



Ministry for the
Environment
Manatū Mō Te Taiao

Proposed National Policy Statement on Indigenous Biodiversity

Summary of Submissions

This report may be cited as:
Ministry for the Environment. 2011. *Proposed National Policy Statement on Indigenous Biodiversity Summary of Submissions*. Wellington: Ministry for the Environment.

Published in December 2011 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand
ISBN: 978-0-478-37262-5 (electronic)

Publication number: ME 1075

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www.mfe.govt.nz



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Executive Summary

In January 2011, the Ministry for the Environment notified the proposed National Policy Statement on Indigenous Biodiversity for consultation under the Resource Management Act 1991.

The process for consultation was determined by the Minister for the Environment under Section 46A(1)(b) of the Resource Management Act. Under the process established by the Minister, the Ministry for the Environment has been tasked with receiving and analysing submissions on the proposed National Policy Statement. A total of 426 submissions were received.

This document summarises the submissions and presents the main issues and themes raised in the submissions.

1 Introduction

1.1 Background

In January 2011, the Ministry for the Environment notified the proposed National Policy Statement on Indigenous Biodiversity (the proposed NPS) for consultation, under the Resource Management Act 1991 (RMA). A National Policy Statement (NPS) is a tool under the RMA that provides statutory guidance to decision-makers, including local authorities. Its purpose is to state objectives and policies on matters of national significance that are relevant to promoting the sustainable management of natural and physical resources.

1.2 Consultation process

The process for consulting on and developing the proposed NPS was determined by the Minister for the Environment under Section 46A(1)(b) of the RMA. Under this process, the Ministry for the Environment has been tasked with leading the consultation and receiving and analysing submissions on the proposed NPS.

The Ministry held public, stakeholder and council meetings at centres around the country from February to April 2011. The submission period closed on 2 May 2011. There was an extension granted for submitters affected by the Canterbury earthquake and Hawke's Bay floods.

A total of 426 submissions were received.

1.3 Purpose of this document

This document summarises the submissions received, and presents the main issues and themes raised in the submissions.

1.4 Notes on conventions used in this document

- Where numbers and percentages are used in reference to the number of submitters who commented on specific issues, these are approximate only. They are provided to give a sense of the extent of interest in particular issues rather than as statistically correct measures.
- Selected quotes from submissions have been included in the summary document. They have been selected for their value in illustrating issues raised by submitters, or because they articulate issues in a way that is difficult to paraphrase without losing the original meaning. Their inclusion in this document does not imply they have been given more weight over and above submissions that have not been cited specifically.
- Where quotes from submissions are used any unexplained acronyms or minor typological errors have been amended to allow for improved readability.
- Every effort has been made to ensure citations of submissions are accurate. However, where these have been manually typed, there may be some minor errors.
- The proposed NPS is referred to as “the NPS” where it is clear from the context that it is the NPS on Indigenous Biodiversity (rather than another NPS or national policy statements generally) being referred to.

2 Submissions overview

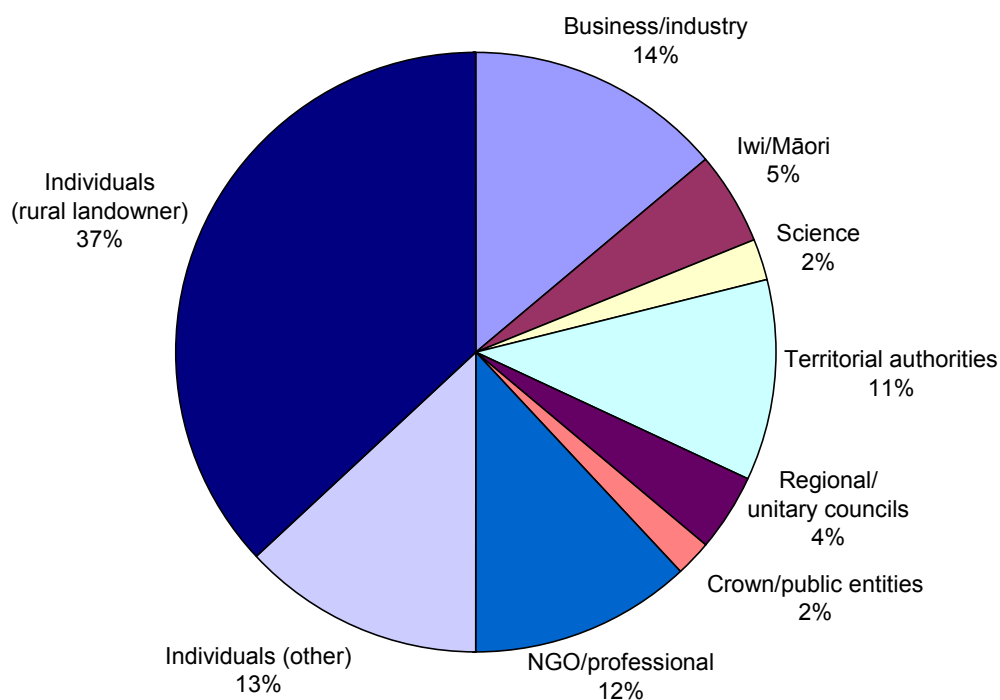
2.1 Breakdown of submissions by organisation type

A total of 426 submissions were received from a wide range of groups and individuals. Individual rural landowners were by far the largest group of submitters accounting for 37 per cent (156) of all submissions received. Table 1 lists the number and proportion of submissions received by submitter type. Figure 1 displays the proportion of submissions received by submitter type.

Table 1: Quantity and percentage of submissions received by submitter type

Submitter type	Number of submissions	Percentage
Business/industry	59	14%
Iwi/Māori organisations	23	5%
NGOs and professional bodies	50	12%
Science and research organisations	11	2%
Individuals (landowner)	156	37%
Individuals (other)	58	13%
Regional and unitary councils	16	4%
Territorial authorities	46	11%
Crown/public organisations	7	2%
Total	426	100%

Figure 1: Percentage of submissions received by submitter type



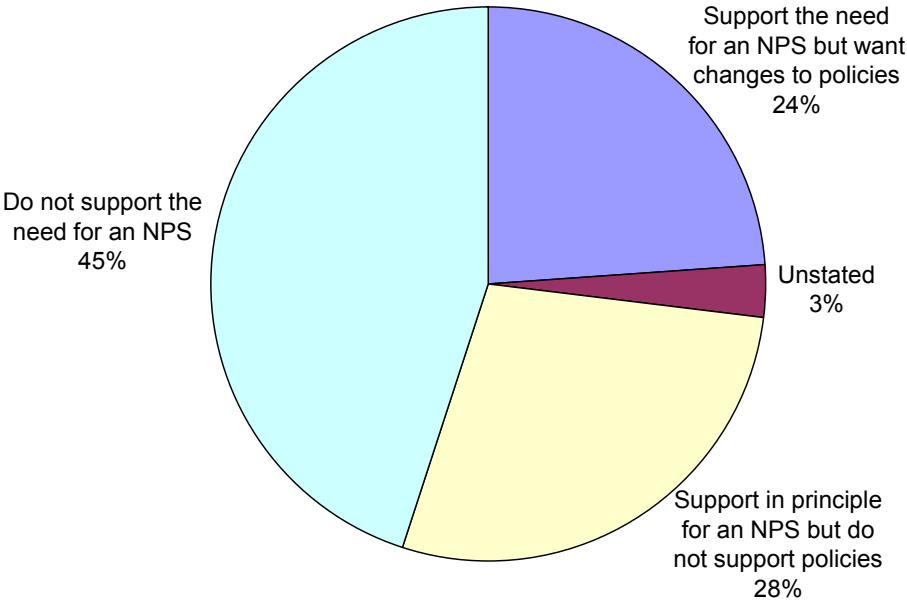
2.2 Breakdown of submissions by level of support for an NPS

Figures 2 and 3 illustrate submitters' overall position in respect to the proposed NPS. Positions (stated or implied) by submitters have been grouped into the following categories:

- support the need for an NPS with some policy changes
- support in principle an NPS but do not support the policies (support contingent on policy changes)
- do not support the need for an NPS
- unstated.

Forty five per cent of all submitters rejected the need for an NPS. In contrast, 24 per cent supported the need for an NPS but generally wanted some changes to the policies. A further 28 per cent indicated that they would support an NPS in principle, but their support was contingent on changes being made to policies.

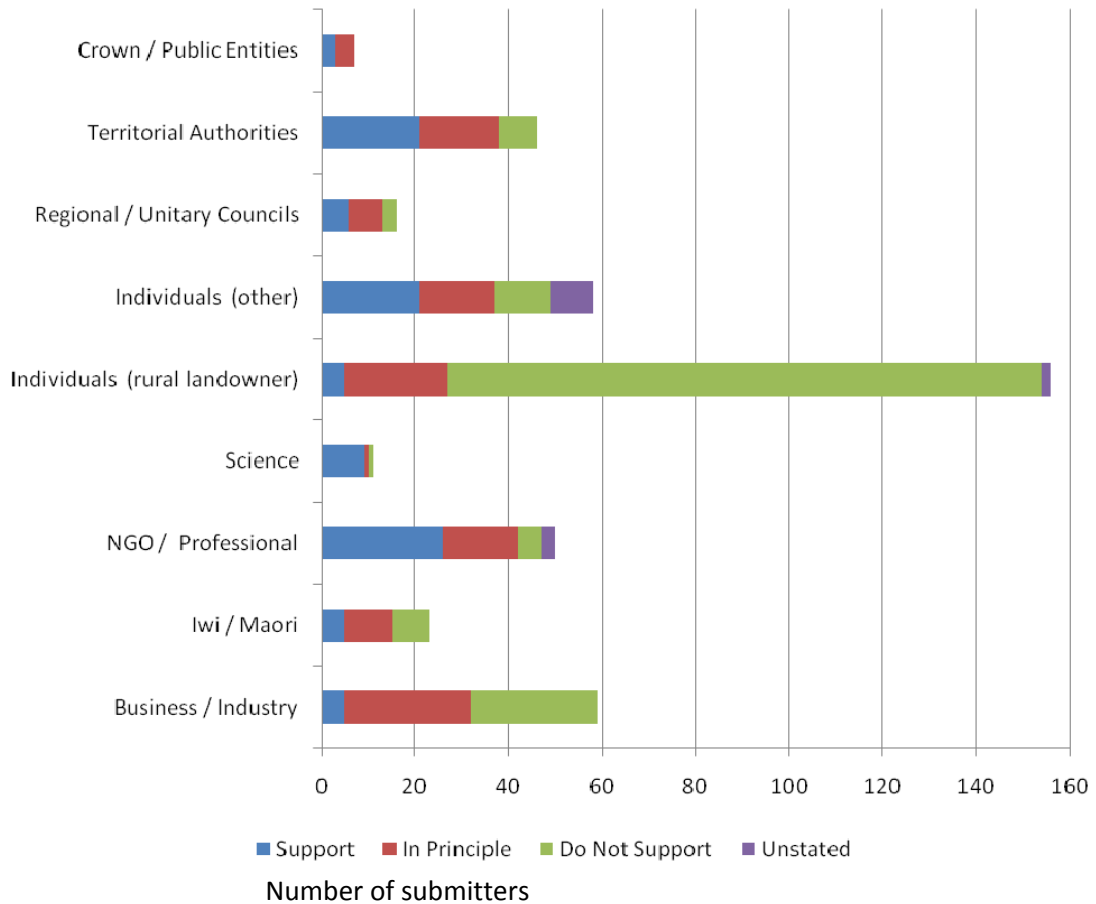
Figure 2: Submitters overall position toward the proposed NPS



Submissions from territorial authorities and regional councils demonstrated similar overall positions in respect to the proposed NPS, with 45 per cent of territorial authorities and 37 per cent of regional councils in support (with some policy changes), and 36 per cent of territorial authorities and 44 per cent of regional councils in support in principle (contingent on policy changes). Nineteen per cent were opposed in both groups. The greatest level of support for an NPS came from non-government (NGOs) and professional organisations (52 per cent in total), though these submitters also recommended changes to the proposed policies.

The submitter grouping that demonstrated the most opposition was individual rural landowners, with 82 per cent opposed to the proposed NPS. A further 14 per cent supported an NPS in principle, but did not support the proposed policies. Of submissions received from businesses and industry organisations, 46 per cent opposed the NPS, and a further 46 per cent indicated support for an NPS in principle but did not agree with the proposed policies. Only 8 per cent supported an NPS (with changes). In total therefore, a total of 92 per cent of business and industry submitters either rejected the need for an NPS or disagreed with the proposed policies.

Figure 3: Submitters' overall position toward the NPS grouped by submitter type



2.3 Key issues raised in support of, or in opposition to, the NPS

The following issues or themes were recurrent across a large number or broad range of submissions. Here they are grouped according to whether they are raised in support, support in principle, or in opposition of the NPS. The various issues and themes are discussed in greater detail in the sections that follow.

2.3.1 Support of an NPS

The key issue for submitters supporting the proposed NPS was the clear mandate national direction would provide to councils, enabling them to better fulfil their functions and duties in respect to indigenous biodiversity. While submitters in support of the NPS generally stated that national guidance would have been more beneficial had it come earlier, and that councils had, in its absence, developed their own approaches to managing indigenous biodiversity, they nevertheless welcomed the proposed NPS and the potential benefits it would bring.

Many submitters recommended that changes be made to the proposed policies. A common theme amongst submitters who supported the NPS was that the bar is set too low and the NPS will not achieve the objectives of maintaining indigenous diversity, let alone reverse its decline. Submitters recommended that the NPS should be aligned to the goals and priority actions of New Zealand's Biodiversity Strategy. In particular, ecosystem functioning, enhancement, freshwater and pest management were priorities that were frequently raised.

Submitters favoured full protection of nationally significant habitat and increased controls and incentives to maintain regionally significant biodiversity.

2.3.2 Support in principle

Submitters who supported an NPS in principle generally agreed with the objectives of the NPS but did not support some of the proposed policies.

Business, industry and infrastructure organisations and individuals involved in farming, forestry, mining, transport, energy and water services raised concerns that some of the policies were unclear. Submitters suggested that this would make them subject to local authority interpretation, leading to uncertain outcomes. Submitters were concerned that this could result in increased costs and constraints on their activities or future development plans.

Local authorities were generally supportive of the need for an NPS, but some had quite significant caveats around their support. Many local authorities were concerned about the potential impact implementing the NPS would have on the non-regulatory methods they have been using to maintain biodiversity on private land. In particular, many local authorities noted that they have established good relationships with landowners and do not want this goodwill undermined.

A number of councils raised issues about the costs to the council and ratepayers of implementing the NPS. Councils submitted that the regional variance in the distribution of indigenous biodiversity may result in significant costs falling on councils with large areas of biodiversity to be protected, but low rating bases. Many councils asked for central government support for these communities and councils.

Other submitters raised similar concerns highlighting a lack of funding for councils, the Department of Conservation (DOC) or biodiversity protection and enhancement funds, which would undermine the implementation and effectiveness of the NPS.

A broad cross-section of submitters was critical that the NPS failed to provide stronger guidance on the use of non-regulatory mechanisms and incentives for landowners to protect indigenous biodiversity. Submitters considered this was inconsistent with the stated objective of NPS to recognise the positive contribution of landowners as guardians/kaitiaki of their land, because it was not reflected in the policies of the NPS.

Many local authorities were concerned about the use of the non-Board of Inquiry process for the development of the NPS. They viewed this as a way of “streamlining” the process and expressed concern about the lack of opportunity for submitters to see and respond to other submissions.

Iwi and hapū organisations highlighted the need for further consultation following the release of the Waitangi Tribunal report into the WAI 262 treaty claim.

2.3.3 Do not support

As noted above, the majority of rural landowners/farmers did not support the NPS. They considered the regulatory approach proposed in the NPS would be counter-productive to achieving the intended objectives. Rural landowners noted that indigenous biodiversity on private land existed as a consequence of the strong ethic of stewardship that landowners had toward their land. Many landowners highlighted that effective protection of biodiversity required good local knowledge of the environment and active management at a considerable cost of both time and money to the landowner. The majority favoured using a voluntary approach with strong incentives to work with landowners to protect biodiversity on their land, rather than putting regulatory controls on their land, thereby alienating them.

Landowners pointed to the injustice and inequity evident in protecting indigenous biodiversity for national public benefit at private landowners’ cost, with the greatest cost falling on landowners that have taken steps to protect or sustainably use biodiversity on their lands. A number of landowners stated that if the Government was intent on limiting landowners’ rights to use their land for the protection of indigenous biodiversity for national benefit, then compensation should be paid to the landowner.

Landowners expressed widespread concern that local authorities may impose rules that constrain their ability to manage or develop their farms while also increasing compliance costs to their businesses. Farmers were particularly concerned over rules that prevented farmers periodically clearing regenerating vegetation such as mānuka and kānuka for the maintenance of pastoral areas and fence lines, for example.

Farmers and rural businesses also expressed concerns that increased costs or rules that lead to reduced productivity and profitability would have negative economic consequences that would be felt beyond the farm gate. This would particularly be the case in regions heavily dependent on farming, as well as having overall effects on the national economy through reduced export earnings. Landowners also highlighted that lower farm profitability would also have negative consequences for biodiversity as landowners would have less money to spend on protecting areas and pest management.

3 Interpretation, application and objective of the NPS

3.1 Preamble

The preamble outlines the problem that the policy seeks to address and rationale for the NPS. Unlike the NPS itself, it has no statutory weight, but may be used to aid interpretation of other sections of the NPS.

A small proportion of submitters commented on the preamble. Most of these had suggestions for additions or changes.

Some suggested that it was important to more clearly articulate the benefits of indigenous biodiversity, for example by highlighting the importance of natural heritage and New Zealand's clean green image to our tourism industry, or by including a discussion of the benefits of ecosystem services, including their value to the economy. For example, the Tourism Industry Association (342) stated:

New Zealand has carved out this [clean, green image] image based on a landscape with wide open spaces, and a pristine and unspoilt environment. Any future damage to this position e.g. through the ongoing loss of indigenous biodiversity holds very real risks to the perception of NZ as a nation that is environmentally conscious, and consequently a range of industries including tourism.

Two submitters also suggested that the preamble make reference to climate change. One of these submitters stated, for example: "The preamble should also reference the growing importance of protection and maintenance of existing biodiversity in order to deal with the effects of climate change" (Forest and Bird (Head Office) 91).

A number of submitters urged for greater recognition in the preamble of the work landowners are undertaking to protect biodiversity. For example, Federated Farmers (High Country Section) stated:

We believe that the preamble to the proposed NPS fails to give sufficient recognition to the affinity many landholders have with their lands. Nor does it acknowledge voluntary contribution landholders have made and continue to make towards the protection of indigenous biodiversity on their land (85).

Some submitters suggested that the preamble needs to more accurately reflect the content of the NPS. Hurunui District Council (408) stated, for example:

The preamble is nicely worded and descriptive, but does not actually reflect the content of the NPS in some areas. The NPS provisions do not achieve what it claims to seek in the preamble. For example it says the NPS will support and help local authorities but provides little to achieve this. It says it introduces a 'bottom-line' category of sites for protection' but does not provide this specifically.

Federated Farmers of New Zealand (434) made the following comments on the ability of the NPS to fulfil the objectives listed in the preamble:

Bring more clarity to the role of local authorities in biodiversity management under the RMA than may be apparent on the face of the Act itself: The proposed NPS fails to do this. It creates confusion between regional and district roles in Biodiversity management. It increases the scope of the requirement to protect particular areas and blurs the lines between matters of national importance and other matters in the Act. It adds to the duplication of roles between regional and district councils in respect to Biodiversity, adds additional costs to implementation of the RMA, with the Bill falling squarely on landowners who are asked to protect the areas, three ways, privately, and as ratepayers to regional and district councils.

Submitters also questioned the problem definition set out in the preamble. Bay of Plenty Regional Council (18) stated:

It would be helpful to undertake a simple intervention logic model for the National Policy Statement, setting out the reasons for action and the intended consequences of action. It will also help us to understand the direct outcomes that the National Policy Statement will contribute to achieving, and how these then contribute to the overall outcomes sought for biodiversity in New Zealand.

Some submitters were concerned that the NPS would require councils to go beyond what is required for section 6(c). New Zealand Deerstalkers' Association (215) stated, for example:

The dogma presented here implies that councils should be 'seen' to be going further than 6C provides, without accepting that some councils may not have resource, political stability or political mandate, through their electors, to go further than 6(c) provides.

Submitters were also concerned about how S 6(c) had been interpreted in the NPS. For example, Forest and Bird (Head Office) (91) stated:

This section of the Act does not cover: "sites valued for conservation in a more general sense" (covered by s.5(2)(b), s.6(b), s.7(aa),(d), (f)); "amenity values of biodiversity" (covered by s.7(c)); or "cultural values of biodiversity" (covered by s.6(e)(f), s.7(a)). It is confusing to introduce these extraneous issues into the consideration of s.6(c).

3.2 Interpretation (definitions)

The Interpretation section contains definitions of terms used in the NPS. Around a fifth of all submitters commented on the Interpretation section. The following section provides a summary of submitters' comments on the terms that were specifically raised in submissions.

3.2.1 Indigenous vegetation

Of the definitions in the interpretation section, the definition of “indigenous vegetation” attracted the most comment. The majority of submitters who commented felt that it was too all-encompassing, in particular because it included land with the potential to develop the stated characteristics. Some representative submissions on this aspect were:

The inclusion in the definition of “indigenous vegetation” of “habitats normally associated with that vegetation type, soil or ecosystem or having the potential to develop these characteristics”, inappropriately takes the definition beyond areas where indigenous vegetation actually is to include areas where it could potentially be in future. This is inconsistent with the requirement under the RMA for decision makers to assess the effects of a development on the existing environment (NZ Transport Agency, 239).

The NPS requires councils to protect areas that have potential to regenerate – this could literally be interpreted as any farm (PR McLaughlin, 193).

A range of other exclusions to the definition were proposed, including all vegetation managed for commercial purposes; all production land; all “utility plantings”; and all indigenous vegetation outside its natural range.

There were also some concerns that the definition would be too limiting; in particular the threshold implied by the words “consisting primarily of indigenous species”. For example, Landcare Research (158) stated:

We are unclear whether the use of “primarily” is intended in relation to indigenous species’ number or abundance. Because the definition is ecologically unclear, it may lead to ambiguity and debate. If interpreted as a threshold of 50% native, it also seems an unnecessarily high threshold, as currently many council district plans and vegetation clearance rules we are familiar with use 20–30% indigenous cover or proportion of native species as a threshold for “indigenous vegetation”... Alternatively a threshold could be omitted, and a broad definition similar to that in the National Priorities could be used, i.e. “A plant community containing naturally occurring native species.

Submitters generally commented favourably about the exclusion of indigenous vegetation planted for commercial purposes, for example:

Whilst acknowledging the value of planted forests as habitats for indigenous biodiversity, the NPS should not seek to restrict the operations of forest managers where those actions are clearly guided by sustainable forest management objectives and best practices. Recognition should be given to the need to continue to manage indigenous biodiversity at the forest level, rather than compartment level, where some loss of indigenous biodiversity is inevitable (Scion Research, 290).

There was also a submission that the (indigenous) understory of (exotic) forests should be excluded from the definition of indigenous vegetation (New Zealand Forest Owners Association, 218).

3.2.2 Habitat

The definition of “habitat” was also contentious. Submitters (especially councils) were divided on the matter. Some thought it is too broad. For example, Taranaki Regional Council (321) stated:

The Council seeks amendment of the definition of “habitat” to limit its application to areas of indigenous vegetation where an organism or ecological community occurs naturally. For example it is not unknown for the grey teal to be living in local authority wastewater treatment ponds and interpretation of the proposed NPS could mean these were defined as significant habitat.

However, others, such as Porirua City Council (252), submitted that it was important that modified, or non-indigenous habitats could be captured:

Many species either by necessity or design have had to adapt to modified environments. This means that their range has extended beyond what would be considered ‘natural’.

There were also differing opinions about whether habitat in plantation forest should be included:

By not excluding plantation forests, any areas that meet the definition must be protected, and harvesting is not guaranteed. The definition needs amending by adding: “but excludes habitats in plantations and vegetation that has been established for commercial harvesting” (Juken New Zealand Ltd, 147).

Some provision needs to be made for the protection of threatened species or assemblages that occur in plantations and other vegetation established for commercial harvesting, for instance pine forests in which kiwi have established habitat (Environment and Conservation Organisations of New Zealand, 79).

3.3.3 Maintenance

There were concerns the definition of maintenance as “no net loss” conflicts with how the term is currently used for RMA purposes. Contact Energy (59) submitted, for instance:

... the concept of ‘maintenance’ is well understood under the RMA. It has a natural and ordinary meaning which has been applied in innumerable Environment Court decisions. Introducing, through a layered series of definitions, the concept of no net loss displaces that ordinary and natural meaning and has significant potential implications for regional and district plans, almost all of which refer to maintenance of particular values or resources.

3.3.4 No net loss

Those submitters who commented on the definition of “no net loss” generally felt that it is unclear or untenable. Recommendations included:

- clarifying the scale at which no net loss should be measured
- removing any requirement to protect an equivalent area (in terms of size)
- clarifying whether all of Policy 5 a–d need to be achieved (see also section on Policy 5)
- removing unscientific terms (eg, ecological health)
- inserting the terms “reasonably measurable” ie, “no ‘reasonably measurable’ overall reduction in ...”.

Representative submissions on the untenable or impractical nature of the “no net loss” policy were:

The proposed definition of “no net loss” is unworkable. Firstly, the definition fails to provide clear guidance on whether all the requirements listed, or only one or some of those requirements need to be satisfied in order to ensure a “no net loss” ... Secondly, the proposed definition requires an applicant to undertake an assessment of the impacts of a proposal on the species, communities and ecosystems that may be adversely affected, to a very high degree of accuracy. Such an assessment would be technically unfeasible (MainPower NZ, 424).

