The Role of Regional Councils.

We strongly oppose the suggestion that Regional Councils should have powers to control land-use in order to promote biodiversity.

The Districts of Northland and the Far North are huge while the Regional Council offices for the whole area are in Whangarei.

District Council offices are more widely distributed with headquarters in Dargaville (Kaipara District), Kaikohe (Far North District) and Whangarei (Whangarei District). The Districts are also better able to provide information and service centres in other neighbourhood locations. Kaipara District has just opened such a centre at Kaiwaka reflecting the fact that most consent activity now takes place in the Eastern Otamatea Ward, even though it accounts for only one fourth of the area of the District.

Landowners are confused as to the relative roles of their District and Regional Council and are frustrated when they visit their District Council (having driven for say one and half hours from Mangawhai to Dargaville) only to be told they have to go to the Regional Council in Whangarei. Councils are working to have routine discharge consents (such as septic tank and other wastewater matters) delegated to the Districts. But involving the Regional Council in land-use controls would impose major costs and frustrations on the landowners of the Kaipara and Far North Districts.

We would prefer that Regional Councils focused on developing environmental standards relating to discharges to soil, water and air which are appropriate to the region. Overlapping constituencies and jurisdictions are wasteful of resources and bring the RMA into disrepute.

7.4.4 Some “Simple Rules” can be simple-minded.

While there is much to commend the idea (as developed by Epstein and others) that we need “simple rules for a complex world”, we strongly oppose the proposal put forward by the Far North Council on page 9 of their submission.

This proposal reads:

It needs only a requirement from the Minister for the Environment to the effect that “with respect to indigenous flora and fauna and habitat, the District Plans include rules



which make any development affecting these values on private land a discretionary activity.

This is a recipe for economic decline and a total halt to the enhancement of natural habitat.

We believe that in rural areas councils should be able to write Plans in which almost all reasonable applications can be dealt with as permitted, controlled or limited discretionary activities. Planning officials and consultants (as opposed to genuine resource managers - who seem to be a struggling species) seem to have no appreciation of the compliance costs incurred by the shift to a discretionary activity. (Genuine resource managers understand the intentions of section 32. Planning consultants seem determined to ignore the costing requirements of the section) Discretionary activity applications typically expose the applicant to up to \$150,000 in costs, and delays of up to two years.

Landowners with long term management plans for their property would be foolish to develop a large area of natural habitat on their property because they expose themselves to massive compliance costs in the future.

On the other hand those who maintain a slash and burn approach are actually rewarded because their land has no ecological value.

Our submission is that the main problem landowners face, and which is also the main problem confronting the objective of biodiversity, is that the economic signals are all wrong.

For example, landowners who spend large amounts of time and effort and money on developing high quality landscape are likely to be penalised, and may even have their land confiscated without compensation.

If those same landowners decide to invest in a new development on their land for a tourism project, or even intensive horticulture or whatever, their application (which is intended to create wealth and employment) will be seized on as an opportunity to both take the land with high quality landscaping and to seize further land, or impose other conditions and costs, as a “tradeoff” for granting the consent. (This is an international trend. See Richard Epstein “The Permit Power meets the Constitution” in *Iowa Law Review*, December 1995)

The end result is that landowners have a strong incentive to do nothing with their land at all. Given that traditional farming, on less productive land, is becoming less viable by the day, and given that stock numbers are in decline, and given that populations in most of the rural areas of Northland and the Far North are in decline, the end result will be a rural slum. Large areas of land will be simply abandoned or deliberately devalued to avoid the burden of rates.

7.4.5 Conflicts between District Plans and Biodiversity.

Curiously many District Plans give great weight to maintaining the natural or rural character provided by existing pastoral land. Hence a proposal to develop land which incorporates



substantial planting of trees to create or enhance natural habitats may be rejected on the ground that the amenity value of “open space” and “unfragmented land” must be protected.

There is nothing particularly natural about clover and rye and it would seem that tree crops with indigenous shelter belts are an improvement over extensive pasture.

Many Plans continue to seek the protection of “versatile soils” for primary production. Again if someone decides that the versatile (high quality) soils are best used for creating an indigenous habitat and the poor soils on their property are best used for Olive groves (which need poor quality soil if they are to produce commercial quantities of fruit) why should the District Plan insist that the versatile soil be protected for some undefined but evidently ‘superior’ use? And what are these soils being protected from?

7.4.6 Eco-resorts

Eco-resorts are leading the way in creating and enhancing natural habitats.

The investors in eco-resorts naturally seek out the highest quality environments. In New Zealand this means the coastal areas, and especially those coastal areas with high quality vegetation or natural habitat. Too many District Plans have rules which direct such investors to inland sites with poor natural landscapes – and of course the investors and developers promptly lose interest.

Again too many plans pay no regard to the enabling provisions of section 5 and the need to have regard to the efficient use of natural and physical resources. If we insist on locking up our coastal areas in order to protect their coastal character then eventually our coastal areas will be dominated by gorse farms, possums and other pests.

