Fish & Game
NEW ZEALAND

SUBMISSION ON 'IMPROVING OUR RESOURCE MANAGEMENT SYSTEM'

INTRODUCTION

Fish and Game New Zealand in perspective

1. This submission is presented on behalf of the New Zealand Fish and Game Council pursuant to s.26B of the Conservation Act 1987 which requires the Council to *"represent nationally the interests of anglers and hunters"*.

2. In addition to the New Zealand Council there are 12 regional Fish and Game Councils which are established pursuant to s.26P of the Act for the purpose of *"management, maintenance and enhancement of sports fish and game"*.

3. Collectively, these two components of sports fish and game administration and management in New Zealand comprise what is collectively known today as 'Fish and Game New Zealand', which has its origins in the New Zealand Acclimatisation Societies established in 1861 and which have provided a seamless and internationally unique statutory form of self-management by anglers and hunters of their own affairs for over 150 years.

4. While the original Acclimatisation Societies were concerned primarily with the introduction, establishment and accessibility of species of freshwater fish and game suitable for angler and hunter harvest Fish and Game Councils are today primarily concerned with habitat conservation, based on the tenet that 'if the habitat is cared for and secured the species that depend upon it will largely look after themselves'.

5. For this fundamental reason Fish and Game New Zealand has been obliged to become centrally involved in habitat protection and is today the most prominent participant in statutory and political advocacy for natural water quality and river protection. This has involved becoming a major submitter in statutory planning processes, resource consenting procedures and as the principal applicant for Water Conservation Orders. This has also involved a growing role in public education around the often poorly recognised *finite nature* of habitat, and the adverse environmental effects of intensive agriculture and hydro-electric development in particular, both of which degrade and diminish sports fish and game habitat.

6. The statute under which the vast majority of such advocacy occurs is the Resource Management Act 1991, meaning that any proposed amendments to the statute potentially affect fish & Game New Zealand's reason for being. Hence Fish and Game's involvement in this issue and submission process.

7. Any attack on the RMA that is hostile to that statute's habitat protection interests of Fish and Game New Zealand therefore amounts to an attack on the future of the Fish and Game organization. Without adequate, good quality and secure habitat Fish and Game, and the New Zealand pastimes of freshwater angling for trout and salmon, and hunting of wetland dependent game birds, has no future.

8. In recent years Fish and Game New Zealand's public and statutory advocacy for freshwater fisheries habitat protection, and in particular the need for agriculture to take responsibility for *'avoiding, remedying or mitigating'* its adverse environmental effects, has attracted wide public support, including from conservation organisations that are primarily interested in the welfare of indigenous fresh water fish species. This has come about because of the fact that trout have a higher ecological requirement for freshwater quality than most indigenous fresh water species, meaning that a water body protected to ensure a healthy trout population will ensure adequate habitat quality for indigenous fisheries. Increasingly the public want natural water bodies to be *'swimmable, fishable and safe for food gathering'*, and Fish and Game's advocacy is now seen as entirely compatible with that desired outcome.

The Government's RMA reforms in perspective

9. Just on four years ago the Government established the Land and Water Forum. This was an ambitious public planning experiment to attempt a 'collaborative' approach to the future management of New Zealand's natural (land and) water resource. Its genesis was the growing realization by competing interests in natural water conservation and use that this resource was in fact finite and that cumulative use by one sector was having unacceptable consequences for the aspirations of other sectors. The Forum brought together sectors that had become increasingly engaged in hostile public debates, all with the hope that each might gain a better appreciation of each other's interests and aspirations, and in so doing identify a way forward based on compromise.

10. A central element of the process that under-pinned participation and enabled the Forum to last the distance, and to finally agree on three substantive reports with 156 recommendations, was the expectation that the Government would honour the 'recommendations' on the basis that as all the competing interests had become the architects of these recommendations the Government would have no justifiable mandate to take a substantively different path or pick winners. In essence there was a genuine presumption of 'duty' upon the Government to respect and embrace the Forum's outcomes.

11. However what was never anticipated, and was never signaled to the Forum either by visiting Ministers or their permanently present and fully engaged officials, was the

Government's proposals to reform the RMA's 'Purpose and Principles'. Had this been signaled during the LWF process the Forum would have probably collapsed. Indeed, it is hard not to conclude that the Government's actions are anything other than duplicitous, and have significantly undermined any trust that might ever be extended to any similar process in the future.

The current process

12. Fish and Game is very concerned at the short time (five weeks) being provided to comment on a matter as fundamental to the identity and future of New Zealand as this proposed reform. Justification for the proposed changes has been based more on anecdote than analysis and the Minister for the Environment has acknowledged that there is no substantive document to which the public can refer to objectively authenticate the reasons for the proposed changes.