The proposed definition of no net loss does not make the intended scale of the definition clear. The phrase “overall reduction” may be intended to be interpreted as a national scale, which would be appropriate. However, “overall” might be interpreted more narrowly to apply to the scale of a development project alone. In this case, wider, cumulative loss at a national scale would be overlooked (Landcare Research, 158).

3.3.5 Biodiversity offset

Comments on this definition included:

- remove reference to net gain
- should better align with Business and Biodiversity Offsets Programme (BOP) principles
- should focus on ecosystems rather than just on species.

One submitter (The New Zealand Ecological Society, 237) expressed concerns on the limited nature of the definition:

While the definition includes ecological health and functioning of assemblages of species, community types and ecosystems it does not address the loss of ecological processes, connections, extent and cumulative effects. The process of moving a species or a small population out of an impacted area, e.g. native lizards or fish, may be a relatively simple procedure however replacing and recreating a naturally functioning mature ecosystem is not straightforward.

3.3.6 Biodiversity values

A small number of submitters commented that this definition is unclear or unnecessary. Some of these submitters proposed that a definition for biodiversity be given instead; for example:

The policy statement must state that ‘biodiversity’ corresponds with ‘biological diversity’ of the RMA – on all other occasions the term ‘indigenous biodiversity’ must be used with the ‘indigenous –’ prefix – if that is the intention (291).

3.3.7 Comments on other definitions

A small number of submitters asked that the definition for “restoration” and “enhancement” be clarified or removed. It was also suggested that “community” should be changed to “ecological community” due to conflicts with the use of the term “communities” in the objective.

The definition of “matter” was also seen to be confusing:

The reference to using the definition of “matter” as defined in section 141 of the Act seems unusual, as that definition is within Part 6AA which relates to proposals of national significance, and is the definition only “in this Part” (Forest and Bird (Head Office), 91).

Submitters also requested definitions for “significant” “associated with”, “sand dune” “natural/naturally” and reasonable use.

3.4 Application

The application identifies what is within the scope of the NPS. The application section in the NPS has three parts:

This national policy statement applies to land owned by any person except that it does not apply to public conservation land.

This national policy statement does not apply to the coastal marine area. Biodiversity in the coastal marine area should be managed in accordance with relevant policies of the New Zealand Coastal Policy Statement.

This national policy statement is not intended to be a statement of all that is required in order to fulfil obligations under section 6(c) of the Act. Instead it requires the recognition that at least one of the reasons an area or habitat may be significant for the purposes of section 6(c) is for its contribution to maintaining biodiversity.

The vast majority of submitters who commented on this section felt that the scope of the NPS should be widened, in particular to include freshwater biodiversity, the coastal marine area and public conservation land under DOC management. The following submissions are representative of many of the concerns expressed by these submitters:

The proposed NPS:

- is very terra-centric in its scope;
- excludes (without adequate reference to the Coastal NPS) the coastal marine environment which extends 12 nautical miles to sea;
- emphasises native vegetation over native fauna and virtually excludes fungal and microbial systems;
- is ambiguous in regard to its application to freshwater ecosystems and other aquatic elements of biodiversity; and
- excludes public conservation land. We believe it is essential to address these issues in the scope, framework and structure of the national policy statement (New Zealand Committee of IUCN, 213).

... the NZCA would like to see the NPS expanded in scope ... to cover biodiversity not covered by the NZCPS or the NPS for Freshwater to include the characteristics covered in policies 3, 5 and 11 of the NZCPS – to recognise the value of ecosystem services, especially water and soil conservation – to consider the effects of climate change on indigenous biodiversity (New Zealand Conservation Authority, 214).

A key reason given by some submitters for widening the scope of the NPS was to promote the integrated management of biodiversity:

The Forum recommends that the proposed NPS reflect policy on integrated management of biodiversity by including all ecosystem types and therefore the importance of each to the other. At present there is mainly a focus on terrestrial biodiversity (Waikato Biodiversity Forum, 349).

There was concern from iwi that the terrestrial focus taken in the NPS is inconsistent with the Māori world view and approach to resource management:

We do not support the exclusion of the coastal-marine environment which for Te Uri o Hau hold tremendous cultural significance as a paramount taonga. The disregard for the coastal-marine environment is inconsistent with Mātauranga Māori and the Māori worldview (Te Uri O Hau Settlement Trust, 332).

Submitters also felt a wider scope was needed to ensure consistency with the RMA and the New Zealand Biodiversity Strategy. Forest and Bird (Head Office) (91), for example, submitted that:

Our indigenous biodiversity certainly pays no heed to legal or cultural boundaries imposed on the New Zealand land, water and seascapes. The NPS should follow the position recommended by the New Zealand Biodiversity Strategy (2000) and the Biowhat? Report (1999) that an NPS cover all lands and waters. To arbitrarily exclude lands or waters of particular tenure, administration or land use would undermine the principles and purposes of the RMA, and the NZ Biodiversity Strategy. Many regional and district policies and plans currently provide for the conservation of indigenous biodiversity across the whole area regulated, and an NPS must not serve to prevent this.

3.4.1 Application to coastal marine area

Many submitters believed that the NPS should apply to the Coastal Marine Area (CMA). The main reasons given were:

- to support the integrated management of biodiversity
- to ensure that effects of land based activities on biodiversity in the CMA are captured by the NPS
- to recognise that species may move between regulatory boundaries – should have consistent protection
- to reduce administrative complexity
- to support the purpose of the RMA and New Zealand Biodiversity Strategy
- to better align with Māori approaches to resource management
- because there is significant biodiversity in the CMA
- because biodiversity in the CMA is declining or under threat
- because the proposed NPS sets a higher benchmark than the New Zealand Coastal Policy Statement.

Some submitters pointed to conflicts between the NPS and the NZCPS in the coastal environment and requested clarification:

The Proposed NPS should: (a) explicitly state that not only does it cover terrestrial resources down to the edge of the CMA, but that it overrides the NZCPS references to biodiversity, and, if there is conflict, whether the Proposed NPS (as the newer policy) prevails; or (b) state that where the Coastal Environment has been mapped, the NZCPS has primacy over provisions in the Proposed NPS (Resource Management Law Association, 277).

Environment Canterbury submits that the PNPS should specifically exclude the coastal environment from its scope, and the NZCPS should apply, as its policies have been specifically derived for the characteristics of this area (Environment Canterbury, 417).

3.4.2 Application to freshwater

Submitters also requested that the application of the NPS to freshwater is clarified. Approximately 45 people stated that the NPS should more explicitly address freshwater biodiversity, while about 26 did not agree. The remainder did not state a view.

The key reasons given for more explicitly including freshwater were that freshwater biodiversity is at risk and the NPS on freshwater biodiversity does not adequately address freshwater biodiversity. For example:

There is a gap in respect to the proposed Freshwater NPS. While the NPS on Indigenous Biodiversity does not cover freshwater, the Proposed Freshwater NPS does not refer to protecting biodiversity. While biodiversity may be offered some protection through the Freshwater NPS standards for quality and quantity, the overall strategy cannot be effective without recognising the problems of introduced pest species (and managed species such as trout) and their impacts on biodiversity (Forest and Bird (Head Office) 90).

Both within New Zealand and globally, biodiversity is more threatened in freshwater ecosystems than in any other ecosystem, so it is essential that explicit reference be made, and mandate be given, to addressing this biodiversity loss (Waikato Biodiversity Forum, 349).

Submitters also made arguments similar to those in the above section on the CMA regarding integrated management of biodiversity:

The NPS is focussed on terrestrial biodiversity and does not address aquatic biodiversity well. This also seems anomalous from an ecological perspective as well as our Raukawa perspective. Due to the interconnected nature of the environment, it is not appropriate nor possible to separate different elements (Raukawa Trust, 425).

There is a direct link referenced here [in section 30 of the RMA] between land use and management, and the enhancement of aquatic and marine ecosystems. The NPS fails to provide mechanisms that give due consideration to this fundamental connection (Ngati Kahungunu Iwi Incorporated, 227).

The NPS should more directly address the quality of stormwater run-off to streams in both urban and rural areas and its effect on freshwater biodiversity (Federated Mountain Clubs, 87).

Some submitters pointed out specific aspects of biodiversity which may not be captured unless the application to freshwater is made more explicit:

HCC notes that peat lakes, riparian margins and tributaries do not appear to be included within the policy as they are not captured within the category of wetlands, and suggest that the policy is amended to include these (Hamilton City Council, 115).

Some submitters suggested that Freshwater Environments of New Zealand (FENZ) or Water Bodies of National Importance (WONI) should be used to identify freshwater environments worthy of protection. For example, Chris Richmond (275) submitted:

The NPS does NOT cover any aquatic habitats, such as lake and riverbeds, for which there are clear biodiversity protection imperatives in s.6(a), 6(c) and 7(d). Need to either address in these in a parallel freshwater NPS (cf New Zealand Coastal Policy Statement) or include in this NPS. This could include at least Waterbodies of National Importance (ie WONIs from 2005 Cabinet papers), and submerged vegetation that has no significant alien plant component (ie extremely rare now).

The majority of the 26 submitters who stated that the NPS should not more explicitly address freshwater biodiversity did not provide specific reasons for their position. Many of these were individual landowners. The reasons that were given for not agreeing that the NPS should more explicitly address freshwater biodiversity were that the proposed NPS deals adequately with freshwater ecosystems, and that freshwater biodiversity should be addressed in a separate NPS.

3.4.3 Application to public conservation land

A significant proportion of submitters who commented on the proposed NPS had views on the exclusion of the public conservation estate, administered by DOC. The majority of these submitters argued that the scope of the NPS should be extended to the DOC estate. The most common reasons given included: that DOC land is subject to development, and its protection is not necessarily better than what the NPS provides; and that its inclusion in the proposed NPS would allow offsets to be used in the DOC estate. Some representative submissions were:

The exclusion of public conservation land from the application of the NPS seems anomalous. Mines or quarries may abut or extend across more than one class of land; that much of public conservation land has been inadequately surveyed; and that biodiversity offsets or alternative off-site mitigation mechanisms could be applied over both public and private land. There is no compelling reason to exclude the application of the NPS from public conservation land; this is a national policy statement (Straterra Incorporated, 315).

... Nor does it make sense to exclude the public conservation estate. Activities off the estate may well have impacts on the estate (such as siltation of protected wetlands) and it seems a little perverse to put a boundary in such as this. The RMA also applies to conservation lands so there is little rationale for the exclusion (Federated Mountain Clubs, 87).

We would like to see public conservation land included so that the NPS helps rectify inconsistencies in protection status of public conservation land management which does not always follow ecological boundaries. This is especially true on the West Coast where vast swaths of Conservation land have simply never had their values assessed properly. This historic miscategorisation of conservation land, such as areas of stewardship land with very high conservation values, means that there is limited protection under the Conservation Act and protection through the NPS and the RMA is necessary (Forest and Bird (West Coast Branch), 372).

Other reasons cited were that:

- council assessments of significance of biodiversity on private land (eg, representativeness at a regional or district scale) should be able to take biodiversity values on any local DOC land into account.
- strengthening protection on private land may increase development pressure on DOC land
- excluding DOC land adds complexity to the consenting process
- the RMA applies to DOC land, so the NPS should as well

- the Crown should be identifying significant areas of indigenous vegetation and the significant habitat of indigenous fauna on Crown land
- it is inconsistent to exclude DOC land as it is a “National” Policy Statement
- excluding the DOC estate shows that government will not comply with its own policy.

It was recognised that identifying “significant” biodiversity on public conservation land could be costly for councils, but some submitters suggested alternative approaches, including the following:

The reasons for not including Crown lands, as I understand it, are that under the RMA it would be too onerous on Councils to obtain the information, verify it, and monitor it? If this is the reason it should either be mandatory on DoC to provide it at no cost (which they must surely do for their minister) or Councils be specifically exonerated from those obligations (Phillip Lissaman, 164).

However some submitters suggested that the DOC estate should be excluded, or only partially included in the NPS:

The Council agrees with the approach of the proposed NPS that it is not intended to apply to the protection of biodiversity on land administered by the Department of Conservation ... The Council believes that the conservation legislation affords sufficient protection of these areas. In some circumstances, activities may affect adjoining land, and in this case identification of such areas may be warranted to ensure ecological values are not adversely affected. However, the duplication of protection mechanisms is unwarranted and inefficient (West Coast Regional Council, 374).

Do not include public conservation land and waters, as the NPS would undermine the protection of their indigenous biodiversity (New Zealand Conservation Authority, 214).

Southland District Council supports the exclusion of public conservation land from the NPS. Conservation land is already managed in a manner that should promote the maintenance of indigenous biological diversity and is covered by existing conservation legislation (Southland District Council, 309).

The inclusion of conservation land under the NPS may raise the public’s expectation about how private land should be managed for biodiversity and the criteria and thresholds that might be used for that management (Federated Farmers of New Zealand, 434).

There were also submitters who said that public conservation land should only be included in the proposed NPS for the purpose of: determining the significance of biodiversity on private land (ie, rarity, representativeness should take account of land in the DOC estate); and enabling the use of offsets within the conservation estate.

3.4.4 Other application matters

There were also submissions on the application of the proposed NPS to plantation forests, pastoral lease land, and various other aspects of biodiversity. In respect to the application of the proposed NPS to plantation forests (see also *Interpretation* section), the Western Bay of Plenty District Council (376) submitted that:

Indigenous fauna can exist in non-indigenous habitats eg exotic forest plantations and non-indigenous Council reserves. Council as a substantial forest owner needs to clarify if this includes habitats in exotic forests. If it does there could be substantial risks to commercial operations and wider industry views should be sought.

In respect to the proposed NPS's application to pastoral lease land, the New Zealand Planning Institute (416) submitted that:

NZPI also recommends that the NPS on Indigenous Biodiversity addresses the relationship with the Pastoral Land Act 1998. Because pastoral lease land is technically Crown land, but is not public conservation land. In particular, it is important to clarify whether the NPS will apply to pastoral lease land. If not, it will be important to clarify whose responsibility pastoral lease land will be. NZPI notes that the top 4 local authorities listed on page 41 of the s32 (with the greatest unprotected threatened environments) have vast tracts of pastoral lease land, and it is likely to be an important concern for them.

Other submissions concerning the application related to:

- fungi and microbes
- data deficient species
- soils and their biota
- aquatic environments including sea mounts and deep ocean environments that are in need of protection
- non-indigenous flora, especially where these provide habitat to threatened or at risk indigenous species.

Other submissions suggested additional exclusions from the proposed NPS:

- covenanted land
- Māori land
- indigenous vegetation harvested for commercial purposes (planted or naturally regenerated)
- indigenous vegetation planted for private purposes such as shelterbelts, hedges, landscaping and gardens.

3.5 Matter of national significance

The matter of national significance to which this national policy statement applies is the need to maintain New Zealand's indigenous biological diversity. A small number of submitters commented on the Matter of National Significance. The key theme of these submissions was that the Matter of National Significance should refer to both maintenance and enhancement of indigenous biodiversity. For example, the Waikato Biodiversity Forum (349) submitted that:

The Forum recommends the word enhance or improve be placed in this sentence to strengthen the policy statement. Maintain gives a message of status quo and because of so much loss of biodiversity has occurred restoration and improve is recommended.

The New Zealand Ecological Society (237) submitted that:

NZES supports the need to maintain New Zealand's indigenous biodiversity as being a matter of national significance. It is submitted that maintenance should include preservation and protection, as well as restoration and enhancement. Many ecosystem types (e.g. many lowland forest types) and species (e.g. 38% of indigenous plant species and 40% of indigenous bird species) are at critical levels of loss and threat, and what is left of these threatened habitat types and species is important to protect. The protection and maintenance of these areas requires restoration and enhancement, not just the maintenance of existing extent and state.

Conversely, Contact Energy (59) submitted that the Matter of National Significance was worded too broadly:

The stated matter of national significance is “the need to maintain New Zealand’s indigenous biological diversity”. This is too broad and all-encompassing to be supportable. Some focus is required on the significant elements of indigenous biological diversity.

3.6 Objective

The objective of the proposed NPS is:

To promote the maintenance of indigenous biological diversity by protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and to encourage protection and enhancement of biodiversity values more broadly while:

- supporting best practice of local authorities
- recognising the positive contribution of landowners as guardians/kaitiaki of their land
- recognising that the economic, social and cultural well-being of people and communities depends on, amongst other things, making reasonable use of land.

3.6.1 The balancing approach taken in the objective

Many submitters stated their support for what they saw as the “balanced approach” embodied by the objective, including the following submitters:

The objective seems reasonable in terms of providing a balance between promoting the maintenance of biological diversity while (among other things) recognising that the economic, social and cultural wellbeing of people and communities depends on making reasonable use of land (Newmont Waihi Gold, 225).

Winstone supports the objective to promote maintenance and protection of biodiversity values while recognising rights of landowners and the need to provide for economic, social and cultural well-being of people and communities (Winstone Aggregates, 387).

Taranaki Federated Farmers is broadly supportive of the objective stated in the proposed NPS and the sentiment expressed in both the preamble and Section 32 evaluation. The importance of landowners’ positive contribution, recognition that the overall success of the NPS is reliant on the goodwill and buy-in of landowners and stated desire to seek a balance between biodiversity values and landowner rights is encouraging (Federated Farmers (Taranaki), 432).

I thoroughly support the objective, while the definition of “significant indigenous vegetation” remains balanced, and does not include areas where indigenous vegetation has re-infested farmland as a weed (Alastair Haliburton, 113).

Recognising the economic, social, and cultural wellbeing of people and communities is critical as it is the only statement that recognises that other factors must be considered when considering activities that affect areas that are important for indigenous biodiversity (Watercare Service Limited, 368).

(See also comments on reasonable use below.)

However there were many others who submitted that the objective should focus on biodiversity and that the balancing should be left to section 5 of the RMA, including the following:

The Objective as written is trying to be all things to all people and will not change the status quo – it is this approach that has resulted in the loss of biodiversity. Without a strong

objective, indigenous biodiversity will continue to decline ... Section 5 of the RMA refers to the use, development and protection of natural and physical resources, but the “protection” element is given little attention (Forest and Bird (Eastern Bay of Plenty), 75).

The national policy statement on biodiversity should focus on biodiversity and not on other concerns. It is inappropriate for the NPS to attempt to balance biodiversity values with economic concerns (Raukawa Trust, 425).

The Forum suggests that the 3 bullet points are removed from the objectives. These points are part of the RMA decision making process under section 5 and do not have a place in this objective (Waikato Biodiversity Forum, 349).

The three bullet points are unnecessary and should be removed (Otago Regional Council, 245).

It was also suggested that the three bullet points should only apply to non-significant areas:

The objective should be amended to comprise two clear and distinct statements, where the first statement better reflects the matter of national importance to which it relates, and the consideration of socio economic and other matters relates to wider biodiversity values (Mike Plowman, 351).

Some submitters commented that the use of “while” created uncertainty about what the objective was setting out to achieve:

The reference to “while” within the objective means that the promotion of no net loss or reduction in indigenous biodiversity is to occur at the same time as recognising the social and economic wellbeing of the use of land. It is TrustPower’s submission that these two intentions cannot co-exist given the inherent focus on the absolute preservation or protection of indigenous biodiversity within the first half of the objective (TrustPower Limited, 344).

Mostly it is clear, but the ambiguity of “while” is unhelpful and leaves it unclear whether these are absolute requirements or simply things that should be done simultaneously. (Environment and Conservation Organisations of New Zealand, 79).

3.6.2 Getting the balance right

Many submitters only supported the objective in part, and expressed reservations about the lack of support for landowners evident in the proposed NPS, including the following:

We generally support the broad objectives of the NPS, but have serious concerns about the implications of some of the policies for landowners and we are concerned the NPS ignores the huge progress and investment that has already been made by landowners in protecting thousands of hectares of indigenous vegetation on our own properties (Leveson and Vicki Gower, 318).

I support the objective in part. The part missing is compensation for landowners to achieve the desired ‘balance’ (S. and T. Stark, 310).

While some objectives of the policy are commendable there must be serious concerns for the implications to landowners in regard to the increased restrictions on indigenous vegetation clearance (Jeanette Steed, 402).

Some submitters, especially landowners, stated that the balance is too far towards biodiversity protection and were concerned that this could seriously hinder economic development:

We think the current objective places too much emphasis of protecting biodiversity and places far too little emphasis on the economic well being of local communities ... We do

not agree with the wording “making reasonable use of land”. We should be able to maximise the economic potential of our land (Mahurangi Station Incorporated, 169).

However a large number of submitters who commented on the objective stated that it does not go far enough in protecting biodiversity and that stronger language was needed in favour of biodiversity protection:

We do not support the proposed section 6 Objectives. The objectives need to be strengthened to halt the decline of biodiversity as was outlined in the New Zealand Biodiversity Strategy 2000 and reflect Goal Three (Te Uri O Hau Settlement Trust, 332).

The objective is not strong enough. “Halting the decline” should be stated in the objective as the main purpose of the NPS (New Zealand Conservation Authority, 214).

The Objective needs to state from the outset that it aims to ‘ensure’ rather than ‘promote’ the maintenance of indigenous biological diversity (Orari River Protection Group Inc., 418).

I support the general intent of the objective, but it should be worded more strongly. Our indigenous biodiversity is on serious decline, and it is very important that this document, arguably the only significant direction the government will provide, ensures that we maintain and improve our biodiversity, not just promote and encourage it (Debs Martin, 175).

Approximately 30 submitters stated that the objective should include enhancement or restoration of indigenous biodiversity:

The NPS should ‘promote’ both the ‘maintenance’ and ‘enhancement’ of indigenous biodiversity. Both are envisaged as essential approaches to protecting indigenous biodiversity. As the NPS policy is currently written, it has potential to undermine any approach to biodiversity protection that involves enhancement or restoration of habitat, species or ecosystems (Porirua City Council, 252).

Objective and policies are too weak on protection. In particular the objective to “promote the maintenance of biodiversity” (by various methods), falls well short of New Zealand’s international commitment under the 1992 Convention on Biological Diversity to “the conservation of biological diversity.” Conservation requires more than maintenance of what little is left (Alastair Jamieson, 143).

The NPS should explicitly recognise the need for restoration and enhancement to achieve maintenance of New Zealand’s indigenous biodiversity. As we understand it, simply maintaining the status quo is going to lead to further decline in biodiversity and active restoration and enhancement is required to even maintain what we have left (Raukawa Trust, 425).

The term maintenance is used which is defined as ‘no net loss’. Given the lack of baseline information and lack of definition of whether no net loss is considered in a national, regional, local or catchment level, maintenance alone will not adequately meet the RMA requirements of ‘protect’ (New Zealand Plant Conservation Network Inc., 223).

However, others, such as Hauraki District Council (397), believed that it would be impractical to require enhancement:

Enhancement is desirable, but it has been recognised that it is too high a level to require councils to achieve.

However, some other submitters stated that requiring maintenance (no net loss) was going too far. For example, TrustPower (344) submitted that:

... the definition of maintenance (and supplementary terms) in the Proposed NPS means that the intent of the objective is actually for there to be no net loss or reduction in the size of

species population and the areas they occupy. TrustPower considers that this approach does not accord with the general application of maintenance employed in the RMA ... an objective of no net loss or reduction in indigenous biodiversity is in direct conflict with the third bullet point of the objective, which refers to people and communities making “reasonable use of land” for economic, social and cultural wellbeing.

Many also said that protecting significant habitats was not enough:

Simply protecting existing significant vegetation and habitats may not address the decline because many habitats are already suboptimal and species are hanging on, for example in dryland habitats (Manfred von Tippelskirch, 341).

Protection is a poor proxy for ecosystem resilience, although it is certainly an indicator. Without effective and well resourced management, legal protection guards against little other than outright removal (Centre for Biodiversity and Ecology Research, University of Waikato, 52).

3.6.3 Biodiversity outside of “significant areas”

Some submitters felt that the requirement to ‘protect’ should only apply to areas identified as significant for the purpose of section 6(c) of the RMA:

The requirement in the objective to protect biodiversity values more broadly is of particular concern. While we support maintaining and where practical or affordable enhancing these values, ... a statutory status over and above that currently and will place further obligations on local authorities than those already provided for in the RMA (Federated Farmers, 434).

Another submitter stated that non-significant biodiversity should not be addressed at all:

The objective oversteps parameters of the RMA. The RMA only requires protection of areas of significance. Non-significant areas should not be regulated or addressed in the NPS (S. and T. Stark, 310).

However the vast majority of submitters who commented on this aspect of the objective believed that the NPS should apply to biodiversity outside of significant sites. For example, Environment Canterbury (417) stated that the objective:

... makes it clear that in maintaining indigenous biodiversity, the protection of significant sites under s6(c) is necessary but is not sufficient, and wider biodiversity values must also be addressed. Environment Canterbury strongly supports this.

Many submitters requested that the role of non-significant sites in maintaining biodiversity be made more explicit in the objective, including the following:

... it is important that the focus is not restricted to just ‘significant’ sites and habitats, as biodiversity protection requires a much wider recognition of the range of values, processes and interactions that occur within complex ecosystems. ... Council would recommend that they be to enhance the recognition of those ‘broader’ values (Clutha District Council, 58).

Add a clear strategic statement which: – recognises the need for ecologically resilient and varied landscapes, and – allows for and supports ecological functions and processes (eg migration utilising ecological linkages and corridors) (Waikato Regional Council, 351).

The objective statement... needs to be broadened to include not just significant habitats, but also representative examples of all habitats (Otago Conservation Board, 244).

3.6.4 The three bullet points

A number of submitted made general comments or suggested changes to the three bullets in the Objective, including the following:

We consider that the first two bullet points in the objective should be removed because they do not improve clarity or provide useful guidance. We agree that both of these aims are important and suggest that they be removed from the objective and made more transparent in other sections of the proposed NPS (Wellington Botanical Society, 31).

Watercare supports the objective, subject to the following: – It would seem that the need to improve the management of responses of councils should be part of the objective – recognising the positive contribution of landowners could also recognise that there are positive contributions made by other landowners (such as businesses) (Watercare Services Limited, 368).