Mr Zecha of Amen Resorts, probably the most highly regarded eco-resort operator in the world, wanted to build five resorts in New Zealand before the year 2000. Other countries seek him out and allow him to operate within the best areas of their natural parks because he does so much to promote indigenous flora, fauna and indigenous culture.

New Zealand planning staff sent him packing even though his first proposal was to lease (not buy) over 200 acres of land on the west coast near Piha, which was subject to annual scrub fires and totally restore the native habitats. The proposed resort would have had only 30 rooms.

Mr Zecha could not understand why he was not welcome.

Other Matters related to the Overall Strategy

8 THE NEED TO GENERATE WEALTH.

Promoting biodiversity costs money. Indeed “It’s hard to be green if you’re in the red”. Some people seem to believe that if land is locked up and protected with fences and covenants then all will be well. In reality repairing degraded soils, planting trees and plants, managing



stormwater runoff, and then controlling pests and weeds, requires large amounts of time, money, labour, data and knowledge. All these inputs cost money.

Furthermore only wealthy people and communities can afford to promote biodiversity. Poor communities are more concerned with feeding themselves or otherwise providing for their health and safety. High compliance costs normally divert money which would promote biodiversity into the bank accounts of civil servants, consultants and lawyers.

We note that all too often regulations designed to protect the natural character and habitats actually work to provide high amenities in the urban neighbourhoods occupied by professionals lawyers and consultants.

A rule which requires notification of an application too often means that \$20,000 allocated to planting and land management is diverted into revenue stream for banks. We do not see how such rules promote biodiversity or the purposes of the RMA.

9 THE MAJOR WEAKNESS OF THE STRATEGY

9.1 No priorities

The documents produced to date fails to set any priorities for action as regards specific species and specific habitats.

We are told that while the Conservation estate covers 30% of the country much of it is in the wrong place and does not cover a representative range of habitats.

We submit that the correct response to this situation is not to go out and opportunistically seize all and sundry rural land as opportunities arise – which any reading of Environment Court decisions reveals to be the current practice.

We submit that the correct response is for DoC, the MfE and MA to:

1. Generate a list of habitats which need to be extended or expanded or developed.
2. Generate a list of habitat in surplus and of land in the conservation estate which is not in short supply or in the wrong place.
3. Sell the surplus land to raise money.
4. Use the money to buy the land and or habitats which are in short supply.
5. Develop a programme of revenue generation within the DoC estate to fund the control of pests and promotion of biodiversity within the conservation estate.

The present approach seems to our members to be no more than a softening up process which will finally be used to confiscate our land or enforce major ‘takings’ without compensation.



The end result will be more people leaving the rural areas, to move to the cities or to migrate overseas.

10 COMMERCIAL CONTRIBUTION TO BIODIVERSITY

10.1 Private involvement in Conservation

This is the title of Chapter 5 of Hartley's *Conservation Strategies for New Zealand*. This chapter contains many examples of the successful promotion of conservation goals both within New Zealand and overseas.

Many of these are active farming or tourism based projects while *Bio-what?* focuses exclusively on a land use controls, voluntary or involuntary, on private land. This is a remarkable omission. For example *Bio-what?* does not even contain any reference to the role of zoos in protecting indigenous species by developing methods of reproduction and reintroduction to the wild, even though our zoo staff are highly active in the field.

This may reflect a general attitude within DoC and other conservation oriented institutions towards anything "unnatural". Hartley documents many stories which illustrate this hostility to markets and artificial breeding. (See pages 175 through 180 of Chapter 3 "Goals of Conservation Strategy in New Zealand", in particular).

The following mini case-study, recorded by Beatie (1994) is an excellent example:

A couple of years ago I visited the government-run Mt Bruce Endangered Species Unit. An official from the unit took me on a tour of the complex and described each endangered species and its management. When we came to a species of kakariki my escort explained that there were males in one aviary and females in the next. I asked why they were separated:

Official: We do not want them to breed any more.

Me: Do you mean to say that you have birds in an endangered species unit that you are deliberately not breeding?

Official: Yes.

Me: Why?

Official: We do not know what to do with the extra young birds.

Me: Have you thought of selling them?

Official: Oh no! You couldn't do that!

(Note:the kakariki is commonly traded overseas where there is large and legal market for the species.)



In all the cases quoted by Hartley the prejudice in favour of “natural regimes” appears to be at odds with the objective of increased biodiversity in general and the protection of endangered species in particular. It seems that some of our officials would rather see a species go extinct than have them survive in “unnatural” surroundings.

A National Policy Statement could usefully recognise that private commercial ventures could save many species from extinction, and make them more available for public enjoyment.

10.2 Farming Indigenous Species.

No farmed species has ever gone extinct.