13. Similarly, it is confusing for submitters to draw any distinction between the proposed RMA reforms and the proposed 'Freshwater Reforms' when the two are so inextricably linked.

14. In effect the Government has used the process as a Trojan horse to usher in substantive and fundamental change way beyond what was ever contemplated by the Land and Water Forum. The juxtaposition of reforms is ill considered and damaging to a relatively successful outcome of the Land and Water Forum process.

SUMMARY OF SUBMISSION

15. In broad terms, it appears there are two purposes of these proposed changes, together with other related changes presently being promoted by the Government. The first is to further simplify and streamline processes undertaken under the RMA. There can be little doubt that the idea of improving efficiency, reducing inconsistency, reducing delay and improving certainty would be seen as beneficial to all who may be involved in the RMA process. This would likely be, in principle, supported by most with an interest in the RMA and is supported in principle by Fish and Game.
However, that said, much of what the Government considers needs improvement could be achieved within the frame of the present Act, especially if the Government implemented its own statutory role via National Policy Statements and National Environmental Standards.

16. The second purpose appears to be a desire to enable greater access to natural resources administered under the RMA to enhance the economy and increase employment. The means of achieving this is by lowering environmental standards and protections; facilitating the opportunity for central government intervention at any stage in planning processes and by reducing public involvement in decision-making and recourse to the

Environment Court, compared to what presently exists in the RMA. Not only are these changes deeply hostile to New Zealand's major point of difference, its natural environment and to its citizens involvement in their management, but they would be opposed by many of its citizens if these were honestly portrayed as to what they actually are. The document is, however, a masterpiece of spin and does not honestly articulate its intentions or what the results would be of those changes. Furthermore, Fish and Game considers that the uncertainty generated by such wholesale change to the RMA would be entirely counterproductive to the stated first process objective.

17. The Government therefore has a simple choice. If it honestly wishes to improve process, it must:

    (a) retain sections 6 & 7 of the RMA essentially as they are, with the possible addition of the proposed provision on natural hazards;
    (b) not enable arbitrary Ministerial powers of intervention in planning process;
    (c) not further remove rights of public involvement in decision making;
    (d) not remove the ability of the Environment Court to make decisions on merit associated with value judgements where local authority decision makers have either failed to do this or have not done so in accordance with the law.

SUBSTANTIVE SUBMISSION

18. Fish and Game opposes the unsubstantiated contention on page 35 of the discussion document that Sections 6&7 no longer 'reflect contemporary values'. There is no evidence that New Zealanders want reduced protection for habitats, reduction in amenity values, loss of environmental quality or reduced requirements for access to and along water bodies, for example, or generally want environmental matters downgraded. By contrast, detailed examination of the environmental attitudes of New Zealanders undertaken biennially by Professor Ken Hughey and his colleagues from Lincoln University has shown that, if anything, our attitudes towards the quality of the environment have strengthened, not weakened. Furthermore, all the trends in biodiversity and environmental quality in lowland water bodies, for example, are heading downwards, not upwards. It therefore makes no sense to amend the RMA, nor is there any justification for any reduction in the standards required of environmental protection.

19. Fish and Game considers that the proposals will fundamentally change the context of the RMA without clearly defining what the problem is with the current law. The changes appear to be based more on anecdote and lobbying by vested interests than on evidence, research or rigorous analysis. The wholesale changes to Sections 6&7 are almost entirely to reduce environmental protections. Fish and Game rejects the proposal to add the phrase "In making the overall broad judgment to achieve the purpose of this Act" to section 6. This is an attempt to change Section 5 by stealth. Fish and Game seeks that the matters in section 6 are retained as matters of national importance, and to retain the hierarchy between the existing sections 6 and 7. In particular, new provisions should be added to section 7 so that the existing environmental protections in section 6 are retained and take priority over matters such as enhancing infrastructure. Inclusion of natural hazards as a matter for consideration is supported.

20. Fish and Game strongly supports the retention of the protection of the habitats of trout and salmon and oppose the suggested 'specification' of only those areas deemed significant. While inclusion of other aquatic species is important, as proposed, this total lack of *protective* statutory recognition, and the reference only to *significant* habitats means that the all-important small lowland streams that are critically important as breeding and rearing areas for both indigenous and valued introduced fresh water fish species will be relegated to no more than farm drains in law. Given that trout and salmon have higher and better known habitat requirements than other fresh water species, their comprehensive statutory recognition ensures that groups such as Fish and Game are able to advocate for environmental protection, given that DOC will be increasingly unlikely to advocate these matters on the public's behalf despite its existing explicit statutory obligations to do so. Or is the Government wilfully consigning these important small lowland streams to 'farm drain' status in order to relieve any obligation on pastoral agriculture to take responsibility for its adverse environmental effects? Any thoughts on what Iwi might think of that?