There were also a number of submissions that dealt with each respective bullet in the objective. Comments on bullet point one (supporting the best practice of local authorities) included:

The use of the term ‘best practice’ in the objective may be problematic as this term will mean different things to different people (Southland District Council, 309).

The statement ‘supporting best practice of local authorities’ creates a tension with the policies. It is clear that there are many different approaches taken across the country. It is difficult to make judgement calls over which, if any, or these exhibit ‘best practice’ (Hurunui District Council, 408).

Supports the intent of the NPS of supporting existing best practice of local authorities, and not undermining existing initiatives and provisions (Auckland Council, 13).

What is best practice of local authorities? Tainui have fought for 40 years to stop wastewater disposal into our harbour and waterways to ‘maintain the ecological functioning of the marine environment’, yet local authorities with impunity pollute and destroy the biodiversity of the moana under the RMA. The best practice of tangata whenua is to protect the mauri a much higher threshold. This needs to be considered (Tainui Hapu ki Whaingaroa (Tainui) 319).

How does the NPS truly provide any additional support to the best practice of local authorities, over and above the status quo? (Hastings District Council, 120).

There were also a number of comments on bullet point two (recognising the positive contribution of landowners as guardians of their land), including the following:

The proposed objective also refers to “recognising the positive contribution of landowners as guardians/Kaitiaki of their land”. The only policy which addresses this matter is proposed Policy 8, and even then this is limited specifically to tangata whenua. It is also inappropriate to address the role of landowners in the proposed objective. The more appropriate venue for addressing the role of landowners is at a policy level (MainPower NZ Ltd and Solid Energy New Zealand Ltd 424, 431).

The objective, if it is to recognise the role of different sectors, should recognise the role of land managers and tangata whenua, not solely landowners (Raukawa Trust, 425).

A policy for management of indigenous biodiversity is needed, in part, because many landowners have not been, and are not, good guardians. Careful stewardship may be assumed of some, but not all, landowners. The present statement can be seen as a gesture of good will, ... but ... care should be taken to be precise in wording (Canterbury-Aoraki Conservation Board, 410).

Comments on bullet point three (recognising that the economic, social and cultural wellbeing of people and communities depends on, amongst other things, making reasonable use of land), related to a number of issues, but in particular, the reference to “reasonable use” attracted

conflicting views. Many submitters, particularly business and landowners viewed it positively, as did some councils, such as Waitomo District Council (357):

WDC acknowledges that the objective recognises the economic, social and cultural well being of people and communities depends on, amongst other things, making reasonable use of land. This is an important consideration especially in light of the limited growth potential within the district.

Some felt that while this part of the objective was laudable, it was not apparent in the policies themselves. For example:

Taranaki Federated Farmers is deeply concerned at the disconnect between the objective and policies of the proposed NPS. We believe that better balance needs to be struck between the protection of indigenous vegetation and providing for landowners social and economic wellbeing (Federated Farmers (Taranaki), 432).

The objective to recognise the economic, social, and cultural wellbeing of people and communities is an objective, but this is not carried through in the policies to the extent necessary to provide for the development of infrastructure that is critical to the wellbeing of the community (Watercare Services Limited, 368).

But many other submitters considered that the reference to “reasonable use” should be removed, including the following:

This sub-paragraph promises and implies matter for consideration in this NPS, which is well outside its scope. Reasonable use of land is in our view, best arbitrated by individual local authorities, not by central government, or a presiding minister. This NPS gives no guidance on how or when a council can proclaim when use of land is reasonable or when it isn't (New Zealand Deerstalkers' Association, 215).

I am concerned that the third bullet point may provide an avenue for land to be inappropriately excluded from protection based upon landowners need to maintain economically viable farms/forestry blocks, where in some cases the land may be marginal and best utilised by returning to indigenous cover (Samuel Lang, 159).

The Wellington Botanical Society (31) submitted that the “caveat” of “reasonable use of land” should be removed from the objective for a number of reasons, including that it:

... undermines the purpose of the RMA; introduces a tension between land uses which are “reasonable” for only a short period, and land uses which are always sustainable; risk that some landowners/councils argue that land use “reasonable” even if opportunities to maintain [significant] biodiversity will be lost ...

A number of submitters also stated that the third bullet should recognise the value of indigenous biodiversity (or ecosystem services) to the other wellbeings. Auckland Council (13) for example suggested that “reasonable use of land” needs to be counterbalanced with:

... recognition of the role of indigenous biodiversity in promoting the wellbeing of people and communities. In Auckland, indigenous ecosystems play a critical role in providing ecosystem services through such things as water supply, carbon storage, habitats for valued economic and recreational species, and landscape and recreation values, on both public and private land, and both to individuals and the community as a whole.

While Otago Conservation Board (244) submitted:

Add an additional bullet point under the objective, recognising that the economic, social and cultural well-being of people and communities depends on maintaining biodiversity and healthy indigenous ecosystems.

Some submitters (for example, New Zealand Institute of Forestry (238), Wellington Botanical Society (31) and Frank H (95) raised concerns about the definition of “reasonable use of land”, particularly its ambiguity, and the implications of this.

The following submitters requested that the application of the third bullet be widened beyond “land”:

The term ‘land’ should be replaced with ‘natural and physical resources’, and ‘reasonable’ should be deleted or replaced with ‘appropriate’. These suggested amendments are more consistent with the purpose and existing language of the RMA (New Zealand Wind Energy Association, 224).

The third bullet point of the Objective, referring to making reasonable use of land, is too specific. Land is only one of a number of natural and physical resources managed under the RMA, the use and development of which might affect biodiversity, but which need to be provided for (Contact Energy, 59).

“Would prefer third bullet point to state making reasonable use of land and resources, mainly in regard to water and mining effects (Southland Conservation Board, 308).”

3.6.5 Relationship of the objective with the RMA

A number of submitters urged for the objective to be made consistent with the RMA, including the following:

The current wording of the objective places different priority structure to actions such as protection, maintain and enhance than those currently accepted by councils and the courts in fulfilling councils functions under the Act (Federated Farmers of New Zealand, 434).

The Forum submits that the wording “maintain indigenous biodiversity” is used instead of “maintenance of indigenous biological diversity” to be aligned with the RMA (Waikato Biodiversity Forum, 349).

The Application and Objective incorrectly assume that the biodiversity protection provisions of Part 2 of the Act are largely confined to s.6(c). The scope of these sections, and the NPS, needs to be extended to include at least s.6(a) and 7(d), both of which address the ecosystem component of biodiversity, rather than just the species, habitat and ecotope focus of 6(c) (Chris Richmond, 275).

Some submitters commented specifically on the need to be consistent with section 6(c):

There is a discrepancy and potential conflict with RMA section 6(c). Section 6(c) directs that all local authorities, “... shall recognise and provide for ... The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”. As such, biodiversity protection is mandatory upon all local authorities. The use of the terms “promote” and “encourage” in the NPS objectives opens itself to the suggestion that these activities are not mandatory and therefore the NPS is setting a lower requirement than the principle Act (Porirua City Council, 252).

The objective implies a regulatory obligation on Councils and is arguably ultra vires as it fails to reflect the full scope of s6 of the Act. Persons exercising functions and powers under the Act are required to ‘... recognise and provide for ... ’ among other things ‘... the protection of ... ’. The objective should be reworded to reflect the intent and scope of s6. The words ‘protecting areas’ should be substituted with the words ‘... recognising and providing for the protection of areas ... ’ (New Plymouth District Council, 211).

One submitter stated the need to be more explicit about relationship with section 5:

OceanaGold submits that the principle that all resource management decisions, including those relating to significant biodiversity values, are subject to Part 2 of the Act needs to be

strengthened in the proposed NPS. OceanaGold therefore submits that the objective of the proposed NPS be redrafted to provide clarity that local authorities must weigh and balance competing interests, including biodiversity, in accordance with Part 2 of the Act (OceanaGold New Zealand Limited, 240).

Matamata-Piako District Council (335) submitted that the proposed NPS is only marginally helpful in providing direction over and above that already provided by the RMA:

The Objective seeks the same outcome as section 6(c) of the RMA. However, Paragraph 4 (“Application”) states that the NPS “is not intended to be a statement of all that is required in order to fulfil obligations under section 6(c) of the Act”. This approach in terms of which the NPS does not necessarily address all the requirements under s6(c) is confusing and only partially helpful in providing local authorities with clearer direction regarding their responsibilities under the RMA.

3.6.6 Clarity of wording/outcomes

A number of submitters commented that the objective was vague or unclear, contradictory, or that it was is not measurable, including Otago Regional Council (245), New Zealand Institute of Landscape Architects (222), J.B. and H.A. Brosnahan (35), Kerry Smith (301), Dave Withers (389). Submissions were also made on specific words used in the objective, for example:

We recommend inserting the word “indigenous” into the objective for a fourth time to clarity that the NPS does not require councils to promote non-indigenous biodiversity (Wellington Botanical Society, 31).

Use of the word communities also promotes confusion because the word ‘community’ is defined to mean a group of organisms. Clearly it is not meant to be used in the Objective in that sense (Contact Energy, 59).

The term ‘reasonable’ is not defined and in practice can be skewed to mean all sorts of things. An improved term could be ‘sustainable’. Obviously this is fraught as well, but may provide a better indicator (Debs Martin, 175).

Submitters also commented on the term “biodiversity values”, for example:

We also consider the use of “biodiversity values” creates an overly specific and complicated objective. We think the objective can be amended to state the intention to encourage protection of indigenous biodiversity outside of identified areas (implemented by Policy 6) without relying on the term “biodiversity values” (Genesis Energy, 104).

Use of another defined term in the Objective (biodiversity values) introduces yet more complication which could be simplified without losing what Contact understands to be the intent of the document (Contact Energy, 59).

This objective uses the strict biophysical interpretation of biodiversity values as defined in the interpretation. However, other wider aspects of biodiversity values (ecosystem services – economic, social and cultural values) may align better with this objective given its reference to these factors (Whangarei District Council, 380).

3.6.7 Suggestions for a different objective

Many submitters felt that the objective should be clearer about what it aims to achieve. For example:

The NPS should clearly identify the desired future state of the resource and establish a policy framework to ensure this is achieved. For certainty, this should include specific targets (Raukawa Trust, 425).

The objective lacks any inspirational goal or future direction for biodiversity (Waikato Biodiversity Forum, 349).

The objective is too broad and is unlikely to be achieved. A more focused objective that can be monitored to see if an achievable result is being progressed would be better (Western Bay of Plenty District Council, 376).

Some submitters felt that the objective of the NPS should be to introduce greater consistency to decision making. For example:

Amend objective so that the focus of the NPS is to provide nationally consistent criteria for the identification and determination areas of significant indigenous vegetation and significant habitats of indigenous fauna (New Zealand Wind Energy Association, 224).

We would also like to see it strengthened to more clearly identify specific standards to be met (Forest and Bird (West Coast), 372).

Other submitters commented on the lack of a Māori perspective in the objective:

This Policy does not provide a framework for cultural landscape which is needed to fully indicate significant habitat for native species; and secondly the policy does not consider Mātauranga Māori as a paradigm for assessing significant habitat for native species (Ngati Tuwharetoa (BOP) Settlement Trust, 228).

The objective of the policy statement must be consistent with the Convention on Biological Diversity Article 8(j) which ensures that in the protection of biodiversity the protection of indigenous knowledge or Mātauranga Māori relating to biodiversity is also protected (Ngati Hine, 421).

Submitters also said the objective should:

- encourage greater commercial use of indigenous biodiversity, for example for shelterbelts, mānuka honey etc
- promote non-regulatory measures to protect and/or enhance biodiversity
- recognise the effects of climate change
- recognise the effects of other environmental factors and the interconnectivity of ecological systems
- specifically recognise endangered species
- acknowledge the current efforts of landowners to protect and enhance biodiversity
- recognise the value of non-indigenous biodiversity
- provide more guidance on how to address conflicts between biodiversity protection and resource use
- use Objective 1 of New Zealand Coastal Policy Statement as a model.

3.6.8 Do the policies together achieve the objective?

Submitters who commented on this topic were generally of a view that the policies are not sufficient to achieve the objective. Reasons given for why the policies would not achieve the objective were:

- the language is unclear and this will make implementation difficult
- there is a lack of support for implementation of policies (eg, funding for monitoring and incentives)
- the policies do not present an integrated approach to managing biodiversity
- the policies are too complex
- the policies do not give any greater clarity about how the “balance” between biodiversity protection and reasonable land use should be struck.

Others suggested a different approach was needed to fulfil the objective. For example:

The NPS implies a regulatory approach, which, through our experience with SNA landowners and district plan development over the last 20 years, is the least efficient and least effective method of implementation to halt the decline of indigenous biodiversity on private property (New Plymouth District Council, 211).

TIA is concerned that the clarity, support and encouragement intended for local authorities, may not be met by this NPS and we question whether an NPS is even the correct means for achieving these outcomes. Rather than create yet another planning document to compensate for lack of guidance within the Resource Management Act (RMA), it may make more sense to change the Act itself (Tourism Industry Association of New Zealand, 342).

A number of submitters specifically commented that the policies were not sufficient to achieve the objective of promoting the maintenance of biodiversity:

There seems to be an assumption that area (therefore biomass) is the key to success. This is clearly not the case. There will be areas of early regen[erating] scrub with high biodiversity values especially if long term weed threats and pests are controlled. Equally poorly managed monocultures of native beech forest may have relatively lower values, and be continuing to lose diversity (Philip Lissaman, 164).

We do not believe the NPS in its current form can achieve the stated objective of promoting the maintenance of New Zealand’s indigenous biodiversity. In order to be effective, this policy needs to provide more clarity on what is to be protected, the mechanisms and drivers required in order to achieve protection, and on who is responsible for maintaining biodiversity at the local, regional and national scales (Fonterra Co-operative Group Limited (Dairy NZ), 90).

The proposals may find an absolute ‘bottom line’, but will not reverse the tide, nor maintain biodiversity. It may result in some ‘small’ representative areas being identified in plans, no support undertaken to protect them from vegetation removal (i.e. no requirement for rules), and no support for dealing with significant pest and weed problems, and other issues, e.g. stock destruction (Debs Martin, 175).

4 Policy 1 – Defining significant areas and habitats for the purpose of the NPS

The objective of Policy 1 is to clarify that the NPS is not intended to limit what councils can consider as significant indigenous vegetation or habitat. It aims to ensure the NPS does not cut across what local authorities might be doing in respect of section 6(c) for reasons other than biodiversity maintenance or protection, while clarifying that at least one legitimate measure of “significance” is whether an area or habitat contributes to the maintenance of biodiversity.

About a third of all submitters (141) commented on Policy 1. Of these, about half either supported the policy in full or in part, while just under a third opposed the policy (45). (The remainder did not state a preference.)

The most common point raised by submitters was that the wording of Policy 1 was unclear and created considerable uncertainty as to how the policy may be interpreted and applied.

Feedback from submitters has been summarised under the following main themes:

- policy intent
- definitions for “significant” and “important”
- circular reasoning
- maintenance of indigenous biodiversity – scope too broad
- maintenance of indigenous biodiversity – scope too narrow.

4.1 Policy intent

Submitters supporting the policy commented that the policy provided useful guidance to territorial authorities, noting that without it, the NPS may be incorrectly interpreted as a definitive statement of a local authority’s obligations under section 6(c).

A number of submitters supported the intent of Policy 1 as outlined in the Section 32 evaluation to clarify that the proposed NPS is not intended to limit a territorial authority’s section 6(c) obligations to just those specified in the proposed NPS. However, submitters commented that the wording of the policy did not reflect the policy intent.

A number of submitters identified that Policy 1 duplicated guidance provided in the Application section, which states that the proposed NPS is not intended to be a statement of all that is required to fulfil obligations under section 6(c) of the Act. These submitters recommended that Policy 1 be deleted and the Application section be amended to provide clearer guidance to territorial authorities. For example:

This proposed policy is unclear and does not add value to the proposed NPS. If this policy was intended to specify that the proposed NPS does not limit responses under section 6 (c) of the Resource Management Act 1991 (RMA), then that should be stated explicitly. ORC considers that in its current form this policy should be deleted or incorporated into the Application section (Otago Regional Council, 245).

Environment Canterbury recognises and supports the intent behind Policy 1, which is to make it clear that the PNPS is not intended to limit local authorities' interpretation of their s6(c) obligations to just those areas specified in the PNPS. As written however, Policy 1 is more a definition than a policy. Furthermore, Part 4 'Application' already makes this point, making Policy 1 apparently superfluous. Consequently, Environment Canterbury submits that Policy 1 should be deleted. Consideration could be given to incorporating the wording of Policy 1 into Part 4 'Application' to reinforce the intended context of the words "area of significant indigenous vegetation or a significant habitat of indigenous fauna" when used within the PNPS (Environment Canterbury, 417).

One submitter questioned the premise that Policy 1 sought to address, that s6(c) was being applied by councils to provide for matters other than biodiversity:

We are not aware of section 6(c) being applied to sites valued "for conservation in a more general sense; sites valued for landscape, amenity or cultural reasons", and if the drafters have any specific examples in mind we would be pleased to learn of them. Rather our understanding is that section 6(c) is wholly concerned with biodiversity. Of course, local authorities might protect indigenous vegetation for reasons other than indigenous biodiversity, but we believe that this occurs under duties or functions other than section 6(c) (for example, the unified ground cover afforded by an area of indigenous tussock might contribute to a landscape or feature's outstandingness under section 6(b), and this might result in the tussock receiving a measure of protection) (Forest and Bird (Head Office, 91).

4.2 Definitions of "significant" and "important"

A large number of submitters expressed concern that there was no definition provided for the words "significant" or "important" used within Policy 1. Many submitters were of the opinion that this would have negative consequences and undermine the benefits that the proposed NPS intended to deliver. Submitters identified a number of issues relating to the lack of definition of these terms, including: the potential for inconsistent policy interpretation and biodiversity outcomes throughout the country; significant implementation costs for councils, landowners and rate payers; increased uncertainty for landowners and developers; and increased litigation. For example:

Policy 1 is very vague and leaves a lot of room for inconsistent interpretation by local authorities of the meaning of term 'significant.' When there is prevalent dismissiveness of the importance of biodiversity conservation within local authorities (as there is on the West coast), it is highly likely that these attitudes will shape the categorisation of what ecosystems are considered 'important' in this context (Karen Mayhew, 182).

Policy 1 is weak and does not provide clarity or guidance as to what is 'significant'. It is hard to see what value this policy adds... Decision Sought: Amend the policy to provide clearer guidance as to 'significance' (Hurunui District Council, 408).

While Policy 2 gives some context to policy 1, it is unclear what important means in policy one and this will lead to different interpretations under the Act (Federated Farmers of New Zealand, 434).

The terms "significant indigenous vegetation" and "significant habitat of indigenous fauna" are not adequately defined by the explanation "is an area or habitat whose protection is important for the maintenance of indigenous biological diversity". For Councils seeking a definition that is meaningful for District Plan purposes the lack of an adequate definition in the NPS is likely to lead to expensive and extensive action through the Environment Court to define these terms (Stratford District Council, 316).

While Policy 1 may be consistent with the objective of the NPS, the wording of the policy is not entirely clear ... The wording opens up the potential for on-going legal challenges from landowners and conservation groups etc over whether areas are ‘important’ for the maintenance of indigenous biological diversity (Hastings District Council, 120).

Of particular concern is that Policy 1 provides no context or direction to local authorities or resource users as to how an area or habitat should be evaluated for its “importance” for the maintenance of indigenous biodiversity. TrustPower submits that this lack of direction as to what qualifies as being important for indigenous biodiversity will lead to considerable debate amongst ecological experts and litigation as to whether areas of habitats trigger the application of section 6(c) of the RMA (TrustPower Ltd, 344).

The policy as written is vague and very broad which, in our experience, will lead to later conflict between organisations and expensive legal battles to effectively determine what is meant (Forest and Bird (West Coast), 372).

Policy 1 is effectively a definition. As a policy it will not assist local authorities to promote the maintenance of biological diversity. Our concern is that this policy opens up opportunities for significant litigation around the determination of “important” (Hawke’s Bay Regional Council, 124).

The lack of clarity will result in considerable uncertainty as to which areas would fall within the definition of an “area of significance” and potentially increase the costs associated with planning for infrastructure investment (Watercare Services Limited, 368).

4.3 Circular reasoning

A number of submitters identified circular reasoning in the wording of Policy 1. Submitters noted that this was unhelpful and confusing. They recommended that Policy 1 be deleted noting that Policy 2 provided for regional and district councils to identify significant areas.

The statement that an area of significant indigenous vegetation or a significant habitat of indigenous fauna is an area or habitat whose protection is ‘important’ for the maintenance of indigenous biodiversity merely defines one under defined concept (‘significant’) by reference to another undefined concept (Contact Energy Ltd, 59).

Proposed Policy One is effectively providing that indigenous vegetation or habitat of indigenous fauna is significant, because it is important (Resource Management Law Association, 277).

4.4 Maintenance of biodiversity: scope of Policy 1 is too broad

Many landowners, and some businesses and industry organisations expressed concern that by including reference to the maintenance of indigenous biodiversity, Policy 1 broadened the scope of the proposed NPS, and the current interpretation and implementation of Section 6(c).

By its definition in the NPS, maintenance means ‘no net loss’. Federated Farmers considers that reference to the maintenance of biological diversity in Policy 1 is all too encompassing. If an area of indigenous vegetation and or a habitat of indigenous fauna is being lost, irrespective of its significance on a district, regional or national scale it may be considered “important” to “maintain” biological diversity (Federated Farmers of New Zealand, 434).

A number of submitters recommended that Policy 1 be deleted and that the proposed NPS be limited in scope to matters of national importance under the Act, focused only on priority sites that met certain significance thresholds.

Many landowners were particularly concerned the broad scope and ambiguity of Policy 1 would lead to new constraints being placed on existing land use practices such as clearing regenerating woody shrubs and trees (such as mānuka and kānuka) on previously cleared farmland. (Submissions on the potential effects of the proposed NPS are discussed in greater detail in Section 19 – Other issues and effects.)

4.5 Maintenance of biodiversity: scope of Policy 1 is too narrow

A number of submitters expressed the opposite view to those above: that the uncertainty and vagueness of Policy 1 was likely to result in significant confusion and a narrow interpretation of the proposed NPS.

Without clearer direction confusion would exist as to whether only “significant” vegetation and habitat is required to be protected, or whether maintenance of biological diversity requires protection of some vegetation and habitat that does not reach the “significant” mark. It is therefore preferable to define “important to the maintenance of biological diversity”, instead of defining “significant” (Forest and Bird (Head Office), 91).

Submitters also questioned how Policy 1 and the reference to “important for the maintenance of biological diversity” related to other policies of the proposed NPS.

It is not clear how the Policy 1 definition relates to the other policies; in particular Policy 2 and Policy 6. Is it the drafters’ intention that for the purposes of the NPS, Policy 2 vegetation and habitat areas (only) satisfy the test of “important for the maintenance of biological diversity”? Or are those matters set out in Policy 6 also “important”? Alternatively, is there no connection between the definition of Policy 1 and Policies 2 and 6? (Forest and Bird (Head Office), 91).

Many submitters recommended that Policy 1 be clarified to provide guidance for the maintenance of biological diversity, and in particular, ecosystems and ecological functioning. Submitters highlighted that the maintenance of biological diversity would not be achieved through section 6(c) alone and that clearer direction was needed in respect to all of the functions and duties within the RMA that are relevant to the maintenance of indigenous biodiversity.

While NZES supports the need for guidance and direction on section 6(c), the protection of indigenous biodiversity requires significantly more than just this section of the RMA ... For the maintenance of indigenous biodiversity and the persistence of biodiversity pattern and evolutionary processes it is important for the NPS to address other aspects of Part 5, 6 and 7 of the RMA ... (New Zealand Ecological Society, 237).

We agree that the NPS should not set out to provide direction on matters other than biodiversity, however the NPS would provide much greater clarity if it purported to provide comprehensive national direction to local authorities in relation to all of their functions and duties which are relevant to the maintenance of indigenous biodiversity (section 5(2)(a) to (c), section 6(c), section 7(d)&(f), sections 30(1)(c)(iii) and 30(1) (ga) (for regional authorities) and 31(b)(iii) (for territorial authorities) (Forest and Bird (Head Office), 91).

5 Policy 2 – Criteria for identifying significant biodiversity

Policy 2 sets out five standard criteria to assist in the identification of areas of native vegetation and habitats of native species that are rare and/or threatened at the national level. These criteria are drawn from the *National Priorities for Protecting Rare and Threatened Native Biodiversity on Private Land*, published in 2007. Councils are required to apply these standard criteria when considering a resource consent application or any other matter.

Around 250 submissions (about 60 per cent of submitters) commented on Policy 2. About 30 stated they supported the policy, while about 50 supported it in part. About 40 submissions were opposed to the policy. The remainder did not state a preference.

5.1 Clarity of wording and intention

About 150 submitters commented on the clarity of the policy’s wording and intention. Around 40 considered that the wording and intention of the policy were clear. About 60 did not think the policy was clear, while the remainder did not state a preference. Reasons why submitters believed the policy was unclear were wide-ranging, and included the following:

- the policy was too long and complicated
- the opening sentence was difficult to read and unclear in its intent
- the requirement to protect all indigenous vegetation was unclear and too broad. It could be interpreted to include very small areas (eg, single trees) and low quality vegetation (eg, regenerating scrubland)
- it was unclear what was meant by “associated with” and there was no definition of “indigenous fauna”
- the criteria were concepts and did not provide precise direction on what was significant, nor was there any definition of significance
- in respect to 2e, it was unclear to what extent an area must be associated with a threatened species to make it significant
- wording of criteria 2a–e differed from those contained in the Statement of National Priorities (2007). This could lead to confusion and inconsistency in its application
- the list of naturally uncommon ecosystems (NUEs) in Policy 2a and Schedule 1 could be interpreted inconsistently in terms of land extent. The term “naturally uncommon ecosystems” was also inconsistent with the term used in the National Priorities (“naturally uncommon historically rare ecosystem types”) and this could cause confusion
- the criteria for sand dunes and wetlands (Policies 2a and b) were too broad and there was a lack of clarity in relation to what constitutes indigenous vegetation or habitats associated with these areas
- use of Level IV Land Environments of New Zealand (LENZ) maps for defining land environments with 20 per cent or less remaining in indigenous vegetation cover (Policy 2d) was too broad and difficult to implement, due to the scale of the LENZ maps. It is also unclear as to what should be deemed significant within the land environments

- the identification of habitats of threatened and at risk species (Policy 2e) was ambiguous and not quantifiable
- it was unclear how freshwater bodies (outside of wetlands) should be treated under this policy and the NPS as a whole.