Human activities are blamed for the threatened extinction of many species and words like “exploitation” and “extinction” appear side by side as natural partners. Yet sheep and cattle, and dogs and cats are ‘exploited’ by human beings and there seems to be no shortage of any of them.

In fact, one way to hasten the path of a species into extinction is to deprive it of any value. The route will be even faster if the species is turned into a liability to the people and communities among which they live.

The original Far North District Proposed plan contained draconian rules to protect significant natural areas and natural habitats. Many farmers, who had worked closely with DoC in the past to relocate kiwi found on their farms, declared that if they found any kiwi on their farms while such rules prevailed they would simply kill them.

This may seem to be a drastic and cruel response but if the presence of a kiwi on your land puts the owner’s family at risk of losing house and home then the security of the family will take priority over the security of the kiwi.

10.3 Business is not a sin.

Our own experience confirms Hartley’s finding that many Government officials believe it is wrong or unethical to make money out of indigenous species. Indeed it seems that some officials would sooner see species go extinct than see them used to generate commercial profits. We know of several cases where programmes designed to investigate potential commercial farming of native flora and fauna have been closed down for this reason.

There was a considerable “anti-business” bias behind the campaign against the sustainable management of the West Coast native forests.

For example the following extract from a statement by Adrian Picot, a “Friend of the New Zealand Native Forests” published on *Scoop*, Thursday 20th July 2000 reveals such an attitude to business in general and farming in particular:



The native logging ideologues like to call themselves Conservationists but this is a contradiction within the paradigm of their own ideology. They are better described as Destructionists. Preservation and conservation are almost identical concepts. These terms mean to keep in store for the future. No logger is interested in the ecology of their environment any more than a farmer is interested in a retirement home for his stock. ... By definition, a logger must look at a tree in terms of dollars and cents. When a logger talks about sustainability, what they mean is the ability of forests to produce what the industry wants - a steady stream of revenue for as long as possible. Industries seldom think in terms of hundreds of years, especially in New Zealand where the massive level of private and corporate debt means financial planning seldom gets past paying next month's bills.

Mr Picot overlooks the fact that while farmers may not plan retirement homes for their stock (although thoroughbred owners routinely do so) they certainly ensure that their flocks are sustainable by ensuring their health and fertility rates guarantee an ongoing supply.

10.4 The farming community has proven skills

New Zealand farmers have a long tradition of working with scientists from our research institutes to introduce and commercialise new species and crops.

New Zealand farmers were the first to domesticate the deer, which now make a significant contribution to our export earnings. This was the first domestication of a wild animal in several thousand years.

There is a valuable international market for kiwi, tuatara and other New Zealand fauna for precisely the reason why we so urgently wish to preserve our biodiversity – our species are unique to this part of the world.

10.5 The skill base is developing within our CRIs and Zoos.

Hartley records that the skills and techniques necessary to breed many of these species are now being rapidly developed within our research institutes, zoos and private parks.

Many of our members are developing farm parks or managed parks of one kind or another, which feature natural habitats, are rich in indigenous flora, but short of indigenous fauna. Many would leap at the opportunity to include large areas of fenced and intensively controlled areas of land as breeding estates for native species. These would be commercially viable either by adding value to tourist venues, or as sales outlets for live species or as food sources for restaurants, or for all three. These private farms could also sell their stock back to DoC and others for settlement in other parts of the conservation estate.

If farmers can make money out of raising kiwi, kiwi will never go extinct.

10.6 The need for a partnership



There would need to be some risk sharing in the early stages of establishment. But many owners of managed parks would be willing to take on the task of breeding and caring for kiwi and similar species if the government provided the special advice and assisted with the funding of the special fencing and other controls needed to ensure the safety of the birds and animals involved.

Too often we hear of zoo staff producing a large number of kiwi or other eggs which are then placed in native forests where they are only too likely to provide food for stoats, rats, dogs or feral cats.

The key to attracting private investment in such activities is to allow licensed operators to gain the commercial benefit by trading in their new livestock.

10.7 Emus and Ostriches are plentiful – why not kiwi?

We are not talking about raising such birds and animals in tiny cages. We are talking about a combination of breeding sheds and free range environments similar to those developed by our ostrich and emu farmers.

We are puzzled by the fact that we accept that the flightless kiwi are endangered species in New Zealand, while equally flightless ostrich and emu are multiplying by the day. There are now thousands of these birds throughout the country. Being an indigenous species, kiwi should be easier to breed, contain and raise to maturity.

If DoC continues to find the idea of commercially farming kiwi and other species offensive to their sensitivities, then such programmes should be handed over to MAF or Crop and Food Research.

New Zealanders scientists and farmers have proven skills in adapting exotic species to commercial farming. We should be able to apply those same skills to protecting much more valuable and important species and hence making them more accessible to ordinary New Zealanders.

11 CONCLUSION

We hope that the above information is of assistance and look forward to the opportunity for further input.

Owen McShane

For Federated Farmers Northland.
July 2000