21. Fish and Game seeks the following to be retained in Part 7 "*the maintenance and enhancement of amenity values*" (read 'outdoor recreation'), "*maintenance and enhancement of the quality of the environment*"(implied duty to hold the line and, where necessary, engage in environmental restoration), "*intrinsic values of ecosystems*" (simple respect for nature and ecosystem services), and "*any finite characteristics of natural and physical resources*"(critically important to requiring attention to issues relating to finite natural resource depletion). Fish and Game would supports the reinstatement of the '*maintenance and enhancement*' of public access to water bodies. These current provisions have variously been dropped altogether or recast in discretionary or weak language. Just how does the Government propose to handle, in law, the reality of finite natural resource depletion, and provide for future generations? Any thoughts on what Iwi might think of that?

22. Fish and Game is very concerned that these wholesale changes to Sections 6&7 completely remove the existing certainty afforded by the settled law on these provisions. It will take years to amend plans and policies in accordance with these provisions. All would need to be retested in the Courts before the new meanings became understood. This introduces enormous uncertainty and likely delay; entirely counterproductive to the stated objective to reduce delay and uncertainty. Does the Government place no value on the established case law?

23. Fish and Game opposes new restrictions on the application of key environmental principles in Sections 6&7 to "specified" or "significant" areas only. The discussion document does not propose how these areas will be "specified", what would be "significant", nor does it discuss what will occur in the period before all areas are able to be "specified". This is a critically important deficiency in the information provided in the

Discussion Document, but in any event such discretionary language is opposed for the reasons noted above.

24. Having policy statements and plans made more specific is supported. This can be achieved, however, without wholesale change to Sections 6 & 7. There is no certainty about the implementation of the proposed document:
    - The proposed amendments to appeal rights mean there would not be an adequate check and balance to ensure that the process used to specify areas is the result of a robust analysis.
    - Even if the word 'significant' was to persist, which it shouldn't, there is currently no established assessment process for identifying significant habitats, ecological areas or areas of outstanding natural character, or what the 'value' of access to water bodies is. It would take much time, and extensive controversial political debate, to establish such an assessment process. Until such time as these areas are specified or deemed significant, they will not be subject to any protection. Inevitably this would lead to reduced protections and greater politicization.
    - Any such proposal would require areas to be assessed throughout New Zealand at approximately the same time in order to ensure relativity. This would place a significant burden on the party required to undertake the assessment (probably regional councils) and may not be practical given the limited number of experienced personnel. Besides, determining 'national significance' is already a problem for 'regional' councils!
    - Even if it was to transpire, careful thought would need to be given to transitional provisions. There would be a need for the existing provisions to apply so that protections remain, until assessment processes are established and robust assessments are carried out nationwide. This proposal could not come into effect until an assessment was undertaken to confirm that a robust identification process had occurred nationwide and all areas had been specified. Does the government seriously think this could be done by 'regional' councils, and if not, then who?
    - Some areas of outstanding natural landscape or character, or of significant ecological value, would not be identified in regional plans. It should remain open for such identification to be made during resource consenting processes.
    - A better approach would be to promulgate a National Policy Statement requiring regional policy statements to identify all the various matters of national or other importance, as indeed should have happened before now. This should include a process and timeframe for doing this, and setting out national policy direction for protection of these resources. A back-up entitlement of identifying such areas on an ad hoc basis during resource consenting is still required to cover the situation where councils may have made errors of omission.

25. The proposed wording of section 7 is opposed. Best practice is best addressed through a National Environmental Standard or best practice guidelines or the national planning template. In particular, the uncertain and inappropriate provision seeking an appropriate balance between public and private interests is strongly opposed, as this is debatable and

uncertain. Indeed the restoration of the word 'balance' into resource management parlance is opposed. There is nothing specifically wrong with the notion of 'balance', except when the balance being struck is unspecified. Endless 'rebalancing' without properly defining an end point is the same as environmental degradation. It is notable that the various stakeholders in the Land and Water Forum agreed strongly in the setting of 'hard limits' to resource use. This was in recognition that it serves no useful purpose for the environment or for resource users to fail to establish and hold to limits, as continuing to allocate resources beyond sustainable limits not only degrades the environment but also the authorisations granted to use resources as these become debased on over allocation. The current legislation is about enabling resources to be utilised, subject to appropriately addressing effects and providing for various environmental protections by setting clear limits.

26. Fish and Game opposes the proposal to change appeals from *de novo* to rehearing, for plans and resource consents. The proposed powers for the Minister for the Environment to insert provisions directly into council plans with no formal public consultation are opposed. Several of the powers that are proposed go well beyond government 'direction' and are anti-democratic.