5.2 Consistency of policy with objective

About 65 submissions commented on the consistency of Policy 2 with the stated objective. Around half considered that the policy was consistent with the objective, while about 25 did not think it was consistent. The remainder did not state a preference.

Several submitters considered that the policy did not meet the objective because it did not recognise the full range of ecosystems that needed protection to promote the maintenance of indigenous biodiversity. Stratford District Council (316) noted that the objective of the NPS was “protection of significant indigenous vegetation and significant habitats of indigenous fauna”, but Policy 2 only required local authorities to consider the effects on identified areas. They considered this requirement did not necessarily constitute protection. The West Coast Blue Penguin Trust (339) commented that the policy should include protection of declining species (those species trending towards threatened status), while Gillian Pollock (401) submitted that it should include freshwater habitats. Several submitters considered that Schedule 1, which lists NUEs, should be expanded to achieve a wider ecosystem approach and better meet the objective.

Hamish and Wynne de Lautour (67) believed the policy was inconsistent with the objective because it potentially went further than the objective. This is because it could result in the identification of indigenous vegetation and habitats of indigenous fauna that are not significant.

Conversely, the Environmental Defence Society (81) stated that Policy 2 was consistent with the objective because it:

... present[s] the listed as minimum (or bottom line) criteria. This protects the ability of councils to apply more inclusive criteria for assessing significance to achieve the overall objective of the NPS of promoting the maintenance of indigenous biodiversity.

5.3 Implications/effects of the policy

5.3.1 Definition of significance

A significant number of submitters raised concerns that Policy 2 would considerably broaden the scope and application of section 6(c) of the RMA. According to these submissions, that would mean that more areas of vegetation and habitats could be taken into consideration and identified as significant by councils, and highly modified/developed, man-made and/or operational areas could also be considered.

Submissions from business and industry groups expressed concerns that an expanded definition of significance could impact existing economic activities. In particular, industries such as plantation forestry, mining and electricity generation operate on land with potentially large areas falling within the criteria of Policy 2.

Submitters from the farming sector were particularly concerned that the policy would expand the definition of significance to include potentially “low-value” areas/vegetation such as regenerating indigenous scrub (eg, kānuka/mānuka) or even pest species such as gorse, broom and wilding pines. They submitted that reducing their ability to clear this vegetation would impact on the economic viability of their farms. Murray Redpath (270) was representative of many landowner concerns:

Section d of the policy appears reasonable initially until the implications on regenerating land are considered. These vegetation associations are likely to be deemed rare because they are transitional ecotypes resulting from the clearance of original vegetation. Restrictions on the ability to freely develop this land may make future development expensive and threaten the economic viability of the farm ...

Most local authority submitters were generally supportive of bottom-line criteria for identifying areas to be regarded as significant. The primary reason for this support was that the policy would bring more clarity and certainty for the public and to council decision-making. However, many council submitters were concerned that the protection of further areas/habitats would mean increased implementation costs for councils and costs for affected landowners. For instance, Whakatane District Council (378) raised concerns that the policy’s criteria may undermine the council’s previous investment in developing significance criteria and identifying significant natural areas. This submitter noted that the introduction of new criteria may cause confusion and uncertainty.

A number of submitters considered that the areas to be identified as significant in Policy 2 would not adequately address the decline in indigenous biodiversity. Some submitters commented that the criteria identified smaller, fragmented areas but did not address the larger, more extensive natural areas that may have more value for an ecosystem. For example, Genesis Energy (104) considered a “one size fits all” approach to define and identify significant vegetation and habitats did not adequately enable the unique elements of each location to be considered. Ngati Kahungunu Iwi Incorporated (227) commented that identifying significant biodiversity at a national level could “lower the bar” because species decline may be allowed to occur until it is nationally threatened before any positive action is taken.

5.3.2 Naturally uncommon ecosystems

A small number of submitters commented on the effects of identifying Naturally Uncommon Ecosystems (NUEs) listed in Schedule 1 of the NPS. For example, Anne Ward (364) and Genesis Energy (104) were concerned that Schedule 1 could result in substantial areas of the country being identified as significant, with Genesis Energy of the opinion that “some of these NUEs could be found on practically every farm”. Taranaki/Whanganui Conservation Board (322) considered that a finite list of NUEs may be limiting. Western Bay of Plenty District Council (376) expressed their concern that few territorial authorities and landowners would have access to the in-house ecological expertise to identify NUEs.

5.3.3 Indigenous vegetation associated with sand dunes

A small number of submitters commented specifically on the effects of Policy 2b – identification of indigenous vegetation associated with sand dunes. New Zealand Ecological Society (237) submitted that the criterion would provide urgently needed protection for sand dunes, which are highly threatened ecosystems and much reduced from their former extent. Hancock Forest Management (NZ) (116) expressed concerns that many commercial plantation forests would qualify as habitats associated with sand dunes. In contrast, New Zealand Farm Forestry Association (217) considered that the criterion would have very little impact on exotic forestry operations.

5.3.4 Indigenous vegetation associated with wetlands

About 10 submitters commented specifically on the effects of Policy 2c – identification of indigenous vegetation associated with wetlands. Most submitters were concerned that the policy required all wetlands to be identified as significant. This, combined with the application of the RMA definition of “wetland” (permanently or intermittently wet areas), raised concerns that the policy’s application would be too broad and include potentially “low-value” wetlands.

Hancock Forest Management (116) and King Country Energy Limited (153) submitted that the identification of wetlands as significant might impede their existing or future commercial operations. King Country Energy Limited specifically noted that this criterion may limit hydro-electricity generation and threaten the Government’s target of 90 per cent electricity generated through renewable energy sources by 2025. This submitter also considered that the policy was inconsistent with the objective of the National Policy Statement for Renewable Electricity Generation.

P. and S. Woolley (390) submitted that the criterion would put restrictions on drainage of low-value wetlands, which would reduce the productivity of farms.

West Coast Regional Council (374) raised concerns with the policy’s application in the West Coast region. The Council was concerned that:

... given the soils and rainfall on the West Coast, ‘permanently or intermittently wet areas’ could apply to most, if not all, of the flat land within the West Coast region suitable for agriculture and other economic uses.

The Council further stated that Policy 2c did not achieve a balance between protection of biodiversity and making reasonable use of land. The Council also submitted that the identification of all wetlands on the West Coast as significant would not benefit indigenous biodiversity in the region or nationally. The reason given for this was that the abundance of wetlands in the West Coast would lead to protection of many examples of similar wetlands. They Council considered that many West Coast landowners would be “forced to forego any economic development of their land for no benefit to biodiversity”.

5.3.5 Indigenous vegetation associated with LENZ 20 per cent or less remaining in indigenous vegetation cover

A number of submitters (including several local authorities) raised concerns about the limitations of LENZ for mapping on smaller scales, particularly at property level or for finer-scale analyses of ecosystems. Philip Lissaman (164) commented that LENZ inaccuracies, and a lack of uniform and accepted criteria for significance, would mean significance is more easily challenged.

Some local authorities considered that the requirement to identify vegetation with 20 per cent or less remaining was unclear as to whether this applied to a property scale or to a LENZ environment scale. Dunedin City Council (74) stated that it was unclear whether the criterion applied to existing vegetation or to vegetation originally present. Other local authorities were concerned that the policy would cover large areas of land within their districts. They said this could lead to high survey costs and the potential for community conflict where these areas were identified and mapped/scheduled under Policy 4 without landowner agreement.

A number of landowners commented on Policy 2d in relation to its application to regenerating vegetation. Specifically, submitters stated that due to the NPS's definition of "indigenous vegetation", Policy 2 could be interpreted as including regenerating indigenous vegetation (such as mānuka and kānuka) as significant.

A significant number of submitters stated that the inclusion of regenerating vegetation would be unacceptable because its clearance is an essential part of farm management. They stated that the effects of its inclusion would be significant and wide-ranging, including in respect to:

- adding costs to farming activities
- reduction in areas that could potentially be farmed
- devaluing farms
- leading to a reduction stock numbers (and therefore productivity)
- potentially requiring landowners to obtain resource consent for many farm activities
- increasing costs for local authorities in terms of implementation, monitoring and enforcement
- wider effects on regional economic development and sustainability.

Other concerns were that Policy 2d would capture many small, fragmented blocks of vegetation and that many of these sites may not be viable without active long-term management by local government. Whangarei District Council (380) also suggested that this policy may make it more difficult to promote planting within LENZ less than 20 per cent areas, because regulation under the NPS would be a disincentive to planting.

5.3.6 Habitats of threatened and at risk species

Less than 20 submitters commented on the effects of Policy 2e – identifying habitats of threatened and at risk species. Most submitters raised concerns that the criterion would be too broad, potentially capturing any environment (from natural to highly modified or even man-made) where threatened or at risk species may reside for some or all of their life cycle. There were wide-spread concerns amongst submitters that the identification of these areas as significant would have considerable impact on the "reasonable use" of private land.

Some industry submitters (such as forest owners, electricity generators and mining companies) stated that their operational properties are often frequented by threatened or at risk species. They raised concerns that large areas of their properties could be identified as significant, which would negatively impact on their operations. Submissions from landowners also stated concerns that large parts of their land could be deemed significant under this criterion, leading to the land either being “locked up” (ie, having restrictions placed on its use) or requiring resource consent before development could occur. Contact Energy Ltd (59) summed up the views of many submitters who commented on this issue:

At risk species include species with populations in the tens of thousands if not hundreds of thousands that range over large parts of New Zealand. Deeming their entire range to be significant with no further site assessment could severely limit use and development of the land, without necessarily making a material impact on the factors causing the species population decline.

A number of submitters noted that Policy 2e relied on the Department of Conservation’s (DOC) classifications of threatened and at risk species. They were concerned that these classifications could be amended by DOC without public consultation or appeal by affected landowners. Kapiti Coast District Council (151) also suggested that DOC’s national classifications did not reflect local conditions accurately.

Several local authority submitters raised concerns about practical difficulties with implementing Policy 2e. Central Otago District Council (51) summed up many of these concerns:

... some threatened plants are seasonal and/or very small in size ... The habitats of such threatened or at risk species will be incredibly difficult to identify and map.

John Bowen and Peter McKenzie (32) also noted that:

... identifying ‘habitats of threatened and at risk species’ is a massive job. It would require large extensive initial survey as well as ongoing surveys/reviews with terms of engagement agreed to by all interested parties beforehand As councils do not have the expertise to undertake this work themselves, specialised independent consultations will be required.

Heather Wallace (362) commented that the policy would have very positive effects because it would potentially give protection to habitats of threatened indigenous species whenever they are identified when considering matters under the RMA. Wellington City Council (371) noted that:

The policy has the potential to require areas of exotic vegetation to be protected where these contain habitats of threatened or at risk species and overall this concept is not opposed.

5.3.7 General implications and effects of the policy

There were a wide range of comments from submitters about the general implications/effects of Policy 2. These included that the policy will:

- reduce the profitability of farms and other properties with associated economic consequences
- affect the capital value of properties
- impede the current and future operation of industry/business
- reduce biodiversity intervention by local government to a bottom-line, which will not achieve the objective of the NPS
- jeopardise the good faith of landowners and voluntary action to preserve indigenous biodiversity
- increase costs for local authorities.

J.B. and H.A. Brosnahan's (35) submission was representative of many submitters' concerns regarding the economic implications of Policy 2:

... a) It will remove those areas [areas of significant indigenous biodiversity] from any current or potential contribution to the economic output of a given title; and b) It will adversely affect the capital value of thousands of affected titles – and therefore will likely affect the debt-equity ratios in those properties.

Similarly, the submission by King Country Energy Ltd (153) was typical of the concerns expressed by business/industry submitters in this respect:

... the wording of the policy may impede its existing lawfully established HEPS [hydro power stations], and any upgrading, repair, maintenance, reasonable development or enhancement of these schemes.

Dave Withers (389) and J. and A. McGuinness (188) summed up the opinions of many landowners in respect to this policy:

... will result in many landowners and farmers being disadvantaged and restricted by not allowing them the right to develop their own land to a clean, profitable and viable business to support the economy of New Zealand ...

The policy as worded risks alienating the landowners who will have the greatest effect on its success because of the possibility of remote intervention by rule rather than by individual co-operation.

Local authorities were mainly concerned about the difficulties and costs related to implementing, monitoring and enforcing the policy, as illustrated by Southland District Council (309) and Whangarei District Council (380):

This policy is likely to significantly increase costs for local authorities, particularly those with regions or districts that have larger areas covered by indigenous vegetation and indigenous fauna as listed in a–d (309).

... Policy 2 is likely to increase the work-load relating to resource consents, as Policy 2 will outline matters that need to be addressed irrespective of whether significant indigenous biodiversity is mapped or scheduled in the local plan (380).

5.4 Suggested changes to Policy 2

The majority of submitters who commented on Policy 2 appeared to agree with the approach of listing a bottom-line set of criteria to be used by all councils to assess significance for the purpose of section 6(c) of the RMA. However, while agreeing with the underlying approach, most submitters suggested changes to the list of significant indigenous vegetation and habitats. Suggested changes to Policy 2 were wide-ranging, and are summarised below:

5.4.1 General changes

Many submitters suggested changes to Policy 2 without specifically referring to the criteria 2a–e. A common theme amongst submitters was the need for more guidance associated with the policy. A number of submitters, particularly from the business/industry sectors, considered that the policy should provide guidance for assessing what should be identified as “significant”. For example, MainPower NZ Ltd (424) suggested more guidance for councils was required to aid them to accurately define spatial areas identified as significant under the policy.

Several submitters stated that the NPS should establish a scale or criteria for assessing significance, while others suggested that the NPS explicitly outline which areas are to be considered significant and why. In particular, a number of submitters considered that there was a need for the policy to include the concept of “degrees of significance”. For example, Roger May (181) submitted that:

There is a need for the proposed NPS to outline the concept of degrees of significance. A patch of indigenous biodiversity in the landscape cannot be classified as being significant or not; in fact it is illogical for ‘significance’ to be assessed as a dichotomy. Instead, the ‘significance’ of any patch of indigenous biodiversity will sit somewhere on a gradient.

Several submitters were of the opinion that the policy should be narrowed and more specific. For example, the New Zealand Forest Owners Association (218) commented that the policy should exclude all plantations that have been established for commercial harvesting and associated indigenous understory.

A number of submitters, particularly environmental groups and regional councils, suggested additional criteria. A common suggestion was that the policy should explicitly include freshwater/aquatic ecosystems and habitats. Greater Wellington Regional Council (110) was representative of these submitters in stating:

Policy 2 should make equivalent provision for freshwater, as that currently provided for terrestrial ecosystems using the LENZ environments. This provision could be constructed around the FENZ classification produced by the Department of Conservation (Leathwick et al, 2011).

Chris Richmond (275) commented that the policy could:

... include at least Waterbodies of National Importance (ie WONIs from 2005 Cabinet papers), and submerged vegetation that has no significant alien plant component (ie extremely rare now).

Several submitters considered that the areas to be identified as significant in Policy 2 needed to be expanded to encompass more elements of a naturally functioning ecosystem. For example, Michael North (232) stated that, in addition to the policy’s listed criteria, it should include:

... the now generally accepted standard significance assessment criteria of representativeness, rarity (further aspects thereof than listed in Policy 2), naturalness, diversity and pattern, connectivity, and buffering.

Steve Urlich (346) suggested the replacement of Policies 2d and e with:

- d. Rarity and distinctiveness of indigenous species.
- e. Representativeness of species composition and habitat with its ecological context.
- f. Sustainability of habitat and ecosystem function.

Several iwi/Māori submitters considered that the criteria in Policy 2 did not take into account areas that may be significant to Māori. For example, Ngati Tuwharetoa (BOP) Settlement Trust (228) submitted that:

Having standard criteria for identifying significant vegetation does not take into account the various tribal tikanga that relate to different plant species – eg. Taonga species.

Submitters who commented on this issue were of the opinion that taonga species should be identified, or include criteria that take on board Māori classification systems.

Other suggested criteria and areas for inclusion in Policy 2 were:

- coastal and marine environments, such as estuaries
- criteria to protect specific populations, subspecies, species, habitats and ecosystems
- criteria for degraded habitats that pose a threat to neighbouring habitats
- criteria to recognise sites that are important to tangata whenua and/or other communities of interest.

5.4.2 Suggested changes to Policy 2a – Naturally Uncommon Ecosystems (NUEs) and Schedule 1

Submitters provided a wide range of suggested changes related to Policy 2a. Many considered the list of NUEs in Schedule 1 was unsatisfactory for reasons such as:

- issues with scientific uncertainty with the areas identified
- not identifying enough areas
- applying to physical characteristics and landforms as a proxy for biodiversity
- lacking information on NUE location and extent.

Some submitters considered that a specific schedule of NUEs was unnecessary and should be removed. Other submitters considered the list should be removed or indicative until further consultation and research is undertaken. Bruce Burns (44) suggested a mechanism to allow amendments to Schedule 1 at regular intervals. West Coast Regional Council (374) requested that “... the Schedule 1 list be removed until further research has been undertaken and these ‘naturally uncommon ecosystem types’ have been accurately mapped”.

Other submitters considered that the Schedule should not be exclusive. The New Zealand Ecological Society (237) submitted that:

The NPS should also allow for local authorities to identify and address protection of regionally and locally uncommon ecosystem types that are important for the maintenance of biodiversity at a regional and local scale.

A number of submitters expressed the opinion that Schedule 1 should be expanded to include additional environments, such as drylands, freshwater habitats, underground aquifers, naturally uncommon river and lake systems, gumlands etc. Hamilton City Council (115) stated that the Schedule should include a list of ecosystems that have become nationally uncommon through human activity.

Some submitters believed the list of NUEs was too broad. They suggested removing environments, such as shingle beaches and braided riverbeds, because they are considered common.

5.4.3 Suggested changes to Policy 2b – indigenous vegetation associated with sand dunes

A small number of submitters commented specifically on criterion 2b. Invercargill City Council (141) stated that there needed to be more details and guidance on what constituted indigenous vegetation or habitats associated with sand dunes and wetlands. Juken New Zealand Ltd (147) considered that there needed to be exclusion for sand dune and wetland areas within plantations or other commercial crops.

5.4.4 Suggested changes to Policy 2c – indigenous vegetation associated with wetlands

Many submitters who suggested changes to Policy 2c expressed the opinion that the criterion should be narrowed and/or qualified to capture fewer wetlands. This included excluding wetlands in and around storage facilities or in plantations or other commercial crops. Submitters also commented that a minimum size of wetland should be defined.

In contrast, other submitters considered the criterion should be widened to include other waterbodies. For example, Samuel Lang (159) and Hamilton City Council (115) submitted:

I propose that freshwater ecosystems other than wetlands also be included in recognition of the key role that they play in both the natural and human environment (159).

... peat lakes, riparian margins and tributaries do not appear to be included within the policy as they are not captured within the category of wetlands, and suggests that the policy is amended to include these (115).

Some submitters suggested changes to improve clarity and implementation of the policy. For example, Solid Energy New Zealand Ltd (431) submitted:

The NPS should be amended to provide a more reasoned and balanced approach for the inclusion of wetlands and more guidance as to how wetlands should be defined ...

As noted above under Policy 2b, Invercargill City Council (141) considered there should be more guidance on what constituted indigenous vegetation or habitats associated with wetlands. Rangitata Diversion Race Management Limited (264) stated that the policy should clarify how councils handle the assessment of significance when wetlands are man-made.

The West Coast Regional Council (374) suggested the replacement of Policy 2c with a directive to protect at least 30 per cent of the pre-European wetland types in each district and region. This submitter believed the protection of a percentage of different wetland “types” was more efficient and balanced, and had a better chance of enhancing biodiversity.

5.4.5 Suggested changes to Policy 2d – indigenous vegetation associated with LENZ 20 per cent or less remaining in indigenous vegetation cover

A significant number of submissions commented on Policy 2d. Most wanted its scope to be narrowed in terms of areas captured, or for the criterion to be removed altogether.

As noted elsewhere in this report, there were many submissions from landowners calling for the policy to be amended to exclude indigenous scrub species and/or areas with the potential to regenerate on productive land. The submission by Alexander and Catherine Ward (366) who stated: “We rely on the ability to clear regenerating manuka on our hill country property to maintain current clear pasture areas and hence productivity”, is representative of many of these submissions. Similarly, Di Roadley (278) submitted that: “I am concerned that the policy does not distinguish between the various indigenous vegetation – with manuka scrub being parallel with more precious species.”

Kaipara District Council (149) suggested that cleared pastoral and arable land that is currently used for intensive farming and cropping should be separately provided for in the policy.

S. and T. Stark (310) expressed the opinion that land environments with 20 per cent or less remaining in indigenous vegetation cover should be reduced to 10 per cent to encompass fewer areas. Horizons Regional Council (392) stated that this criterion should be assessed at a regional scale, rather than a national scale, to account for geographical variance in distribution of significant indigenous vegetation.

Western Bay of Plenty District Council (376) considered that the criterion should be reworded to clarify that it would not apply to non-indigenous vegetation within the identified land environments. The Centre for Biodiversity and Ecology Research (University of Waikato) (52) suggested that the criterion should state the limitations of using LENZ Level IV maps for finer scale analysis of ecosystems.

Some submitters believed there should be more guidance for councils on how to implement this criterion. Western Bay of Plenty District Council (376) suggested that central government could provide councils with GIS layers to assist with spatial mapping.

5.4.6 Suggested changes to Policy 2e – habitats of threatened and at risk species

Submitters commenting on Policy 2e were quite varied in their views on the criterion. Some regional councils and NGOs were of the opinion that the criterion should be expanded: for example, to include species that are regionally and locally threatened; to explicitly include habitats of threatened and at risk aquatic flora and fauna; and to include migrant species to New Zealand.

A number of business and industry submitters, as well as landowners, expressed concerns about the potential breadth of the criterion and suggested changes to narrow it, or removed it altogether. Suggested changes included:

- limiting the criterion to include only “natural habitats”
- removing “at risk species” as this category is too extensive
- allowing councils to take account of species that are regionally abundant but nationally rare in assessing significance.

Some submitters wanted an opportunity to independently review DOC’s Threatened Species List.

5.4.7 Alternative options to Policy 2

Few submitters suggested alternatives to Policy 2’s approach of setting bottom line criteria to assess significance for the purpose of section 6(c) of the RMA. J.B. and H.A. Brosnahan (35) suggested the scientific identification of particular priority areas for protecting and maintaining particular indigenous biodiversity so as to sustain DNA variability and diversity and support ecosystem species. Mighty River Power Limited (197) suggested that councils adopt best-practice regional policy instruments exemplified by the approaches taken in the Waikato and Bay of Plenty regions.

6 Policy 3 – Including criteria in Regional Policy Statements

Policy 3 requires regional policy statements (RPSs) notified after the NPS is gazetted to include the criteria of Policy 2. Just over a quarter of submitters (112) commented on Policy 3. Of these, 39 submitters supported the policy, 31 supported it in part conditional on changes, 26 opposed the policy, one was neutral and the remainder did not state a preference.

The main issues raised by submitters were:

- the merit of RPSs including Policy 2 criteria
- Policy 2 criteria as a baseline
- exclusion of criterion 2e
- roles and responsibilities of government
- timeframes for the inclusion of criteria.

6.1 The merit of including Policy 2 criteria in RPSs

Submitters expressed a range of views as to whether RPSs should contain criteria for identifying areas of significant vegetation and habitats of indigenous fauna. Submitters in favour of Policy 3 supported the national consistency and efficiency that the inclusion of national criteria would bring to the management of indigenous biodiversity by territorial authorities. For example, Newmont Waihi Gold (225) submitted:

The effects of this policy will generally be positive. It will allow NWG and others to be able to submit on the proposed criteria as part of the regional policy statement process. This should provide a reasonable degree of certainty to all parties, while allowing for regional variation.

A number of submitters qualified their support for Policy 3 contingent on changes being made to the wording of the policy and/or the criteria. For example, Federated Farmers of New Zealand (434) submitted:

The inclusion of such criteria in a regional policy statement should provide for a consistent approach to biological diversity in a region by territorial authorities... We are concerned however with the proposed current wording. Federated Farmers recommends that the scope of the requirement to include criteria be limited to 2a–2c.

Many submitters also expressed concern that the current wording of Policy 3 and the other policies of the NPS might result in inconsistent and inefficient management outcomes or conversely the undermining of the protection of indigenous biodiversity. For example, the New Zealand Transport Agency (239) stated:

Uncertainties around the meaning of the terms used in the objective, and Policies 1 and 2 and the issues with the criteria in Policy 2 discussed above, would be likely to result in inconsistent responses from Councils and costs, delays and inconsistencies in the approach the NZTA in required to take across the national state highway network.

A number of submitters opposed the inclusion of criteria within RPSs, citing concerns it would undermine the community involvement and local decision-making. These submitters favoured district councils determining criteria to be used. For example:

The Wairoa District Council and its community should decide the biodiversity debate and controls for this region, and should be empowered to communicate with its ratepayers so local policy can be formulated without the disenfranchising the affected parties (Gerald and Claire Bull, 41).

The inclusion of a set of Regional criteria which must be met by District Plans and decisions is a subtle method of removing the decision making power from local communities. I am opposed to this because it is the local communities who will pay the costs of decisions made (Ross Little, 162).

HDC consider it more appropriate for this to be a requirement of all District Plans rather than regional policy statement. Regional level criteria become highly technical and this does not contribute to a community led approach. Requiring regional criteria also ignores all the good work done to date by communities and removes the decision making power from local communities (Hurunui District Council, 408).

6.2 Policy 2 criteria as a “baseline”

A number of submitters noted that the NPS aims only to identify a “baseline” set of criteria which would only meet a subset of section 6(c) responsibilities, and would not necessarily reflect sites of regional or local significance. Several councils pointed out that existing RPSs and district plans contain criteria that allowed them to identify sites of regional and local significance and that this is likely to be a wider range of sites than that covered by the national criteria within Policy 2. They viewed regional criteria as positive as they were more responsive to regional values, biological and ecological patterns, climate and historical land use.

A number of submitters expressed concern that a national bottom line or minimum set of criteria could be counter-productive by becoming the new national benchmark, thereby reducing the level of protection for biodiversity. Submitters commented that the inclusion of additional criteria (to the Policy 2 criteria) is likely to be challenged, resulting in increased litigation and uncertainty. This would in turn undermine efforts of councils and communities that have developed criteria, policies, plans and rules to address section 6(c). For example:

Many Councils have done a lot of work providing for the identification and protection of significant natural areas and these need to be affirmed and others encouraged to raise their work effort in this area not by reducing this need ‘to the lowest common denominator’ (Jenny Campbell, 47).

The Council is concerned that this [the proposed NPS] could undermine the considerable investment that it, and the regional council, has made in developing consistent criteria and in identifying SNAs in the District. It may also lead to a climate of uncertainty and greater litigation around the scheduling process. As such Council seeks more explicit reference, through policy, to existing criteria in regional policy statements (Whakatane District Council, 378).

The section 32 report states that the drafters intend, by using the words “in addition to any other provisions relating to section 6(c) of the Act” that the Policy 2(a) to (d) criteria are to be a bottom line. The effect of this Policy will be to pull any future Regional Policy Statement (RPS) provisions relating to section 6(c) down to that “bottom line”. It will be extremely difficult for Councils or other parties to argue for provisions in RPSs that provide higher levels of protection for biodiversity purposes than those set out in Policy 2 (Forest and Bird (Head Office), 91).

Submitters recommended a number of amendments to Policy 3 to address these issues including:

- incorporating an explicit policy reference to existing criteria in regional policy statements
- revising the wording to focus on the outcome sought and allow councils to have a one set of criteria that meets or exceeds the desired outcome rather than two sets of criteria
- providing simple, less directive criteria.

Submitters in favour of a national set of criteria only for inclusion within RPSs supported greater national consistency. There was, however, a wide range of views about which criteria should be included and whether they should give effect only to national priorities or to regional and local priorities also.

Some submitters expressed concern that giving local authorities the discretion to include additional criteria would result in inconsistencies between regions. Submitters who managed national infrastructure highlighted that inconsistency would result in inefficiencies such as increased costs, time delays, uncertainty and inconsistencies for their own operations. They also stated that it would lead to cross boundary issues and not achieve the objectives of the proposed NPS to maintain indigenous biodiversity.

A number of submitters were critical that the proposed NPS failed to provide clear guidance to local authorities for them to assess significance at a regional and district level in a nationally consistent manner. Submitters noted that the absence of national criteria and a standard assessment procedure had caused problems for councils since section 6(c) was introduced. Submitters recommended that to achieve the objectives of the NPS that a standard set of significance criteria and an assessment procedure are provided for local authorities. For example:

NZWEA feels that Policy Three is critical to the NPS. Unfortunately, Policy Three in its current form does not provide the guidance that is necessary to provide nationally consistent criteria for identifying and determining significant indigenous vegetation or significant habitat of indigenous fauna. In our view, Policy Three should be amended to provide the criteria for local authorities, applicants, submitters, and decision makers to use when identifying or determining areas of significant indigenous vegetation and significant habitats of indigenous fauna (New Zealand Wind Energy Association, 224).

The present wording of Policy 3 suggests to regional authorities that they may have other, unspecified obligations under section 6(c) which the NPS provides no guidance about, and that is unhelpful. If Policy 2 is amended in the manner sought, then it is appropriate for new regional policy statements to use significance criteria that are consistent with the NPS, rather than to hint at other possible criteria flowing from section 6(c). This will reduce uncertainty and promote consistency between regional policy statements (which is important, for example, where an application for resource consent for an activity having cross boundary effects is being considered) (Forest and Bird, 91).

MainPower supports in principle the need to identify areas and habitats above and beyond those areas and habitats described in Policy 2. However, MainPower submits that simply allowing councils to come up with their own criteria for significance in their regional policy statements and district and regional plans is unnecessary, inefficient, and will create difficulties from the perspective of consistency and interpretation between local authorities. There is a need to have consistent criteria across the country for assessing significance. Many councils do not have the necessary resources to adequately assess and identify significant areas and habitats (MainPower NZ Ltd, 424).

Empowering local authorities with discretion to include criteria additional to those set out in proposed Policy 2 in their regional policy statements will be problematic. This will create wide scope for litigation to occur over the inclusion of the additional criteria (Oceania Gold New Zealand Ltd, 240).

6.3 Exclusion of criterion 2e

A small number of submitters commented on the exclusion of 2e (habitats of threatened and at risk species) from the list of criteria that must be included in regional policy statement. Submitters in favour of this aspect of the policy agreed that these habitats should be considered on a case by case basis, such as in the context of a resource consent where the information is available. For example:

NWG notes that the Explanation Document states that with reference to policy 3, habitats of threatened and at risk species are deliberately excluded and that criterion should be applied on a case by case basis (for example, in the context of a resource consent) where the requisite information is available. NWG supports this approach, and notes that Policy 4 provides that habitats of threatened and at risk species are to be included in plans within 5 years (to the extent there is available information enabling this to occur) (Newmont Waihi Gold, 225).

PCC agrees with the omission of item (e) of Policy 2 (relating to habitats of threatened and at risk species) from Policy 3. We agree that only known habitats be recognised by local authorities. Otherwise this would require local authorities to identify such areas. This is an expertise that councils will not necessarily have (Porirua City Council, 252).

Southland District Council notes and supports the specific exclusion of the habitats of threatened and at risk species [Policy 2(e)] from Policy 3. This will enable application on a case by case basis where information on these habitats is available (Southland District Council, 309).

Submitters who disagreed with the exclusion of criteria 2e in Policy 3 noted that threatened and at risk species were in danger of extinction and consequently should be considered significant. Their exclusion sent the wrong message and could be viewed as a justification for inaction. One submitter questioned why criteria 2e should not be addressed within a RPS given such a requirement aligned with the present functions of a regional council.

Other submitters expressed concern that the exclusion of 2e would result in an inconsistent and piecemeal approach that failed to take account of how threatened and at risk species interact with other species and habitats that are not threatened or at risk. Some submitters also doubted whether a case by case approach would adequately identify and protect habitats of threatened and at risk species.

A number of submitters challenged the assumption that including 2e would be too onerous or costly for councils. Forest and Bird (Head Office) (91), for example, highlighted that information to identify these sites is often available from previous investigations, RMA proceedings or from DOC. This submitter also noted that the obligation and costs associated with Policy 4 – to map habitats of threatened or at risk species – applies only if that information is available.

Such submitters recommended that 2e be included in RPSs or as an alternative, Environment Southland (80) recommended that RPSs include a requirement for resource consent applications that affect significant indigenous biodiversity to include an ecological survey which assesses the presence of species in Policy 2e.

6.4 Roles and responsibilities of government

A number of submissions raised issues with the respective roles and responsibilities of regional and local government. Submitters sought greater clarification with respect to functions and responsibilities between regional and district councils in the maintenance of biodiversity.

Issues highlighted by submitters included duplication or gaps in council management efforts, lack of oversight, inter-agency disputes, and inconsistency between regional and territorial planning documents.

... there needs to be a comment in policy 3 that reflects the link between regional and city/district plan approaches to the NPS. The way that Policy 3 is written regional and territorial authority documents are treated as separate and unrelated, however, there needs to be consistency between the approach taken by a regional council and the approaches taken by the territorial authorities within that region (New Zealand Transport Agency, 239).

While the inclusion of these criteria in the RPS may require consequent amendments of our District Plan the addition of the criteria in the RPS would put a greater onus on regional councils to meet their obligations to protect indigenous biodiversity under the RMA (Queenstown Lakes District Council, 261).

The NPS also needs to set out clear and consistent roles and responsibilities for Regional and District Councils and overview provided so that these responsibilities are undertaken. The present rules governing environmental responsibilities for both Regional and District councils are not sufficiently clear (Forest and Bird (South Otago), 304).

The NPS could provide greater clarification about the overlapping functions and responsibilities of regional and district councils in the maintenance of biodiversity. In many cases councils are duplicating efforts in management, and this has created a level of uncertainty and frustration for landowners (Whakatane District Council, 378).

A number of councils requested that Policy 3 allow for more flexibility in the roles and responsibilities relating to biodiversity management. For example:

While Horizons supports the obligation to include criteria for the identification of areas of significant indigenous vegetation and significant habitat of indigenous fauna in planning documents, the placement of such criteria should not be restricted to regional policy statements. ... Horizons submits that the NPS provides for situations where regional councils have taken on the responsibility for the protection of significant indigenous vegetation and significant habitat of indigenous fauna and reword Policy 3 to allow for this alternative (Horizons Regional Council, 392).

In the case of the Southland Region, it may be impractical in the future for the regional council and each territorial authority to identify areas of significant indigenous vegetation or significant habitat of indigenous fauna given agreement to date on our draft Regional Policy Statement has been for the territorial authorities and the regional council to manage biodiversity collaboratively (Environment Southland, 80).

Policy 3 should be amended to provide for instances where it is agreed to develop criteria to identify significant indigenous vegetation and significant habitat of indigenous fauna outside of the regional policy statement process e.g. Horizons Proposed One Plan (Southland District Council, 309).

6.5 Timeframes for the inclusion of criteria

A number of submitters were critical of the absence of a timeline within Policy 3 for regional councils to include criteria within regional policy statements (RPSs). While submitters noted the intent to avoid additional costs on councils, some submitters, including a number of regional councils, expressed concern that under the current wording, it may be 10 years before some RPSs gave effect to the NPS. Submitters thought that this was unacceptable and inconsistent with the objectives of the NPS to advance the protection of indigenous biodiversity. Submitters identified a number of options provided for within section 55 of the RMA including:

- as soon as practicable (in accordance with section 55(2D)(a))
- amendment within 12 months without using the Schedule 1 process (in accordance with section 55 (2A))
- amendment within five years, consistent with the direction within Policy 4.

For example:

... some second generation RPSs have already been notified at the time of writing this submission and therefore will not be caught by this policy for potentially a decade. A time frame for implementation of this policy is required to ensure it is given effect to in a timely fashion. EDS considers 12 months is an appropriate time frame ... The Proposed NPS should also direct that regional councils can give effect to this Policy without going through the process in Schedule 1 (in accordance with section 55(2A) RMA) (Environmental Defence Society, 81).

It could therefore conceivably take 10 years (until an RPS is reviewed in accordance with section 79) for the criteria to be included in an RPS. The RMLA submits that this is too long and uncertain a period for implementation (Resource Management Law Association, 277).

Environment Canterbury supports Policy 3, but we are concerned that limiting its application to Regional Policy Statements (RPS) that are notified after the PNPS takes effect means that the PNPS may take up to 10 years to take full effect ... we consider that s55(2D)(a) of the RMA provides a reasonable approach to timeframes for giving effect to this policy (i.e. "as soon as practicable") (Environment Canterbury, 417).

Environment Southland is very concerned that in the current wording of Policy 3, Regional Policy Statements that have been notified prior to this NPS taking effect will not have to include the criteria listed in Policy 2 for identifying significant indigenous biodiversity. We are aware of several Regional Policy Statements that have been recently notified which have not included reference to the National Priorities. These RPS's will more than likely not be reviewed for a minimum of 10 years or more (Environment Southland, 80).

The policy does not include any compulsion for regional authorities to change a Regional Policy Statement that is notified before the NPS takes effect and does not include the criteria listed in Policy 2(a) (d). In such a case the RPS would not be required to include the policy 2(a) (d) criteria until it is next review which could be as long as ten years later. This would not appear to be consistent with the objective of the NPS to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna (Invercargill City Council, 141).

7 Policy 4 – Plans and identification of significant areas

Policy 4 requires district plans to identify, using (where practical) maps and/or schedules, areas of significant native vegetation and significant habitats of native fauna. Approximately 170 submissions commented on Policy 4. About half stated that they supported the policy, or supported it in part. Around 35 submissions were opposed to the policy. The remainder did not state a preference.

7.1 Clarity of wording and intention

About 80 submissions commented on the clarity of the policy's wording and intention. About half considered that the wording and intention of the policy were clear. Around 25 did not believe the policy was clear. The remainder did not state a view.

Most local authorities that commented on Policy 4 considered that its requirements were confusing. Some council submitters submitted that it was unclear what the five year timeframe applied to. For example, Environment Canterbury (417) submitted:

... clarity is needed ... whether the 5 year timeframe applies to the identification of sites meeting the Policy 2 'criteria', or to the inclusion of the Policy 2 'criteria' in plans, or both.

Tasman District Council (325) submitted:

There is sufficient ambiguity in the way the policy is written to question whether the directive to include in plans (within 5 years of the NPS taking effect) applies to the criteria to identify significant indigenous vegetation and significant habitats, or to maps/schedules. Careful reading of this policy is required to determine that in fact the application of the 5 year time frame applies to criteria to identify significant areas beyond those captured in Policy 2(a)–(d).

There were a number of other points of confusion raised by submitters. Several councils noted that the inclusion of the words "where practical" in the policy introduced ambiguity. Hutt City Council (138) commented that this statement could be misinterpreted to imply that maps and schedules or other methods did not need to be used. Invercargill City Council's submission (141) queried: "Does this mean that where a territorial authority lacks the funding and resources necessary to map the areas, it is therefore not practical to do so and is not required?"

The New Zealand Institute of Landscape Architects (222) and Environment Canterbury (417) stated that the policy was unclear with regards to the degree of accuracy of site identification and mapping. Environment Canterbury also expressed uncertainty about whether the identification of sites using maps and/or schedules required the publication of those maps/schedules within the plan. Hutt City Council (138) was unsure as to whether the policy required identification of significant areas beyond those in Policy 2 a–d. Palmerston North City Council (414) considered it was unclear how it would give effect to both the existing biodiversity provisions in its region's regional policy statement and the requirements of Policy 4 within its district plan.

Raukawa Trust (425) submitted that there was potential for confusion where there might be more than one relevant regional policy statement for a given district plan where a district

straddles two regions. Similarly, Contact Energy (59) stated that the policy was difficult to interpret because of the cross references to “relevant regional policy statement”.

7.2 Consistency of policy with objective

Around 55 submissions commented on the consistency of Policy 4 with the stated objective. A significant majority of submitters considered that the policy was consistent with the objective, while a minority submitted that it was not consistent.

Three submitters, all from NGOs, provided comments on why they believed the policy was not consistent with the objective of the NPS. Waikato Biodiversity Forum (349) considered the policy did not recognise the interconnectedness of terrestrial, freshwater and marine environments. Forest and Bird (Head Office) (91) submitted that the policy did not state clearly that the proposed NPS represents a “bottom-line” for indigenous biodiversity protection, and that protection of vegetation and habitat listed in the required maps or schedules did not comprehensively fulfil local authorities’ obligations in respect of biodiversity under the RMA. Federated Mountain Clubs (87) considered that the policy allowed for councils lacking the will or the resources to implement the NPS to do nothing.

7.3 Implications/effects of the policy

7.3.1 Identification using maps and/or schedules

About 65 submitters commented on the implications/effects of the requirement to identify significant indigenous vegetation and habitats using (where practical) maps and/or schedules.

Business/industry submitters who commented on this aspect of the policy were varied in their views. Some supported mapping and/or scheduling because it provided certainty and clarity as to the values that exist on properties. TrustPower Limited (344) was representative of a number of submissions:

The identification and then mapping / scheduling of significant areas within district and regional plans will provide a greater degree of certainty to landowners, resource consent applicants and potential submitters as to the values that exist on a proposed site ...

Other business/industry submitters said that the costs of identifying significant areas in plans would be prohibitive. Some thought that the requirement would be a source of contention and dispute amongst landowners. For example, Ravensdown (265) submitted:

Given this NPS applies to all land other than public conservation land, this will see a repeat of the divisions and disputes that occurred in the District planning processes in the 1990s.

Landowners who commented on the requirement to map or schedule sites in Policy 4 expressed opposition to the requirement. Most landowner submitters considered it would place a costly and unreasonable burden on councils and ratepayers. For example, John and Mary Mulcock (203) submitted:

The requirement for the council to identify and map a schedule of significant indigenous vegetation under new criteria will be a huge and expensive undertaking by our small rural council.

Others stated that confidentiality issues or the erosion of private property rights would result from the identification of areas within plans. Some examples of the views of landowners are set out below:

The creation of publically accessible maps showing areas of significant indigenous vegetation and significant habitats of indigenous fauna would be an erosion of individual property rights and would be open to misuse by authorities and the public (Peter Chartres, 53).

Aside from the issue of confidentiality, which has been an important aspect of the Marlborough programme, we cannot see any benefits from publically disclosing the mapped areas of private property (Michael and Kristen Gerard, 105).

... there is likely to be a major landowner revolt that will only cause biodiversity losses not gains, and a loss of trust that will effect council/landowner relations indefinitely (Michael North, 232).

Most local authorities that submitted on the identification of significant biodiversity using maps and/or schedules were opposed to the requirement. Their reasons included that:

- it would be a costly and time-consuming burden on councils to identify the significant areas and amend district and relevant regional plans. These costs could outweigh the benefits
- there would be strong opposition from landowners, leading to difficulties with entering properties to “ground-truth” sites, and undermining of goodwill and trust between councils and landowners. This is likely in turn to result in significant delays due to appeals on the formal plan change process
- it would create challenges associated with lack of information for mapping/scheduling, as well as difficulties using the LENZ maps for identification of areas at smaller scales
- it would potentially undermine the work that some councils have already done to identify and map significant natural areas.

In contrast, Western Bay of Plenty District Council (376) noted that “accurate spatial identification of the areas identified in Policy 2 a-d will be a costly undertaking for TLA but it does provide clarity for Council staff, land owners and the wider community.”

Environment and Conservation Organisations of New Zealand (ECO) (79) and the New Zealand Conservation Authority (214) were concerned that the inclusion of Policy 2e (habitats of threatened and at risk species) within plans was not mandatory (ie, only required to the extent that existing information is available). ECO also submitted that the policy, as currently worded, suggested that areas for which there was no information would be considered insignificant.

Other submissions included:

One danger with mapping is that rules will be applied only to these sites. Not only will it neglect important council functions, but it may unfairly penalise landowners who have chosen to go through the process (Debs Martin, 175).

We are concerned that potential sites identified by tangata whenua once registered in the District Plan, can be publicly contested at anytime by anyone (Tuwharetoa Māori Trust Board, 426).

District plans are rewritten on a regular basis, and ecological surveys are ongoing, so that any point in time, mapping of sites will either be inaccurate or soon out of date (R. Beech, C. Bowron and K. Gerard, 24).

In contrast, some submitters had positive comments about the mapping/scheduling requirement:

It will ensure that some baseline information on significant biodiversity values is included in regional and district plans across the country (Dune Restoration Trust of New Zealand, 73).

I think the idea of clearly identifying SNAs is important for councils, so that they can appropriately consider these matters in resource consent, planning, funding, and other processes, including rehabilitation and pest/weed control (Debs Martin, 175).

7.3.2 Costs associated with Policy 4

About 50 submitters commented specifically about the costs associated with implementing Policy 4. Most considered that the policy would impose prohibitive and unreasonable costs on councils for little or no benefit. Reasons included:

- inadequacy of maps at operational level, as well as costs associated with physical “ground-truthing”
- the need for councils to recruit staff with technical expertise to identify and verify areas that should be included on maps/schedules
- costs associated with appeals on planning documents
- increased costs as calls for retirement of identified areas increases.

Several submitters noted that meeting the costs associated with Policy 4 would be particularly difficult for small, rural councils with large, remote districts and small rating bases. They commented that such costs would be passed on to landowners through increased rates.

A number of submitters were of the opinion that the policy was an example of the “private purse” (landowners and local councils) paying for a “public good” (nationally significant biodiversity). Several submitters therefore submitted that central government should cover the costs because the benefits of indigenous biodiversity are national.

In contrast, TrustPower (344) noted that many local authorities already included mapping/scheduling of areas of significant indigenous vegetation and habitats within their planning documents, and the requirements of Policy 4 would therefore not be too onerous.

Queenstown Lakes District Council (261) suggested that the identification and mapping of significant indigenous vegetation on Crown land outside the DOC estate could be done in conjunction with the tenure review process. The Council submitted that this would significantly reduce implementation costs for a number of councils.

7.3.3 Timeframe

About 55 submitters commented on the potential implications/effects of the Policy 4 requirement that district plans and relevant regional plans include the criteria of Policy 2 a–d within five years of the proposed NPS taking effect. A number of local authority submitters were opposed to the five year timeframe. Hawke’s Bay Regional Council (124) and Waitomo District Council (357) said they were concerned that they would not be able to meet the timeframe due to resourcing issues, while Westland District Council (377) considered that the timeframe could be restrictive. Clutha District Council (58) and Matamata-Piako District Council (335) suggested that the timing of inclusion of criteria 2 a–d within plans should be at the discretion of local authorities, so they could save resources by including the changes during general plan reviews.

Western Bay of Plenty District Council (376) stated that they would need “support from MfE [the Ministry for the Environment] in the identification of areas covered by Policy 2 a–e if TLAs are to give effect to this within 5 years.” In contrast, Whangarei District Council (380) submitted there was: “... significant allowance of time within which to give effect to the policy (5 years).”

The Resource Management Law Association (277) submitted that the timeframe was inconsistent relative to Policy 3 (Policy 3 requires regional policy statements notified after the date on which the NPS takes effect to include the criteria of Policy 2a–d). The Association suggested that the requirements as to when the criteria needed to be incorporated was unhelpful and should be resolved. Straterra Inc. (315) submitted that the five year timeframe was too short and could lead to local authorities doing a “less than adequate job of designating areas in plans as significant”. This submitter also suggested that “Councils are unlikely to have the money for the detailed survey work at district or regional scale, with the five-year timeframe.”

7.3.4 General implications/effects of the policy

There were a range of general comments from submitters about the implications/effects of Policy 4. Comments included:

- the policy fails to tie council actions to scientific proof of specific issues relating to indigenous biodiversity. This would lead to arbitrary and unscientific policies by councils, causing further problems
- the policy’s compulsory planning approach would be an unnecessary waste of limited resources
- the policy would breach the Treaty of Waitangi because it would allow councils to restrict the ability of Tangata Whenua to live on and relate to land that had been inherited and looked after for centuries
- the policy’s wording is overly prescriptive and lacked focus on the outcome sought by the policy. It could negatively affect constructive working relationships and undermine local government approaches to implementing the NPS’s objectives
- identification of sites in plans would invariably produce an incomplete list of significant areas
- the policy could unfairly penalise regional plans that already included methods to control activities in identified significant areas (if it requires councils to change them).

7.4 Suggested changes to Policy 4

7.4.1 Changes to mapping/scheduling requirement

A range of submitters (including businesses, landowners and councils) considered the requirement for district plans to identify significant biodiversity (using, where practical, maps and/or schedules) should be removed. Several councils commented that the policy should allow councils to choose other ways of achieving the maintenance of indigenous biodiversity. Some submitters believed the policy should focus on a desired outcome, rather than a method. Marlborough District Council (174) suggested replacing Policy 4 with a requirement for councils to keep and maintain records of significant indigenous vegetation and habitats.

A number of individual submitters considered that landowners should retain the right to request that significant areas on their land not be included in district plans. Federated Farmers (Hauraki Islands) (122) recommended the development of protocols for disclosure of information as a solution to this issue. Some submitters suggested that further conditions should be imposed on the mapping/scheduling requirement. Aggregate and Quarry Association of New Zealand (4) commented that the policy should require ground-truthing of all sites of significance, and that this work should be independently peer reviewed by a national advisory panel or similar. Leslie Thompson (340) said the policy should require “legal accuracy” in the maps and/or schedules used by councils.

7.4.2 Changes to five year timeframe requirement

Several submitters (including some local authorities) considered that the five year timeframe for councils to include the criteria within their plans should be removed. These submitters commented that removing a timeframe would give councils more flexibility to include the criteria as part of their general plan changes.

MainPower NZ (424) noted that Policy 4 did not specify a timeframe for the identification of areas of significant indigenous vegetation and significant habitats of indigenous fauna in district and regional plans. This submitter believed that the policy should explicitly include a timeframe.

7.4.3 Other changes

Other suggested changes to Policy 4 included:

- clarifying that, in identifying additional areas to those identified as significant in Policy 2a–d, councils must only apply the criteria specified in the NPS
- strengthening the wording of Policy 4 to clarify that councils can adopt rules for biodiversity
- providing for the retention of existing district plan provisions where they already meet the requirements of the NPS
- providing for flexibility and minor variations between the policies of district plans and regional policy statements
- providing for those regions where territorial authorities have already agreed to the regional council taking responsibility for the protection of biodiversity.

Several submitters suggested more fundamental changes or alternative approaches. Chris Richmond (275) submitted that, instead of requiring the identification of significant indigenous vegetation and habitats in plans, a non-statutory register of significant areas could be developed. This would include rules and criteria for assessing applications. Baywatch Group Hawke's Bay (23) suggested that it may be of value to require councils to define areas that are not important and that can be developed for other purposes.

8 Policy 5 – No net loss

Policy 5 sets out that councils must manage biodiversity to achieve no net loss. It introduces a mitigation hierarchy and provides for the use of offsets. Two hundred and nineteen (219) submitters commented on Policy 5. Of those who indicated a preference, the majority of submitters either supported the policy or supported it in part. Twenty-nine stated they support the policy, 42 support in part while 52 submitters stated they opposed the policy.