27. The proposed limits on conditions that can be put on resource consents are opposed. It is important that conditions can be imposed which relate to all environmental effects to ensure developments enhance our communities and well-being.

28. The proposed limits on the ability to make submissions are also opposed. Public participation promotes better informed decisions and the interests of resource users should not be placed above the public's right to participate in decision-making. This is particularly important for those resources such as water, air and the coast, which are managed on behalf of the community at large. It is important that the community has the opportunity to influence decision making over such resources of fundamental importance to their lifestyle.

29. The establishment of a streamlined process for urgent issues is viewed with concern and needs to be better specified before it could be supported.

30. Fish and Game strongly opposes the proposed limits on appeal rights and reduction in the Environment Court's role. The Court's independence and oversight is an important check on the quality and legality of decisions.

31. Fish and Game is concerned about proposed changes to non-notified consents, which are being treated as something of a blunt instrument. Fish and Game processes hundreds of non-notified resource consents annually as an affected party for matters affecting our statutory interest, such as many applications to take or use water, or for activities in river and lake beds. These processes usually work well and efficiently and currently occur at

no cost to the applicant from Fish and Game. The vast majority are processed within a few days and usually with relatively standard conditions applied to meet particular potential effects (such as over water quality, effect on habitats or fish passage, for example). The sweeping proposals may require Fish and Game to meet new standards and may increase costs, which may have to be passed on to applicants. There is considerable detail to be worked through on these matters if efficiency and certainty is to be improved.

32. Similarly, limits on consent conditions cause Fish and Game major concern. Often applications are received in which the AEE makes no reference to effects on habitats (which are unknown to the applicant and usually also to the Council officer). Fish and Game becomes involved to add this aspect to the process at no cost to the applicant. Clearly this should be included at the outset, but begs the question as to which body should pay for this. The applicant clearly benefits, and the Council charges for its time, but affected parties presently are expected to meet their own costs. This raises some equity issues if only the applicant's interests are considered.

Matters in the proposals which are supported or conditionally supported

33. Having more efficient and effective NPS and NES is supported by Fish and Game and has been since the RMA was enacted in 1991. We have been centrally involved in the development of the NPS on Freshwater, and NES on Ecological Flows and on Plantation Forestry. Indeed, we remain concerned that the reason the latter two NESs have failed is due to overly prescriptive regulatory impact statements, which is why we oppose proposed changes to Section 32 of the Act in the RM Reform Bill. Many of the proposed difficulties with the current RMA, such as over allocation of water, and unnecessary inconsistency between local authorities, might have been prevented by more central direction. The failure of successive Governments to fulfil their national level roles under the RMA has been identified in all external reviews, to our knowledge. Surely remedying this previous and long recognised failure of central government ought to be the first step Government should take to improve the efficiency and effectiveness of the RMA.

34. Having single resource management plans for areas has some appeal. There are some key matters which would need to be considered, however. In particular, New Zealand has had catchment management planning for soil and water management since the advent of the Soil Conservation and Rivers Control Act established catchment boards in 1941, much to the envy of many other jurisdictions; some of which still do not have this. This enables integrated management of our land and water. It would be a retrograde step to allow territorial land use planning to dominate catchment based regional water management. This also raises some key issues about the relationship between regional and territorial councils.

35. Use of national templates for plan structures is, in principle, supported. It is noted, however, that this will take some time to implement.

CLOSING COMMENT

Judging by the reports of attendance and comments at public meetings, and comments in the media (both op-eds and letters) there is likely to be escalating and ultimately overwhelming opposition to the proposed changes to the 'Purpose and Principles' of the Resource Management Act, including the increased Ministerial powers to impose political preferences.

As such, the Government is faced with a substantive dilemma. To persist with its current high-handed approach, which goes far beyond the recommendations of its Land and Water Forum, can only undermine confidence and hence participation in any future national level collaborative processes. Such persistence can only invite extreme politicisation of this issue at the central government level, probably resulting in political party public commitment to 'repeal' the amended Act. Quite apart from the destabilising influence on the economy it would also imperil part-changes that could otherwise be supported.

So it would be far better to split out the proposed reforms that are focussed on improvements to the efficiency and effectiveness of RMA processes and drop proposed changes to sections 6 and 7. This would substantively preserve the existing case law and reduce the ultimately expensive and time consuming need for its redefinition by the Courts.

In summary, the greatest and most expedient gains will be made by the Government implementing the full potential of the existing statute, which it could perhaps do via a genuine commitment to a national level collaborative process, and in so doing recover some confidence in the process that it has lost by its disrespect for the Land and Water Forum process.

Fish and Game wishes to be heard in support of this submission.

Bryce Johnson
Chief Executive

2 April 2013