Submissions have been summarised under three key aspects of the policy:

- mitigation hierarchy
- offsetting
- managing biodiversity for no net loss.

8.1 Mitigation hierarchy

Sixty submitters commented on the introduction of a mitigation hierarchy in Policy 5.

The majority of local authorities that commented on the mitigation hierarchy supported it. Many submitted that it provides clear direction and certainty around the management of adverse effects on indigenous biodiversity. For example, Horizons Regional Council (392) submitted that “This hierarchy is a fundamental concept of the application of meaningful biodiversity off-sets designed to result in tangible biodiversity gains.” However, a number of council submitters requested further guidance and direction regarding the use and implementation of the mitigation hierarchy.

Several industry organisations had concerns that it was inconsistent with established case law and the RMA. Some of these submitters argued that the mitigation hierarchy is inconsistent with Section 5 of the RMA and contrary to the RMA. For example TrustPower (344) submitted:

... section 5 of the RMA does not establish a hierarchy between avoid, remedy or mitigate. Case law¹ has established that section 5(2)(c) of the RMA is to be “read conjunctively with equal importance, even if they appear to follow a continuum.” Whether prominence is given to the avoidance, remediation or mitigation of adverse effects will depend on the facts of a particular case and the application of section 5 of the RMA to those facts ... Policy 5 effectively seeks to alter the overall weighing under section 5 of the RMA for projects involving biodiversity values by introducing a requirement for no adverse effects, without any regard to balance, cost, practicality or reasonableness.

A number of industry organisations submitted that there should be no hierarchy between avoid remedy and mitigate and that offsetting should only be an option after all three have been considered (Watercare Services Limited, 368; Rangitata Diversion Race Management Limited, 264; New Zealand Wind Energy Association, 224; King Country Energy Limited, 153; and Genesis Energy, 104).

¹ Winstone Aggregates Ltd v Auckland Regional Council [EC] A49/2002

Meridian Energy (422), MainPower NZ Ltd (424) and Solid Energy New Zealand (431) proposed that the mitigation hierarchy should be amended: instead of avoid remedy, mitigate then offset, they suggested it should be appropriately avoid, then minimise, then reasonable rehabilitation, then offset residual adverse effects that are more than minor.

Much of the concern regarding the mitigation hierarchy surrounded the provision for the use of offsets. Some felt the mitigation hierarchy pointed too much toward the use of offsetting, some felt avoidance should be identified as the preferred option while others supported the use of the mitigation hierarchy but with the use of offsets as a last resort. For example, Queenstown Lakes District Council (261) submitted:

There is concern that the practical application of biodiversity offsets is still a relatively new approach and inappropriate application may prove counterproductive to the overall objective of the maintenance and enhancement of biodiversity. However, the approach proposed setting obligations to follow the chain to avoid, remedy or mitigate adverse effects prior to considering whether any residual effects can be properly offset does reduce this concern.

Some submitters were not supportive of the mitigation hierarchy due to the inclusion of the provision for offsetting. The Kapiti Coast District Council (151) submitted for example:

The RMA already requires adverse effects to be avoided, remedied or mitigated, and to date the application of that hierarchy as a means of maintaining biodiversity has failed. The record of remedying or mitigating adverse effects on biodiversity is poor ... Therefore adding a provision for offsetting that could be more permissive, and making this augmented hierarchy the lynchpin of protective management, is unlikely to achieve the stated objective.

Some submitters requested that the policy to be more clearly worded to clarify and prioritise the ranking of avoid, remedy, mitigate and offset of effects. Some submitters thought that the hierarchy was too permissive and not appropriate for sites of significant indigenous biodiversity, for example:

The hierarchy of effects is a step forward from what the RMA has defined in the past and is welcomed, but this framework is too permissive. The importance of significant sites (SNAs) is such that they simply should not be open to loss or modification except in the most extreme cases... It is only the sites of lesser ecological value that are suitable for addressing by the hierarchy of effects as listed (Michael North, 232).

Some industry organisations submitted that avoidance is always an option for a development proposal affecting biodiversity, but that the use of avoidance may not produce the best environmental outcome:

The hierarchy is clearly set out to avoid effects on indigenous biodiversity where possible regardless of other effects, benefits, costs, or any other constraints. The avoidance of an area of national significance may not provide the best environmental outcome. The requirement to strictly adhere to the hierarchy may preclude remediation or mitigation options that provide better environmental outcomes and may include a net gain in indigenous biodiversity (Transpower New Zealand Ltd, 343).

A variety of submitters were concerned that there is a lack of consistency between Policy 5 and other regulations, particularly the NZCPS and the Electricity Transmission NPS:

There is overlap and inconsistency with the NZ Coastal Policy Statement (NZCPS). The hierarchy of effects should be consistent with that of the NZCPS and ensure no further loss of biodiversity (Patuharakeke Te Iwi Trust, 423).

The hierarchy proposed in Policy 5 of the NPS on Indigenous Biodiversity has the potential to be applied inconsistently with Policies 3 and 8 of NPS for Electricity Transmission. In the case of electricity transmission infrastructure it may be possible to avoid an area of national significance but there may be other constraints that determine that a route through an area of national significance is the best option. NPS for Electricity Transmission Policies 3 and 8 seek that areas of national significance are avoided but allows the constraints on the transmission network to be considered (Transpower New Zealand Ltd, 343).

8.2 Offsetting

One hundred and seventy-nine (179) submitters commented on the offsetting component of this policy. Positions in regard to the offsetting provisions of the policy were mixed, with no clear majority either in support or opposition. Reasons for supporting the use of offsetting included a need for the introduction of regulation on a tool that is already in use, and its role as a useful tool that allows for development while protecting the environment. On the other hand, a number of organisations raised concerns regarding the implications for their industry or business of a policy requiring the offsetting of residual effects, including those from the electricity transmission, geothermal energy generation and farming sectors. For example:

NZDF recognises the high biodiversity values of its training areas, and the on-going net gain in biodiversity across many of these sites is proof of this. However, the designated purpose of the sites for military training activities under the Defence Act 1990 must also be recognised. This is also a matter of national importance, and one which cannot be undertaken without some effect on the land on which it is carried out. As the sites are managed to encourage regeneration and enhancement of biodiversity overtime, it is not feasible that all significant areas (under the definition of the NPS) would be able to be avoided or even off-set as training areas would no longer be functional for their intended Defence purposes (New Zealand Defence Force, 216).

Concerns were also raised regarding the potential costs that offsetting will impose on a variety of organisations including industry, individual landowners, and councils. Industry organisations pointed out that the cost of employing ecological experts, dealing with litigation and buying additional areas of land necessary for offsetting would have to be passed on to the consumer.

A number of industry organisations, NGOs and councils submitted that offsetting should be the last resort and that greater emphasis should be given to the rest of the mitigation hierarchy. For example, the New Zealand Transport Agency (239) submitted that:

We also have strong concerns that due to the emphasis on ‘offsetting’ in the NPS that, regardless of the hierarchy set out in Policy 5, offsetting may inappropriately be used before all practicable options to ‘avoid’, ‘remedy’ or ‘mitigate’ effects have been properly explored.

Conversely, Transpower New Zealand Limited, (343) Meridian Energy (422), MainPower NZ Ltd (424) and Solid Energy New Zealand (431) submitted that an offset should be considered as part of mitigation.

Some submitters identified a need to clarify where offsetting is not appropriate. Meridian Energy (422), MainPower NZ Ltd (424) and Solid Energy New Zealand (431) suggested the addition of a Policy 5A regarding the identification of areas where offsetting is not considered appropriate:

- a. Local authorities must not include in plans the identification of “no go areas” in terms of Principle 3 of Schedule 2.
- b. Local authorities must not include in plans the identification or definition of acceptable and not acceptable methods or measures for the assessment of biodiversity offsets in terms of Principles 1 and 6 of Schedule 2.

As also discussed in the section on the mitigation hierarchy above, a number of submitters, particularly industry organisations, submitted that the inclusion of offsetting in the NPS is inconsistent with the RMA and established case law. Several industry organisations that commented on Policy 5 also had concerns that the NPS was biased toward the use of offsets rather than any other form of environmental compensation. For example, Port Companies of New Zealand (253) submitted:

The concept of “offsetting” effects is not specifically mentioned in the RMA ... Notwithstanding this, Policy 5 of the Proposed NPS purports to elevate “offsets” to the only alternative solution once a biodiversity effect cannot be avoided, remedied, or mitigated. This is clearly inappropriate and inconsistent with the purpose and principles of the RMA. The focus of the proposed NPS on offset mitigation excludes other types of environmental compensation such as transfer of land to public ownership, covenants protecting significant areas or provision of walkways and public access.

A number of submitters, particularly industry organisations, called for the NPS to be delayed until work has been completed on the Biodiversity Offsets Programme led by DOC. Some submitters suggested that principles and methodology produced under the Programme should replace Schedule 2, while others recommended that DOC’s work on this programme should feed into NPS guidance and implementation measures. For example, Contact Energy (59) submitted that it may be a better approach to:

- provide policy support for biodiversity offsets in a NPS;
- await the completion of DOC’s project, which is expected to produce methodology;
- bring that methodology into effect through a national environmental standard.

Some submitters identified that Schedule 2 of the NPS is not consistent with the Business and Biodiversity Offsets Programme (BBOP) principles and that the final NPS should be in line with these.

A broad range of submitters, including industry organisations, NGOs and local authorities requested additional guidance to be provided on offsetting. Potential areas for guidance included guidance on the procedural application of offsetting as well as evaluating adequate remedy and mitigation measures, the necessary level of offsetting, the area to be offset, and offset design, implementation, monitoring and evaluation. For example, Powerco (257) submitted:

There is little detail on how a determination on the need for offset will be made, the opportunities for challenging this decision and who will be responsible for managing land upgraded as part of off-set. It will be necessary for councils to take a lead role in this area and work with affected companies to ensure they are able to achieve the desired aim.

Vector (348) submitted that owing to lack of guidance on how to value offsite environmental outcomes, the offsetting policy may result in inconsistencies across councils:

[The policy] requires valuation of offsite mitigation which is problematic as there is currently no benchmark or guidance given in terms of valuation. It appears from Policy 5 that Local Authorities would be responsible for coming up with their own methodology for assessing offsets, which is highly likely to lead to inconsistent outcomes between regions.

A number of submitters called for guidance on where offsetting is not appropriate, particularly what is meant by “vulnerable” or “irreplaceable”. For example, Fonterra Co-operative Group Limited (Dairy NZ) (90) submitted:

It is vital to understand what proportion of the land in question is likely to be deemed irreplaceable and therefore unable to be offset. This may be a large proportion of indigenous vegetation and habitat on dairy land, owing to the rarity of many lowland ecosystem types... Given the importance of the dairy industry to New Zealand’s economy, we believe it is important to have a proper understanding of the potential implications of this part of the policy so that there can be a full assessment of the likely economic impacts.

A number of councils, in particular, called for training and guidance to be provided on the use of offsets. For example, Environment Southland (80) submitted:

The inclusion of a policy on biodiversity offsets in the NPS needs to incorporate guidance on the scale of both the application of the offset and the scale at which the no net loss is to be achieved ... Decision makers and plan users have little experience in their application (either the ecological assessments and calculations or the procedural processes required). Therefore, for the policy on offsetting to be successful it needs to be accompanied by implementation guidance and training of decision-makers, council staff, applicants and the community.

Southland District Council (309) submitted:

If possible the principles [for offsetting] could be simplified and made more user-friendly. Consents staff will need to work through the principles when processing resource consent applications and the more complex the principles are the more difficulty there is likely to be in implementing them. The principles are too prescriptive and should provide broad guidance rather than a constraining methodology.

Some submitters felt strongly that offsetting should not be included in a NPS until further research has been carried out into the use of offsetting, how it works, and its effects and results. There was also concern, particularly among some local authorities, regarding a perceived lack of international success of offsets. They submitted that results of offsets were as yet unproven and uncertain. For example, Hutt City Council (138) submitted:

Although we support the concept of biodiversity offsetting in principle, we are concerned about the effectiveness of biodiversity offsetting, given the limited experience with its use in New Zealand and lack of information on its success internationally. We are concerned that biodiversity offsetting will add unnecessary complexity to management of effects under the RMA, the value of which to biodiversity may be unproven and the results uncertain. As such we are unsure whether it is appropriate for the NPS to require the use of biodiversity offsetting.

A number of submitters, particularly NGOs, suggested that offsets were not appropriate in any areas of significant biodiversity. They submitted that the offsetting tool should only be used in areas of non-significant biodiversity. For example, Greenpeace (111) submitted:

Offsetting is particularly inappropriate for significant flora and fauna, ecosystems, and habitats as these are irreplaceable and the focus should be on maintaining and restoring all those areas and attributes. Offsetting could only possibly play a limited role for non-significant areas.

Horizons Regional Council (392) suggested that Schedule 2 be removed and the principles of applying biodiversity offsets be explicitly incorporated within Policy 5. The first three principles proposed by the Council were:

- a. Can only be used as a last option after all attempts to avoid, remedy or mitigate have been explored.
- b. Some habitat types or areas of habitat are not tradable and can not be offset (no-go areas, eg. naturally rare ecosystems).
- c. Should be used to preferentially replace like for like (ecological equivalent) or where not like for like a better outcome.

A number of submitters thought that the policy should be clearer that offsetting is the last resort after other measures in the hierarchy have been exhausted. Others submitted that offsets do not adequately protect biodiversity, and ultimately result in a net loss of biodiversity. Others suggested a need for offset formulation to result in a net gain rather than a net loss of biodiversity.

A number of submitters commented on the need for guidance regarding the required location of an offset. Some called for further guidance while others called on it to be mandatory for an offset to occur as close to the affected site as possible. Conversely, other submitters requested the removal of ‘in situ’ from Schedule 2 as in some cases this would not be possible and because it is inconsistent with the requirement that offsets be designed to complement biodiversity goals at “landscape and national level” (Resource Management Law Association, 277).

A number of submitters highlighted concerns regarding the perpetuity of biodiversity offsets. For example, New Zealand Transport Agency (239) submitted:

Often the restoration system as an offsetting measure requires succession processes and can extend to 20 or more years. This can have implications for councils in terms of securing appropriate funding for ongoing restoration costs (bonds – financial contributions) understanding the nature of the restoration process and being able to adequately monitor progress.

Submitters also highlighted inconsistency between the wording of Policy 5 and Schedule 2. Specific issues included inconsistencies in approaches to the mitigation hierarchy, and the inconsistent use of terms “highly vulnerable and threatened biodiversity components” and “vulnerable and threatened species”. For example, Environment Southland (80) pointed to the fact that:

Policy 5 refers to remedying then mitigating adverse effects but Schedule 2 refers to on-site rehabilitation and minimising adverse effects. Since offsetting is relatively new to New Zealand, and it is important for the mitigation hierarchy to be adhered to before consideration of an offset, it is important to be as clear and consistent as possible in an NPS.

Other points raised regarding offsetting included:

- the offsetting policy does not take account of Māori knowledge and customs (Ngati Hine, 421) and Schedule 2 is not reflective of the Māori world view (Ngati Tuwharetoa (BOP) Settlement Trust, 228)
- biodiversity is not suitable for offsetting as it is difficult to measure and cannot be completely interchanged, unlike greenhouse gas emissions (Karen Mayhew, 182)
- the Parliamentary Commissioner for the Environment or Environmental Protection Authority should scrutinise and approve each offset application (Nga Motu Marine Reserve Society, 226)

- the status quo should be maintained regarding the use of offsetting (Auckland Airport, 12)
- current wording of Policy 5 and Schedule 2 limits flexibility and has the potential to stifle innovation (King Country Energy Limited, 153).

Comments specific to Schedule 2 that have not be covered above, included:

- should include principles or guidelines on the use of other forms of environmental compensation (Aggregate and Quarry Association of New Zealand, 4 and Mighty River Power Limited, 197)
- the principles should be capable of flexibility as technology and case law on offsets evolves (Lloyd Beech, 25, Mighty River Power Limited, 197)
- in support of Schedule 2 as guidance as it provides certainty for applicants and decision makers on the application of offsetting (Transpower New Zealand Ltd, 343)
- Schedule 2 is inappropriate for inclusion in the NPS as the principles have been developed outside the sustainable management framework of the RMA (TrustPower Ltd, 344)
- Schedule 2 should incorporate the most recent BBOP principles (a number of submitters)
- there should be an expectation rather than a preference for net gains in offset designs (Forest and Bird (Head Office) 91)
- the list of where offsetting is inappropriate should be more broad and should include all areas of significant indigenous vegetation and significant habitats of indigenous fauna (Forest and Bird (Head Office) 91)
- offsets need to have regard to ecosystems as well as vegetation and/or habitat (Forest and Bird (Head Office) 91)
- offset design also needs to demonstrate there will be no loss of connectivity across the landscape or isolation of important habitats (G. Foster, 92). The importance of including a landscape context in offset design was highlighted by a number of submitters
- wording needs to be amended to avoid it being open to too much interpretation or ambiguity. Submitters requested that a number of definitions to be included, including transparency, timeliness, appropriate measures, suitable basis, non-negligible, and landscape context (Canterbury-Aoraki Conservation Board, 410 and Environment Canterbury, 417)
- Schedule 2 should provide guidance for other off-site mitigation tools other than offsets (Strattera Inc., 315)
- Principle 3 should recognise the functional need for certain activities (eg quarries) to be located on particular sites (Strattera Inc., 315)
- ensure that the contribution of an area to ecosystem services is accounted for when offsetting as per Schedule 2. Offsets should include such improvements to other areas so that the ecosystem services are maintained (Nga Motu Marine Reserve Society, 226 and New Zealand Ecological Society, 237).

8.3 No net loss

Slightly less than a third of submitters (133) commented on the objective of managing biodiversity for no net loss, introduced in Policy 5. Submitters raised a number of concerns regarding the definition, measurement, monitoring and effects of no net loss as well as concerns regarding the consistency of managing for no net loss within the sustainable management framework of the RMA.

A number of industries, including farming, plantation forestry, geothermal energy and power lines companies, submitted that managing for no net loss would hinder their ability to carry out their business. For example, Deer Industry NZ and Beef and Lamb NZ (406) stated that it would “effectively cap rural land development”. Farmers, in particular, were concerned that managing for no net loss would “lock up” areas of their land and would prevent them from clearing regenerating scrub. (For further discussion on the issue of the clearance of regenerating vegetation, see Policy 2.) For example, Federated Farmers (Gisborne-Wairoa) (107) submitted: “Considered in context with Policy one and the definition of indigenous vegetation this ‘no net loss’ approach has the potential to hamstring the rural economy overnight.” Similarly, Tauwharetoi Station (327) commented: “... effectively this will result in the continual dwindling of our farmable land mass.”

Geothermal energy companies submitted that managing for no net loss would hinder their activities as it would not be possible to relocate geothermal “bio data” outside geothermal areas (New Zealand Geothermal Association, 220). Transpower New Zealand Ltd (343) expressed concern that the requirement to manage for no net loss would prevent them from carrying out necessary tasks such as maintaining access tracks and relocating power lines. Plantation forestry companies were also concerned about the effects of the policy on their activities (for example see Hancock Forest Management (NZ) Ltd, 116).

A range of submitters commented that indigenous biodiversity should be managed to achieve no loss or a net gain in indigenous biodiversity. These submitters felt that managing for no net loss would be inadequate to halt the decline of indigenous biodiversity. Some also thought that no net loss was inappropriate for the management of rare or threatened habitats or species. For instance, Waitakere Ranges Protection Society (355) submitted that “... the concept of ‘no net loss’ is totally inadequate in order to achieve the purpose of the NPS and that losses will continue to occur unless enhancement of biodiversity is a stated policy.” The New Zealand Ecological Society (237) submitted:

The concept of no net loss in many cases is not going far enough and will not achieve the need to turn the tide of biodiversity loss. Consideration of the concept of a net gain in biodiversity is needed. For many lowland ecosystem types loss has been significant and to increase viability and extent restoration and net gain is needed.

Conversely, numerous submitters expressed opposition to the no net loss objective from quite a different perspective. Industry organisations in particular raised strong concerns that the concept of no net loss is at odds with the sustainable management purpose of the RMA. For example, the New Zealand Wind Energy Association (224) submitted: “This policy is not consistent with the RMA and in our opinion it is contrary to the concept of sustainable management. The RMA is not a ‘no effects statute’.”

Other submissions on this aspect of the policy included the following:

This concept risks overriding the overall RMA purpose of sustainable management of natural and physical resources. The RMA is not a “no effects” statute designed to achieve environmental protection at all costs and, as stated above, the matters of national importance contained in section 6 of the RMA are not “vetoes”, but rather matters that must be considered when determining whether a particular application achieves the purpose of the Act (Auckland Airport, 12).

The proposed test of “no net loss” in the Policy is inconsistent with the sustainable management purpose of the RMA ... The Policy would require no net loss of biodiversity to be achieved regardless of the costs both financial and to communities and the environment of reaching that no net loss target (New Zealand Transport Agency, 239).

... the Act’s central tenet is the sustainable management of natural and physical resources. But the draft NPS makes no mention of sustainable management and in doing so, appears to extend the interpretation of the purpose of the Act from managing effects to ‘doing no harm’ – a substantial leap, and one not likely to have been intended by Parliament. In doing so, the draft NPS requirement of ‘no net loss’ will reduce the likelihood of appropriate development with positive social, economic and cultural benefits that would, but for the draft NPS, otherwise achieve sustainable development (Business NZ, 45).

There is no requirement in the RMA that a proposal must have “no net loss” in terms of its environmental effects; conversely there are several examples where the RMA anticipates that there may be adverse effects on the environment provided that the purpose of sustainable management is satisfied. That will often be the case with important infrastructure proposals, or the ongoing upgrading or maintenance of infrastructure to provide for the needs of people and communities (Vector Limited, 348).

Some industry groups and landowners submitted that the concept of no net loss was not in accordance with the objective of the NPS to strike a balance between protecting biodiversity and recognising that the economic, social and cultural wellbeing of people and communities depends on, amongst other things, making reasonable use of land. For example:

Application of the term “no net loss”, the proposed imposition of a hierarchy of avoidance, remediation and mitigation and omission of options other than offset mitigation is not consistent with the Objective in that it would fail to provide a balance between promoting maintenance and protection of biodiversity values while recognising rights of landowners and the need to provide for economic, social and cultural well-being of people and communities (Winstone Aggregates, 387).

We suggest that clarity and conformity with the ‘parent’ principles of the RMA, requires that Policy 5 be amended so that the word “cannot” is in each instance supplemented with the word “reasonably”, or, “practicably”. This amendment would better achieve the proposed NPSIB’s overall Objective of “recognising that the economic, social and cultural well-being of people and communities depends on, amongst other things, making reasonable use of land” by specifically introducing that element of reasonableness into its provisions (Mighty River Power Limited, 197).

Local authorities, landowners and some industry groups submitted that the costs of implementing the no net loss policy would be prohibitive and impractical. Costs would be felt by both local authorities and project proponents. Costs include those for processing, monitoring, enforcement and hiring ecological experts.

Concerns were also raised regarding the definition of “no net loss”. Submitters considered that the definition:

- is unclear
- is too narrow
- captures both exotic and indigenous biodiversity
- should include no reduction in ecosystem types.

For example, Fonterra Co-operative Group Limited (Dairy NZ) (90) submitted that “For the implementation of Policy 5, a clear definition of what constitutes “no net loss” is vital. ... A definition of no net loss needs to be clear and uniformly applicable – though not overly complicated or detailed such that it would require reliance on experts in each case.”

8.4 Measuring no net loss

Submitters highlighted a number of issues regarding difficulties in measuring no net loss. Local authorities, in particular, were concerned about the scale of measurement and monitoring of no net loss, whether it would be at a local, regional or national level. Local Government New Zealand (166) and a number of councils expressed concern that the proposed NPS does not define the geographical extent or scale to which the concept of no net loss is to be applied.

Many local authorities submitted that it is vital to establish a baseline of biodiversity data so that no net loss can be measured effectively, and called for guidance on how to measure no net loss. A number of submitters also requested direction on the time period over which to measure no net loss.

Forest and Bird (Eastern Bay of Plenty) (75) expressed doubt about the ability of local authorities to effectively measure and implement the policy. The Royal Society of New Zealand (284) raised concerns regarding the difficulty in measuring for no net loss of invertebrates and microbiota.

9 Policy 6 – Non-regulatory approaches

Policy 6 promotes the protection and enhancement of biodiversity beyond sites of significance. The policy refers to a range of matters well recognised in ecology and in many existing RMA plans. Importantly, the measures outlined in policies 6 a–h are not mandatory.

About 180 submissions commented on Policy 6. About 40 stated that they supported the policy, while around 50 supported it in part. Around 30 submissions were opposed to the policy. The remainder did not state a preference.

9.1 Clarity of wording and intention

About 100 submissions commented on the clarity of the policy’s wording and intention. Around 35 considered that the wording and intention of the policy were clear, while about the same number did not think the policy was clear. The remainder did not state a preference.

Several local authorities considered Policy 6 was unclear. For example, Otago Regional Council (245) submitted that it was unclear what the policy was seeking to achieve; whether it is to specifically guide decision-makers or encourage councils and the public to undertake these measures. Environment Canterbury (417) commented that: “... the phrasing of this Policy as “should do” means that ambiguity remains regarding what, beyond protection of significant sites, is required for local authorities to fulfil their maintenance of indigenous biodiversity functions.”

Tauranga City Council (326), Horizons Regional Council (392) and Environment Canterbury (417) commented that Policy 6e was particularly confusing. Horizons Regional Council commented, for example: “The current wording of 6e is complicated and mixes several management methods (planting, pest control, creation of habitat) with best practice (ecosourcing).” Hurunui District Council (408) considered that, given the confusing nature of Policy 6, the policy could be ignored by decision-makers.

A number of other submitters said the role and application of the policy was confusing. Transpower Ltd (343) was representative of these concerns, stating: “How Policy 6 will be implemented is unclear under the current drafting ... there is no certainty for applicants or landowners on when this Policy will apply or how it will be applied by decision makers.”

Two submitters commented that the phrase “identified areas” was unclear. David Scott (291) said it could imply the establishment of another class of reserves. Wellington Botanical Society (31) suggested it could mean that the policy related to biodiversity outside of significant areas. Alternatively, this submitter said it could mean the policy related to biodiversity outside identified significant areas *and* to biodiversity within larger significant areas where biodiversity values may not necessarily meet the criteria for “significant” under Policy 2.

Some submitters made other comments about specific parts of Policy 6:

- Tauranga City Council (326) commented that Policy 6e (encourage planting of locally sourced indigenous species) was too complicated.
- Tainui Hapu ki Whaingaroa (Tainui) (319) commented that it was unsure how Policy 6(g) (ensures human-made structures do not adversely impact on indigenous species) would be enforced, given that most wind farms are already consented. Hurunui District Council (408) considered that the word “ensure” at the beginning of Policy 6(g) was not consistent with the policy’s non-mandatory approach.
- Tuwharetoi Station (327) was unsure what the word “appropriate” meant in Policy 6(h).

9.2 Consistency with objective

About 65 submissions commented on the consistency of Policy 6 with the stated objective. Submitters were reasonably evenly split on whether or not they considered that the policy was consistent with the objective.

A number of submitters commented that Policy 6 was inconsistent with the objective of the NPS because the measures outlined were not mandatory. The general opinion amongst these submitters was that the language of the policy was not strong enough to ensure councils considered the policy or undertook activities. Christchurch City Council (staff submission) (54) summed up the concerns of a number of submitters: “... use of words such as ‘encourage’ and ‘recognise’ does not require actual protective measures on the ground for indigenous biodiversity.”

Other submitters, particularly environmental NGOs, considered that the scope of the policy did not meet the objective of protecting indigenous biodiversity. This was because it did not go far enough, for example:

- several submitters believed the policy did not adequately account for the importance of plant and animal pest control
- the Centre for Biodiversity and Ecology Research (52) considered that the policy did not adequately address habitats not associated with vegetation (such as hydrology and geological substrate)
- Fonterra Co-operative Group Limited (Dairy NZ) (90) considered the policy failed to acknowledge historical and ongoing effects, such as climate change
- Man ‘O War Farm (172) submitted that the policy did not recognise the value of voluntary measures and incentives
- Council of Outdoor Recreation Associations of New Zealand (60) and Environment Southland (80) considered that the policy did not adequately address freshwater habitats
- Nga Motu Marine Reserve Society (226) submitted that ecosystem services were not accounted for.

Selwyn District Council (420) stated that the policy was not consistent with the objective to encourage protection and enhancement of biodiversity values more broadly, because it did not provide a coherent framework for the development of non-regulatory methods.

In contrast, Stratford District Council (316) and the Matamata-Piako District Council (335) stated that the policy's aim to promote the protection and enhancement of biodiversity more widely fell outside the scope of what should be considered an appropriate objective for an NPS.

9.3 Implications/effects of the policy

9.3.1 Non-mandatory guidance on best practice

About 10 submitters commented on the implications and effects of the policy. Most submitters who commented on this aspect of the policy disagreed with the non-mandatory approach. Most said that the lack of mandatory requirements would mean the policy would be ignored by many decision-makers and therefore achieve little. The submission of the Advisory Committee for the Waikato Regional Environment (2) was representative of these concerns: "... use of soft language such as 'recognise', 'encourage', and 'consider' in this policy does not actually require decision makers to do anything, if they choose not to... it lets the Councils not showing leadership off the hook."

Hastings District Council (120) also stated that non-mandatory policies would be hard to implement because: "While a consent authority can 'encourage' or 'recognise' various elements of efforts to protect indigenous vegetation, to do so carries little enforceability... [and] in fact may achieve little ..." In contrast, Newmont Waihi Gold (225) submitted that it was comfortable with the non-mandatory approach because it was not likely to result in increased costs or significant changes to its operations.

Hawke's Bay Regional Council (124) said that non-regulatory methods would require a greater implementation period than regulatory responses and would therefore require greater time before the policy's effectiveness could be measured.

Submitter 120 commented that there is no requirement under the RMA to protect areas of indigenous vegetation and habitats of indigenous fauna that are not significant. They said that non-mandatory methods may therefore be appropriate.

9.3.2 Consideration of incentives

Policy 6(h) states that decision-makers should consider both regulatory and non-regulatory incentives to support and encourage landowners to make appropriate land management decisions. All submitters who commented on this aspect of the policy supported the use of incentives to support and encourage biodiversity measures. Some submitters were of the opinion that central government should provide funding for such incentives.

Some submitters noted that non-regulatory methods, such as bonus development rights, rates relief, technical advice, practical help, and financial assistance and covenanting, are more effective in protecting indigenous biodiversity than regulatory approaches such as rules.

9.3.3 Forestry

Several forestry companies and associations submitted on the potential impact of Policy 6 on forestry operations. All of these submitters raised concerns that it could negatively impact the forestry industry. For example, Rayonier NZ Ltd (267) submitted: “Rayonier is deeply concerned that this policy will be relied upon to promote significant additional rules in regional and district plans that restrict activities near indigenous biodiversity.”

Forestry industry submitters were particularly concerned about potential negative implications of Policy 6c and 6d. Policy 6c requires councils to encourage the retention of existing vegetation (whether indigenous or not) that provides habitat for indigenous species, seasonal food source or indigenous species, ecological linkage between areas and habitats, and a buffer to indigenous vegetation. Policy 6d encourages measures that mitigate and offset adverse effects on indigenous species during, and subsequent to, removal or modification of vegetation or habitat through harvest or clearance.

Submitters commented that 6c would have serious implications for plantation forests because “almost every indigenous species can and will make use of exotic forest species and habitats on a permanent or semi-permanent basis” (New Zealand Farm Forestry Association, 217). These submitters expressed the opinion that 6d may require foresters to undertake mitigation or offsetting at the time of harvest. In their opinion, this would penalise plantation forestry for the biodiversity values that it provides. Blakely Pacific Ltd (30) summed up these concerns in its submission:

It is reasonable to anticipate that this policy will be relied upon to impose significant restrictions on plantation forestry, including but not limited to the following:

- (a) Greater regulation of buffer areas and riparian margins;
- (b) Requirements for detailed management plans for indigenous biodiversity;
- (c) Restrictions on timing of operations ...
- (d) Restrictions on the ability to harvest existing plantations that contain indigenous biodiversity; and
- (e) Additional direct cost imposed to assess biodiversity values for the public good.

Such measures would impose significant costs and challenge the viability of Blakely Pacific’s operations.

New Zealand Farm Forestry Association (217) stated that small-scale forest owners would be particularly disadvantaged by the policy:

We have many members who have very small pockets of forest that they will harvest once in their forest tenure. These forests could well be made totally uneconomic to manage, due to the added burden of any costs that may be imposed... under the direction of this NPS. Many of our members do not have the financial depth, or spread of harvest dates, or number of woodlots, to spread out any potential costs associated with mitigation and offsets.

Southland District Council (309) also stated that encouraging the retention of existing vegetation may have an impact on operations such as roading and forestry activities.

9.3.4 General implications

There were a wide range of submissions that made general comments on the implications or effects of Policy 6. A common concern was that the policy could lead to rules and restrictions being placed on much wider areas – potentially elevating the importance of vegetation and habitats that may not be particularly significant.

Business/industry submitters, as well as some central government submitters, were generally concerned that the policy would result in councils placing additional controls and restrictions on their activities. For example, King Country Energy Limited (153) commented: “Policy 6 ... has the potential to constrain and unduly fetter the operational requirements of KEC’s HEPS [hydro schemes] and the operation and maintenance of the same.”

More specifically, business/industry submitters were concerned that the policy would result in greater compliance costs for applicants, submitters and councils through the need to engage expert ecologists to assess proposals that may have adverse effects on natural features. Some business/industry submitters said the policy may even discourage or prohibit land disturbance and vegetation clearance, regardless of the significance of the vegetation.

Many landowners who commented generally on the implications or effects of Policy 6 were concerned that the policy may lead to councils passing restrictive rules which could interfere with normal farming activities such as clearance of regenerating vegetation. There were also some concerns that the policy could lead to higher rates for landowners, as councils look to fund additional biodiversity activities.

Local authorities were varied in their comments on the implications or effects of the policy. Some councils said it would be difficult to implement due to weak policy direction and lack of funding. Others stated that the non-mandatory nature of the policy would mean it should not have any negative implications. Invercargill City Council (141) was specifically concerned that the policy did not take account of pest plants that provide habitats for indigenous flora or fauna.

In contrast, some councils commented positively on the policy, suggesting that it allowed flexibility to consider a range of factors where they contribute towards the objectives.

Other comments on the general implications of Policy 6 included:

- it was too prescriptive and removes local government control and decision-making
- it did not recognise regional and local context
- it did not adequately address the threat of pests and weeds to indigenous biodiversity
- it was likely to increase regional inconsistencies in the management of biodiversity, leading to inefficiencies and inequity
- Policy 6a (recognising the contribution indigenous vegetation makes to the maintenance of indigenous biodiversity) would be impossible for councils to achieve because there is no longer any ability under the RMA for councils to make blanket tree protection policies
- Policy 6g (ensuring human-made structures do not adversely impact on indigenous species) was inconsistent with the sustainable management purpose of the RMA.

9.4 Suggested changes to Policy 6

There were a large number of submissions suggesting different approaches and/or amendments to the policy. The majority of suggested changes fell under three broad themes:

- changes related to the non-mandatory approach
- changes related to incentives and voluntary approaches
- changes related to forestry.

There were a range of submissions suggesting that all or parts of the policy should be more directive. The most common suggestion was to replace the word “should” with “shall” or “must” to make the policy mandatory.

Several submitters suggested that Policy 6 could set out specific options or guidance on incentives for landowners to protect their indigenous biodiversity. The most common suggestion was rates relief for landowners with significant areas affected by Policy 6 or the NPS in general. Other submitters suggested incentives, included tax relief, subdivision rights, or subsidies.

Some submitters suggested the policy needed to better recognise, support and encourage voluntary efforts by landowners. Federated Farmers (West Coast) (86) suggested that councils be required to have agreements with landowners to achieve appropriate management of areas on private land.

A small number of submitters suggested changes to Policy 6 in relation to forestry. Scion Research (290) said the policy should recognise that forests planted with indigenous species for commercial reasons also contribute to the conservation of biodiversity and the provision of ecosystem services. They also considered that councils should not seek to prevent the sustainable management and harvesting of these forests.

New Zealand Forest Owners Association (218) suggested amending Policy 6(c) to exclude recognised pest plants and plantations that have been established for commercial harvesting, and all associated indigenous understory.

There were a wide range of other suggested changes to Policy 6. Most were suggestions to add to or expand the policy’s criteria. These changes included:

- having regard to the importance of existing investment in biodiversity
- changing the objective of the policy to “promote the enhancement, restoration and maintenance of biodiversity”
- adding rules for the protection of (contiguous) natural areas “from sea to mountains”
- including a separate policy for the control of pest plants and animals
- recognising and providing for the use of matauranga Māori in the policy
- providing guidance to councils on how they might evaluate and/or weigh visual/amenity considerations with biophysical considerations
- stating what vegetation or habitats should be maintained to fulfil sections 30 and 31 of the RMA (functions of regional councils and territorial authorities under the RMA)
- recognising the potential for degradation of biodiversity by pastoral stock
- more specifically recognising freshwater habitats and riparian vegetation along waterways

- recognising that natural succession of indigenous vegetation and natural events (such as earthquakes and climate change) can result in biodiversity composition change and habitat type
- stating that blanket tree protection is an acceptable tool for council use
- recognising pest plants that provide habitat for threatened fauna.

Some submitters suggested changes to simplify and/or reduce the scope of Policy 6. MainPower NZ Ltd (424) submitted that the policy should be simplified to allow for the use of both statutory and non-statutory methods, appropriate to the circumstances, for promoting the maintenance of biodiversity outside of significant areas. It suggested including these methods in planning documents to enable an opportunity for consultation and direction from the Ministry for the Environment. New Zealand Wind Energy Association (224) agreed with this approach, stating: "... we feel the appropriate avenue for encouraging councils in this regard is to have a broader, non-prescriptive, policy in the NPS that is supported by educational guidance material."

Alastair Haliburton (113) said Policies 6a and 6d would be likely to interfere with reasonable farming activity, and should be changed or removed.

10 Policy 7 – Tangata whenua

Policy 7 sets out how local authorities should recognise and provide for the role of tangata whenua as kaitiaki of biodiversity when developing and implementing regional policy statements and regional and district plans. Around a quarter of submitters commented on this policy. Fifty seven supported the policy, 25 supported it in part, 28 opposed the policy, and one was neutral.

Of the submitters who provided reasons for their support for Policy 7, the submission from the Federation of Māori Authorities (429) was representative: “We appreciate the recognition of tangata whenua in the NPS. There has traditionally been a deep cultural relationship between Māori, the land and indigenous species and this relationship has often been overlooked when implementing new environmental policy.”

10.1 Consistency with objective

Of the submitters who commented specifically on the policy’s consistency with the overall objective of the NPS (about 35), the majority stated (30) that it was consistent, or consistent in part. Hamilton City Council (115) submitted that as currently worded, the policy did not reflect the balance of the objective:

Policy 7 should be redrafted to allow for the balancing of the points listed within the policy in relation to issues such as landowner rights, economic and environmental considerations, in each given situation. Suggest the words ‘shall provide for’ be replaced by ‘give particular regard to,’ in order to enable such balancing to occur.

A key issue that was picked up by a number of submitters was that “tangata whenua values and interests” (7a) may not always align with the protection or maintenance of biodiversity. For example:

The “values and interests” may be at odds with the objective of biodiversity maintenance and in this case some sense of the priority for biodiversity maintenance and protection and restoration should be clearly spelt out (Environment and Conservation Organisations of New Zealand, 79).

Do “interests” in (a) include commercial interests? If so, this could result in a conflict of interest if tangata whenua were involved in decision making on resource management matters where they had a financial interest (Forest and Bird (Eastern Bay of Plenty), 75).

We note that “kaitiakitanga” is commonly understood to relate to conservation of resources but that interpretation will be particular to each tangata whenua group according to their tikanga. For Raukawa it is important to note that the concept of kaitiakitanga relates to the management of resources and this includes their use and not just their protection. Effectively it refers to sustainable management and using resources in such a way and at such a rate as to ensure they are not diminished. This is an important distinction as recognising and providing for the role of tangata whenua as kaitiaki includes recognising and providing for our use of resources (Raukawa Trust, 425).

10.2 Clarity of wording/intention

Of the submitters who commented specifically on the clarity of wording/intention of this policy (about 50), the majority (38) submitted that the wording was clear. Thirteen said that it was not clear.

Submitters requested further clarification on the requirement to provide for “active” involvement of tangata whenua in the protection of cultural values associated with indigenous biodiversity. For example, Tuwharetoa Māori Trust Board (426) stated: “We would like further clarification as to what the word ‘active’ implies in Policy 7(c). It is unclear and arbitrary.” Similarly, Rotorua District Council (282) submitted: “Local authorities cannot set the level of involvement of tangata whenua, beyond providing the opportunity to do so. Amend Policy 7(c) by deleting the word ‘active’.”

There were submissions on the use of Māori terms in both Policy 7 specifically and throughout the NPS generally. Terms commented on were “tikanga” and “tangata whenua”. Ngati Kahungunu Iwi Incorporated (227) commented that the term “tikanga” should refer specifically to “tikanga Māori”. Hemi Te Rakau (329) suggested that both the term “tangata whenua” and “Māori” (as people), should be defined in the NPS. The Potangotango Foundation (254) stated that they preferred references to “tangata whenua” retained in the policy (as opposed to “iwi”): “References to ‘tangata whenua’ should be retained. There are often more than one group claiming to be iwi Authorities... Iwi authorities do not necessarily have the mandate or the constitutional authority to deal with these issues.”

Some submitters commented that the policy is inconsistent with the RMA or other legislation in respect to its use of the term “tangata whenua”:

The Policy inappropriately changes the status of the role of tangata whenua as kaitiaki from that determined by Parliament in the RMA. Section 7(a) RMA requires decision makers under the RMA to “have particular regard to” katiakitanga. This Policy inappropriately seeks to override this section by requiring decision makers to “recognise and provide” for that role (New Zealand Transport Agency, 239).

The scope of Policy 7 goes beyond the current tangata whenua provisions of s6, s7 and s8 and could arguably be ultra vires. Policy 7c is implicit in Policies 7a and 7b and is therefore redundant (New Plymouth District Council, 211).

Other submitters considered the policy to be unnecessary. Dunedin City Council (74) commented, for example: “The policy is supported but seems to merely state requirements of the RMA.” Similarly, Federated Farmers (Gisborne-Wairoa) (107) stated: “The current RMA planning processes already allow for interested and affected parties to be involved in the resource consent process and Section 8 requires decision makers to take into account Treaty of Waitangi principles.”

Some submitters also suggested that the policy may create uncertainty or inconsistency. For example, New Zealand Transport Agency (239) commented: “Councils’ approaches to implementing Policy 7 will vary creating inconsistencies, which may lead to significant delays and costs.”

A number of submitters questioned how the policy would be applied in practice. New Plymouth District Council (211) expressed concerns that the policy creates expectations that councils would not be able to deliver on, particularly in relation to 7c and 7d. While Man O’ War Farm (172) submitted that the policy generates a number of questions and uncertainties:

Policy 7 raises a number of questions and uncertainties as to how the policy would be interpreted, administered or applied including as follows: (a) How would Tangata Whenua values and interests be identified? (b) How Tangata Whenua is to be identified for the purposes of consultation? (c) How cultural values associated with indigenous biological diversity are to be established or defined? (d) What customary use of indigenous biodiversity according to Tikanga might comprise or involve?

10.3 Effects of the policy

A number of submitters stated that the policy supports best practice, and therefore will not impose significant additional costs. For example, Newmont Waihi Gold (225) submitted:

NWG consults with tangata whenua and generally has a good working relationship with them. For this reason, NWG does not believe that policy 7 will have much of an effect on its activities. Neither will it add significant costs. NWG supports Policy 7 as a necessary way in which to recognise the relationship of Māori to biodiversity through their biodiversity interests which are recognised in accordance with Part 2 of the RMA and the New Zealand Biodiversity Strategy.

A number of councils and landowners were concerned about the implications of 7d, which provides for customary use according to tikanga. Some of these concerns related to the impact of customary use on biodiversity. For example, Christchurch City Council (staff submission) (54) suggested that “There are times when local authorities will not be able to guarantee that customary use is always possible for all species; indeed for some it may not be possible at all.” Some councils submitted that this aspect of the policy would be difficult to implement, especially when the biodiversity in question is located on private land:

Some local authorities have concerns about policy 7(d) ... There has been some confusion about what is required of local authorities to implement this policy. Will local authorities be tasked with resolving access issues between local iwi and landowners for example? (Local Government NZ, 166).

In relation to Policy 7d, customary use on public land can be more readily accommodated than that pertaining to private property. How are Councils expected to provide for customary use on private land? This is a recipe for the classic ‘private property rights versus ‘customary use’ argument (New Plymouth District Council, 211).

Many landowners were concerned that Policy 7 would require them to provide for Māori access to privately owned land:

I am as an individual very respectful of Māori past habitation on my land and in fact see it as something which is a valuable historical aspect of my farm but the operative word is My farm and it means that Tangata whenua come onto my farm at my behest and on my terms and not the Governments nor some faceless body like the Council or the Regional Council (Rob Lilly, 161).

In contrast, Raukawa Trust (425) submitted that it did not interpret this policy as allowing tangata whenua access to the land of others:

We understand there have been concerns raised about this policy enabling tangata whenua access to private property. We do not interpret the policy in this way and we strongly support the inclusion of clause d).

Landowners were also concerned that the policy would result in Māori having a greater say in the management of private land, and suggested that there should be more recognition of the connection that non-Māori landowners have with the land.

Tangata whenua already have a wide range of input into identifying significant places of cultural interest on privately owned land. This is no need for further management by tangata whenua or the public of land purchased privately by rightful means (A. and T. Ward, 365).

We cannot accept that Māori through powers afforded to Local Authorities are given pre-emptive rights over private landowners. We will not accept that tangata whenua are kaitiaki over our land (John and Verona McLeod, 195).

Gives one sector of our population a greater say in the management and use of property than any other sector (Rangitata Diversion Race Management Limited, 364).

This policy recognises the connection that tangata whenua have with the land. I would like it to be recognised that families that have been farming in an area for many generations also have a special and strong connection to their land and deserve to be treated in the same way as tangata whenua (Peter Chartres, 53).

Policy does not acknowledge that non-Māori also act as Kaitiaki over their land (Michael Hayes, 412).

Many submitters pointed out that the policy would create costs – to councils, tangata whenua and landowners:

There are significant resources, including staff and owner time, administrative and specialist advice costs, which are utilised whenever the Incorporation is required to participate in consultative processes or is asked to provide advice to local authorities about areas of significance within our region. In our submission, local authorities along with other stakeholders such as the Incorporation must be fully supported through funding to ensure adequate resources are available to support the development of processes, which are consistent with the objective of Policy 7 (and with the overall policy) (Wakatu Incorporation, 358).

There will be costs to councils to ensure adequate consultation (Southland Conservation Board, 308).

This could impose a huge cost structure onto resource consent applications and or undermine or compromise existing agreements and or relationships between landowners and district councils (Federated Farmers (Ruapehu), 285).

Other effects of the policy on tangata whenua were identified by some submitters, including the following:

While policy seven provides a role for tangata whenua in developing and implementing local policy, it may be limited to areas that are significant to tangata whenua. This may have the effect of forcing tangata whenua to identify specific sites or do a stock take of areas (Te Runanga o Ngaati Ruanui Trust, 330).

... most of New Zealand's high temperature geothermal fields are overlain by Māori land, such that, more often than not, Māori Trusts and land interests are significant partners in developments or principal developers of geothermal resources. If additional restrictions on development occur over and above the checks and balances applied through the current RMA constraints then this may directly impact these Māori interests (New Zealand Geothermal Association, 220).

10.4 Suggested changes

Submitters proposed a range of changes to the policy:

- the tangata whenua policy should be permeated through all policies rather than stand alone
- the policy should include co-management and co-governance arrangements for biodiversity within hapū authority rohe
- the policy should be strengthened to include opportunity to transfer powers under the RMA to iwi/hapū authorities to manage, measure, monitor and report integrity of biodiversity
- iwi/hapū management plans should be recognised
- a policy should be included on integrated management (an approach that considers both traditional Māori management and western scientific management).

Several submitters commented on the relationship between the WAI 262 report and the NPS. (See also process section.) For example, Ngati Kahungunu Iwi Incorporated (227) submitted: “With the report of the Waitangi Tribunal on WAI 262 (flora and fauna claim) pending there should be a pathway or mechanism whereby outcomes and recommendations from this report can be incorporated into the higher level governance and management of indigenous taonga species.”

11 Policy 8 – Consultation

The objective of Policy 8 is to ensure all councils provide for adequate public consultation in accordance with the RMA. About 90 submitters commented on Policy 8. The majority supported the policy. Despite generally positive feedback on the policy, submitters also raised a number of concerns. The key themes raised by submitters were: the requirement for the policy; the policy's interaction with the RMA; the scope of consultation and implementation costs.

A large number of submitters who commented on Policy 8 suggested that there is no need to include it in the NPS because it simply replicates consultation provisions in the RMA. The majority of local authorities that submitted on Policy 8 suggested that consultation outlined in Policy 8 was already established best practice. For example, Invercargill City Council (141) and Stratford District Council (316) submitted the following:

This policy reaffirms the principle of consultation apparent in the RMA but does not appear to require any additional consultation over and above what most local authorities would consider best practice. Indeed most local authorities, including the Invercargill City Council, would likely operate a best practice consultation process that reaches further than the minimum consultation that is required by the policy (141).

The Council believes that this policy is unnecessary, as schedule 1 outlines the process that the Council must follow when undertaking Plan Changes when a District Plan, Regional Plan or Policy Statement is reviewed. In particular, the Council is required to send notice to any person who is likely to be directly affected by the Plan Change ... It is unlikely that the inclusion of this policy would change the Council's consultation processes, or enhance any consultation process (316).

In contrast, some industry organisations and local authorities submitted that Policy 8 is inconsistent with the RMA. For instance, New Zealand Coal and Carbon (212) submitted:

The problem with this policy is that it is inconsistent with the consultation requirements of Schedule 1 of the RMA. There is no need to vary these requirements (and it would be unlawful to do so) as the Act deals with consultation.

A number of landowners and farming organisations submitted that the policy is too broad. They suggest that consultation with affected landowners should be prioritised. For instance Federated Farmers (Taranaki) (432) suggested that the requirement to consult with the public and tangata whenua (8b and c) should be deleted:

Whilst Taranaki Federated Farmers understands the intent of this policy as currently worded it is too broad and this will increase the cost of implementing the policy considerably. We believe it needs to be amended to focus specifically on affected landowners and this will better reflect the proposed NPS objective and purpose of the policy as identified in the Section 32 Evaluation.

Concerns were also raised about the potentially high implementation costs of such a broad policy and the time required by farmers/ business owners to be involved in consultation.

Conversely, a number of submitters called for the scope of consultation to be broadened, by including additional stakeholders to the policy. Proposed additional stakeholders included those that may have an interest in biodiversity issues on a particular site or within a particular area, district or region – for example, DOC, local landcare groups, QEII Trust, NGOs and other affected parties.

12 Implementation and monitoring

A range of issues were raised in submissions in relation to the implementation and monitoring of the NPS. This section outlines the points raised in submission regarding costs and funding, monitoring and more general issues in relation to the policy's implementation.

12.1 Costs and funding

Industry organisations, landowners, individuals and several local authorities identified additional resource constraints that would be placed on local authorities as a result of the NPS. Some submitters considered that the NPS would be too expensive for councils to implement at all. Other submitters identified particular aspects of implementation which would require significant additional resourcing and put a further burden on councils:

- employing expertise such as ecologists and GIS specialists
- additional resourcing required to undertake plan changes
- additional resourcing required to identify significant areas of indigenous biodiversity
- additional resourcing required to monitor indigenous biodiversity.

A number of local authorities were concerned about the costs of plan changes as a result of implementing the NPS. Environment Southland (80) suggested that section 55(2A) of the RMA (which requires amendments to RPSs or plans to be made without using the Schedule 1 process) be used for plan changes associated with the NPS:

Most of the costs incurred in preparing or amending plans or RPSs relates to the Schedule 1 process, therefore, little costs would be incurred to amend an existing RPS to include the criteria in Policy 2 of the NPS. If section 55(2A) of the RMA applies in this situation, then Policy 3 should clarify this and that the Schedule 1 process is not required to incorporate changes to an RPS as a result of Policy 3.

Submitters pointed out that the burden for biodiversity protection was not evenly spread across regions and districts and that there will be local and regional variation in the effects of the NPS on local authorities. For example, Fonterra Co-operative Group Limited (Dairy NZ) (90) submitted:

Local authorities are in varying states of readiness and capacity for managing biodiversity. This is compounded by costs not falling evenly across regions, as the needs for biodiversity protection are likely to vary considerably. As a consequence, implementation of this NPS is likely to be very uneven. It is important to recognise that a lack of action to protect biodiversity by a local authority is most likely to be due to a lack of resourcing, capability or capacity, not a lack of will to make a positive contribution. Direct support will need to be provided where needed to ensure proper implementation.

A range of submitters also raised concerns that the NPS would put particular pressure on councils that have relatively high levels of significant indigenous biodiversity but a smaller ratings base. Examples include the West Coast, Ruapehu and the Far North. Some submitters were concerned that costs would be incurred locally for regional and national benefits.

A number of submitters, including Queenstown Lakes District Council (261) and Hawke's Bay Regional Council (124) submitted that councils and individuals do not have sufficient access to information which will make it difficult for councils to identify and map for areas of significant biodiversity and manage for no net loss.

A large number of submitters called for funding and general financial assistance to be provided by central government to local authorities. Some commented that a lack of funding may undermine the effectiveness of the NPS. Those who commented included individuals, industry and iwi/Māori organisations, NGOs and several councils. Submitters suggested a number of supporting measures that could be provided by central government:

At the very least, central government funding should be provided to support local government initiatives given the national significance of indigenous biodiversity for central government's economic and environmental policy goals and international obligations (Taranaki/Whanganui Conservation Board, 322).

... resourcing for the implementation of the NPS on Indigenous Biodiversity should be funded nationally, not regionally by rate payers. The funding also needs to be adequate for purpose so that qualified personnel and technical assistance can be provided for this important function (Forest and Bird (South Otago), 304).

... the large resource implications for the relevant authorities in implementing these policies and suggests that additional resources be provided by central Government to assist in identifying significant areas, so that these are not reliant on the resourcing levels and political will of the individual Councils to prioritise the work and budgets (Waitakere Ranges Protection Society, 355).

Consideration should be given to central government establishing a new fund to assist local authorities implement biodiversity directives and/or open the current SMF to local authority application (Porirua City Council, 252).

Address the issue of inequitable distribution of costs through a programme of targeted funding of councils to deliver on identification of areas (Taranaki District Council, 323).

A number of submitters, particularly local authorities, also submitted that the biodiversity advice fund and biodiversity condition fund should be available to councils for the implementation of the NPS.

Several submitters called for a more complete implementation framework or support package to address resource and capacity issues and help meet challenges faced by local authorities in giving effect to the NPS:

NZPI recommends the development and inclusion of an implementation framework that addresses resourcing and capacity issues. This should also include ongoing monitoring and evaluation to ensure that the NPS achieves its intended objectives. NZPI recommends that this includes guidance and training (New Zealand Planning Institute, 416).

Landowners raised concerns regarding the costs of compliance, monitoring, additional administration and costs associated with the consent process. Some suggested that funding should be made available to them to protect indigenous biodiversity and compensate them for costs incurred due to the NPS.

Submitters also urged for national guidance to ensure consistent and effective implementation of the NPS and that provisions for managing competing district, regional and national biodiversity priorities should be included in the NPS.

12.2 Monitoring

Submitters suggested a variety of ways to monitor the NPS:

- district/regional council level monitoring
- national level monitoring by the Ministry for the Environment, Parliamentary Commissioner for the Environment, Environmental Protection Authority, QEII Trust or an alternative independent body
- a nationally consistent approach
- using district/regional state of the environment reporting
- using national state of the environment reports
- by engaging local landowners in monitoring process
- by using environmental council officers
- by collaborating with DOC
- monitoring should be carried out by landowners, with Māori landowners monitoring on Māori-owned lands.

Of these approaches, the most frequently suggested approach was regional/district level monitoring with national funding. A range of submitters, including industry, central government, Māori, NGOs, individuals and local authorities supported this approach.

Several local authorities called for a monitoring policy to be included in the NPS. Some suggested a policy similar to what is included in the NZCPS, while other submitters called for a monitoring policy to consider traditional mechanisms for management as well as Western scientific management.

Other issues raised regarding monitoring of the NPS included:

- monitoring should include both council implementation and biophysical (biodiversity) outcomes
- common measures are needed for measurement and reporting
- a catchment approach with ecosystem services evaluation should be taken into consideration
- monitoring should avoid costly monitoring/compliance requirements
- a national database is necessary to ensure effective and consistent monitoring
- monitoring should be carried out in a robust manner to a regular timetable
- monitoring results should be reported to enable central government, local authorities and the community to track progress and effectiveness of measures used to give effect to the NPS.

13 Linkages with other policies

Almost a third of submitters commented on how the proposed NPS links with other policies and legislation, including the NZCPS, other NPSs and the New Zealand Emissions Trading Scheme.

Of the submitters who commented on links, overlap or consistency issues with other policies, the largest proportion (around 20 per cent) raised concerns about overlaps or inconsistencies with the NZCPS. In particular, a number of submitters expressed concerns about the overlap between the proposed NPS and the NZCPS not being addressed in the proposal, particularly with respect to which one will prevail when there is a conflict. A smaller, but still substantial number of submitters commented on the relationship between the proposed NPS and the NPS for freshwater management (2011). Here, the concern was more frequently about the gap in respect to freshwater biodiversity, succinctly summed up by Fonterra Co-operative Group Limited (Dairy NZ) (90): “While the NPS on Indigenous Biodiversity does not cover freshwater, the Proposed Freshwater NPS does not refer to protecting biodiversity.” Submitters also pointed out that in the case of wetlands, there is a degree of overlap, and it may not be immediately clear which NPS applies.

Several submitters expressed concerns about potential conflicts between the proposed NPS and the NPS on renewable electricity generation. Nelson City Council (209) gave an example of a potential conflict where a hydro dam is being developed within a valley that contains an identified area of significant indigenous vegetation and habitats of indigenous fauna.

A number of submitters commented on the need for general consistency across NPSs and national environmental standards (NESSs) – both existing and future. One submitter commented on the need for consistency with the NPS on electricity transmission and on other electricity regulations.

A substantial number of submitters commented on potential conflicting outcomes of the proposed NPS and the New Zealand Emissions Trading Scheme in respect to indigenous forest. Deer Industry NZ and Beef and Lamb NZ (406) stated:

The current ETS provides very strong incentives to plant fast maturing forest to obtain the short-term benefits of carbon credits. The trees most favoured will be fast growing exotics. The parts of the country most likely to be planted are the areas of currently marginal profitability, often currently covered in indigenous scrub... Unfortunately, there now appears to be a risk that the ETS and the NPS on Biodiversity will combine to present a very powerful incentive for the removal of all native scrub on marginal land in advance of full implementation of the policy – a potential consequence of the NPS that must be avoided.

Federated Farmers of New Zealand (434) commented:

... Government is encouraging the active clearance of Indigenous Biological Diversity through its afforestation grants and the implementation of the ETS. It is clear that the conversion of regenerating indigenous vegetation areas to exotic forestry has been identified as one of the biggest contributors to the clearance of indigenous vegetation.

Two submitters stated that the NPS would undermine the purpose of the proposed NES for Plantation Forestry.

In addition, a significant number of submitters commented on the need for linkages with legislation, policies and strategies beyond NPSs and NESs: including the Forests Act, the Biosecurity Act, the Public Works Act and legislation relating to transportation, Hazardous Substances and New Organisms Act, legislation that applies to conservation estate, the Biodiversity Strategy 2000 and international obligations such as the Convention on Biological Diversity.

14 Supporting measures

“Supporting measures” are measures that can be implemented in parallel with a regulatory tool, in this case, the proposed NPS, to support the achievement of its policy objectives. Generally, supporting measures comprise non-regulatory tools, such as guidance, funding or targeted assistance.

About a third of all submitters commented on supporting measures or issues relating to supporting measures in some way. Of these, the largest number (about 40) commented on the need for pest control measures, predominantly for animal pests, but also for weeds. A large proportion of the submissions on supporting measures urged for the provision of compensation for landowner’s whose land is identified as significant (and therefore has more limited options for its productive use). In respect to this, S. and T. Stark (310) stated: “It costs in the vicinity of \$20,000 a hectare to reinstate indigenous plantings and this figure should be used in the mechanism of compensation to the landowner.”

A substantial number of submitters urged for increased funding (from central government) for territorial authorities to cover the additional costs that councils would incur if the NPS were to be implemented. A similar number also urged for more funding for land care groups, covenants and other voluntary protection measures. (While not explicitly stated in all cases, the implication was that the funding should come from central government.)

The importance of incentives, including rates remission from local government, was commented on by several submitters – one submitter stating, however, that rates relief alone was not an adequate incentive or reward for protecting biodiversity on private land. Several submitters also suggested the use of payment for environmental benefits provided by biodiversity on private land as a means of creating incentives for its protection, eg, through carbon credits or payments for ecosystem services. For example, Christine Ellen Henderson (126) stated:

Protection of New Zealand’s biodiversity is nationally important and contributes to a number of wider benefits that should be recognised – soil conservation, water quality. Reflecting the public good values, there should be stronger incentives for to encourage farmers and land owners to protect and enhancement of biodiversity.

Similarly, Fish and Game NZ (394) stated:

There are many examples internationally involving ways to maintain ecosystem integrity along with production and livelihood opportunities (for example, financial incentives, including eco-certification and payments for ecosystem services that promote eco-friendly agricultural practices and farmer-conserved areas). Unfortunately the [NPS] continues the approach of most policy, legal and institutional frameworks of separate action on ecosystem management, agricultural productivity and rural livelihoods.

A number of submitters suggested there should be policies to encourage and reward conservation in “productive landscapes”, such as exotic forestry, (planted) indigenous forestry and shelterbelts on farms. Hancock Forest Management (NZ) Ltd (116) for example stated that it is: “essential that the NPS provides mechanisms and approaches that encourage land uses that provide relative biodiversity benefits otherwise we risk encouraging land use (such as intensive farming) that provide little or no biodiversity benefits.”

A number of submitters emphasised the importance of education to build awareness of biodiversity and further research on biodiversity. Related to this, Federated Mountain Clubs (87) suggested that DOC has an important role in advocacy and education (information provision), and that this role should be strengthened, not diminished.

A number of submitters commented on the need for targeted (technical) assistance to be provided for territorial authorities, including the need for central government support of local authorities to address national monitoring and data collection requirements as part of the implementation package for the NPS.

Other suggestions for supporting measures were:

- the development of a national strategy or indigenous biodiversity protocol to guide council plan development; the development (or requirement to develop) regional strategies on indigenous biodiversity
- a National Environmental Standard on biodiversity as a more directive tool
- an amendment to the Resource Management Act
- the establishment of an independent Ombudsmen to hear cases related to biodiversity currently considered by the courts (the argument being that it would be more cost-effective, and therefore, accessible, to private landowners)
- the importance of whole of farm plans to assist farmers to manage farms more sustainably and productively
- the promotion of restoration of indigenous biodiversity on private land
- the importance of hapū management plans (and the need for them to be resourced adequately and taken account of by councils).

15 Alternatives to an NPS

About a quarter of submitters provided feedback on alternatives to the proposed NPS, including those who submitted that aspects of the status quo were preferable to a statutory intervention. A number of submitters commented that alternative measures to an NPS should not necessarily be seen as mutually exclusive from the NPS. For example, several suggested a “package of options” approach, with a non-regulatory approach supporting the regulatory approach represented by the NPS. Therefore, there is significant overlap between feedback under this section and feedback under the “Supporting measures” section of this report.

A substantial proportion of submitters on alternatives favoured voluntary rather than regulatory measures. In particular, many submitters urged for incentives for landowners to protect biodiversity on their land. Janet Hodgen (130) stated her belief that 90 per cent of landowners support the objective of the NPS and “would help willingly if approached in the right way”. In respect to incentives and rewards, a number suggested that carbon credits under the Emissions Trading Scheme (ETS) or a separate, but similar, biodiversity credit scheme would be an appropriate way in which to reward or incentivise the protection of biodiversity on private land. Another submitter referred to payment for ecosystems services provided by biodiversity as being an appropriate means of incentivising or rewarding its protection.

Many submitters highlighted the importance of voluntary agreements by landowners to protect biodiversity, such as under QEII covenants, and other non-regulatory approaches. One submitter commented on the value of whole of farm management plans, which assess biodiversity across the whole of the farm, not just in specific areas. Many suggested that the status quo, characterised by such voluntary approaches, was preferable to a statutory intervention such as an NPS.

A significant number of submitters commented on the importance of the central government role in biodiversity protection and maintenance on private land. Just over a quarter of the submissions that referred to alternatives to an NPS commented on the need for increased (central government) funding and support of local government and landowner efforts to protect and maintain biodiversity. A number of submitters commented on the success of organisations such as Landcare Trust and QEII Trust, and requested that funding of these kinds of organisations be increased. Federated Farmers of New Zealand (434) also suggested that a new contestable fund be established for landowners to directly apply to for funding for biodiversity projects on their land, and further suggested that a means for providing for additional central government funding would be a levy on international visitors coming into New Zealand.

Many submitters commented on the need for compensation and subsidies for land taken out of production. A number of submitters suggested that if the Government wants to protect private land for its biodiversity value, it should buy the land outright. For example, Hugh Wilson (386) suggested the selling off of “low conservation value” public conservation land as a means of raising funds to do this. In respect to compensation, both forms sourced from central government and local government were referred to, with rates relief (from local government) and tax credits (from central government) being specifically referred to in a subset of submissions.

A number of submitters highlighted the importance of pest control through measures such as fencing, and questioned the value of a regulatory instrument without increased emphasis on pest control (both on private land and conservation estate).

Another approach that was raised by a small number of submitters was the need for additional guidance and targeted assistance for councils from central government. One council urged the withdrawal of the NPS, and instead a focus on achieving biodiversity outcomes through an alignment with the Emissions Trading Scheme. Another council commented on the value of the Ministry for the Environment influencing individual council plan and RPS review processes to achieve national biodiversity objectives.

A small number of submitters suggested that an amendment of the RMA would be preferable to an NPS. The Tourism Industry Association of New Zealand (342) stated: “Rather than create yet another planning document to compensate for lack of guidance within the Resource Management Act (RMA), it may make more sense to change the Act itself.”

Other issues raised were private property rights, the need for more emphasis on better management of public conservation estate, and DOC’s important role in advocacy and providing direction on biodiversity management.

16 Comments on the Section 32 Report

The section 32 report, required under the RMA before a national policy statement is notified, considers the appropriateness, alternatives, costs and benefits of the NPS and its objectives and policies. Submitters commented on the evaluation of the status quo, the situation under the status quo and about whether or not the NPS is the best option to address the management of indigenous biodiversity.

16.1 The status quo

Chapter 2 of the Section 32 Report provided an overview of legislation and other tools used to manage biodiversity, while Chapter 3 provided an overview of the state and trends of biodiversity under the status quo.

A number of submitters commented on the outline of the legislation and tools currently used to manage biodiversity provided in the Section 32 report.

Submitters identified a number of gaps in Chapter 2 (The status quo). A range of submitters stated that insufficient emphasis was placed on the cost and risk implications of the NPS. Many submitters regarded the estimates of implementation costs of the NPS for councils, landowners and industry/business as weak, while some submitters thought that the benefits were overestimated. For example, Taranaki Regional Council (321) and Federated Farmers of New Zealand (434) submitted the following:

The Section 32 provides no evidence of a thorough and detailed analysis of options in the draft. Costs and benefits are identified but only somewhat cursorily examined. It is our firm belief that Council and other parties' compliance and process costs appear to be significantly under estimated in the draft Section 32. A major problem with the Section 32 analysis is the seeming absence of a comprehensive identification and accurate assessment of the potential macro economic costs of implementing the NPS to landowners (321).

“The cost benefit analysis of the fiscal impact of the policies ignores the private costs to landowners and grossly underestimates the costs to small territorial authorities (namely those private landowners who are also rate payers) of identifying, mapping and scheduling areas (434).

A number of submitters commented that the Section 32 Report underestimates the contribution that voluntary and community efforts make in biodiversity management. Landowner groups in particular were concerned about the lack of recognition given to the investment made by farmers into biodiversity management. Federated Farmers of New Zealand (434) and John Harold (117) submitted the following:

We also know that the rate of gain, the level of understanding and the willingness of private landowners to formally protect areas, make huge investments in weed and pest control and spend thousands of dollars on planting is changing. It is Federated Farmers submission that the private tide has already turned, because understanding is increasing, because Government are no longer encouraging unsustainable land use through distorted subsidies, that culture is changing and despite, not because of rules in plans, real people are investing real money in the management and protection of Biodiversity on private land (434).

The fact of the matter is that when I bought the farm I had to buy the bush too. It could be productive land as well but I left it because I chose to leave it which is my right. I have preserved it by fencing it and maintaining them at significant cost. I have been rated on that same area – the same as the productive area so it is not up for free grabs (117).

Others submitted that the contribution of landowners to the maintenance of biodiversity was not given sufficient regard in the Section 32 Report, including wetland restoration, pest control, fencing and QEII covenants.

A few submitters commented that the map showing protected and unprotected land in Chapter 3 (the situation under the status quo) did not accurately reflect the various levels of protection of biodiversity, because they only showed as “protected” public conservation estate or land under binding covenant. The maps did not show areas voluntarily protected by landowners (but not under covenant) or areas to which rules (regarding vegetation clearance etc) apply. For example, Federated Farmers (Taranaki) (432) submitted:

It is stated in Section 3.2.1 of the Section 32 Evaluation that 82.7% of national priority vegetation remains at risk i.e. is not within the public estate or protected by covenant. The legislative protection of the RMA and the fact that a considerable portion of that area will be subject to rules imposed by district and regional plans appears to be inconsequential. This is very frustrating for landowners because the reality is for the most part indigenous vegetation clearance is a tightly controlled, consented activity. To dismiss the protection provided via these mechanisms is illogical.

Some submitters also suggested that protecting land does not necessarily lead to increased indigenous biodiversity.

There were a number of alternative views raised on the rate of biodiversity loss/gain. Some submitters disputed that biodiversity is decreasing, stating that the Section 32 overstates the problem of biodiversity loss. Submitters also suggested that recognition of the biodiversity gains made as a consequence of regenerating scrub, retirement of marginal lands, and planting and restoration projects was lacking.

Other submitters thought that the NPS and supporting documents did not capture the full extent of biodiversity loss. For instance, Environment and Conservation Organisations of New Zealand (79) considered that the urgency of biodiversity loss was understated:

In our view the severity and urgency of the losses of terrestrial, aquatic and marine native biodiversity, including genetic diversity ecosystems, species, assemblages, and communities needs better spelling out, as does the significance and irreversibility of such losses. The losses of biodiversity are so fast, so profound and so irreversible that we need to have regulatory as well as incentive measures. We also need to develop positive social norms and to provide assistance in the control of invasive species.

Some submitters contended that land-use intensification is not the main cause of biodiversity loss. Submitters highlighted the problems caused by pests and weeds, livestock, climate change, economic times, labour issues, knowledge gaps, inaccessible areas, natural degradation, subdivision, the ETS, afforestation grants and the effectiveness of the RMA to address biodiversity issues.

Hastings District Council (120) submitted that the Section 32 Report inaccurately captures the management of biodiversity in their council. The Report refers to Hastings District Council as having no or limited protection in place. The council submitted that they use both regulatory and non-regulatory methods for biodiversity protection and requested that the inaccuracy in the Section 32 Report be remedied.

Central Otago District Council (51) challenged the finding that it is the district with the greatest extent of native cover not legally protected in the five threatened LENZ environment categories. It submitted that the calculation failed to take into account land placed in the conservation estate through the tenure review process in recent years.

Other gaps identified in the analysis of the situation under status quo included:

- a need for better problem definition with a narrower focus and greater clarity of expectations
- a need for additional information on district level biodiversity issues
- not enough account given to the challenges to undertaking monitoring and reporting
- too much focus on terrestrial biodiversity
- issues of cultural landscape not adequately addressed
- lack of recognition given to tangata whenua views and management of biodiversity as well as gathering of biodiversity data
- ecosystem services and the costs of losing them are not sufficiently understood and valued
- insufficient data and analysis of how the status quo has been performing over the last 10 to 20 years
- no reference to New Zealand Biodiversity Recording Network
- lack of reference to the 2000 Ministerial Advisory Committee recommendation against proceeding with a NPS
- no discussion of the legislative process regarding the review of pastoral lease land
- need for further consideration of the New Zealand Biodiversity Strategy
- inadequate consideration afforded to section 5 of the RMA regarding social and economic wellbeing
- failure to identify future issues that will threaten biodiversity.

16.2 Is an NPS the best option?

A number of options (both regulatory and non-regulatory) to address the decline of indigenous biodiversity were identified and evaluated in the Section 32 Report. These were: amendments to the RMA; increased funding; targeted assistance to local authorities; provision of further non-statutory guidance; national environmental standards; and a national policy statement. Some submitters suggested that the analysis of the options was not robust enough. More discussion on the submissions related to these alternative options can be found in the “Alternatives to an NPS” section of this report.

16.2.1 Reasons for supporting the NPS

A range of submitters, including local authorities, NGOs, industry, research and iwi/Māori organisations, welcomed the NPS as it provides clear national direction on biodiversity management. Submitters suggested that it will achieve consistency across regions and districts while allowing for some flexibility and scope in achieving the policy objective. Some councils considered that the NPS filled gaps in the current hierarchy of policy documents relating to biodiversity management. Submitters also stated that the NPS aligned well with the New Zealand Biodiversity Strategy and Statement of National Priorities. Submitters also considered that the NPS would act as a baseline to set biodiversity obligations under the RMA and would provide clarity and a clear mandate for councils about biodiversity management. For example, Landcare Research (158) submitted:

... there has been a pressing need for national guidance to provide minimum standards for the protection of threatened biodiversity since the enactment of the RMA in 1991. Provision of bottom lines through a sound biodiversity NPS should have a significant positive effect on biodiversity relevant resource management practices in New Zealand.

Several councils and a research organisation welcomed the NPS as it fulfils New Zealand’s international obligations under the Convention on Biological Diversity and will enhance New Zealand’s reputation internationally in that it demonstrates that New Zealand takes the protection of biodiversity seriously.

Other reasons for supporting the NPS included:

- that it provides greater clarity and reduces scope for litigation related to plan development
- that it provides guidance to councils about national priorities
- that it reduces the burden on local authorities to develop their own indigenous biodiversity policy
- that it represents a significant improvement in the management of adverse effects on biodiversity.

16.2.2 Concerns raised by partial supporters of the NPS

Many submitters stated that they supported the intent of the NPS but had some concerns about the manner in which the NPS seeks to achieve its objective.

There were various submissions regarding what biodiversity should be protected. Forest and Bird (Head Office) (91) stated that the NPS should provide for the protection of significant areas of biodiversity and the maintenance of other areas, while the New Zealand Conservation Authority (214) submitted that the NPS should address more than just extremely rare and threatened indigenous biodiversity. In contrast, Eloise Neely (207) thought that the NPS was too broad in its scope and should be concentrating efforts on significant vegetation and habitat.

Some industry organisations supported an NPS on indigenous biodiversity in principle, but submitted that the NPS creates confusion and uncertainty and that it fails to provide guidance on criteria for determining significance regarding section 6(c).

Other concerns included:

- the need to lessen the burden of protection (on councils, industry and landowners) before proceeding
- the negative implications for farming practices
- the NPS should include invertebrates, fungal and microbial systems, freshwater and aquatic systems and coastal areas
- there should be more emphasis on pest control
- the NPS should apply to the DOC estate also
- the NPS is likely to increase costs for councils, industry and landowners
- further consideration should be given to the drafting of objectives and policies and how the NPS can best assist local authorities in achieving functions under the RMA
- incentives should be provided for the protection of biodiversity and to compensate for costs incurred.

16.2.3 Reasons for not supporting the NPS

Most of the comments stating reasons for opposing an NPS relate to the use of regulatory rather than non-regulatory methods for biodiversity management. Māori and industry organisations, as well as a large number of landowners, stated a strong preference for voluntary incentives such as funding, education and other support. This is covered in the “Alternatives to an NPS” section of this report.

Farming organisations and individual landowners have called for the NPS to provide for more high-level, adaptive guidance on biodiversity management. They submit that a “one size fits all” approach is not appropriate and the NPS should be less specific, for example:

Maintaining the flexibility for district and regional councils to take into account their own set of circumstances is important due to the distinct biological diversities and habitats that are found in different regions and sub regions ... The adoption of good practice standards also requires flexibility to recognize local limitations. Fencing to keep stock out of designated sites for example is usually not an option for the hill country farmers in the Taranaki region for both financial and practical reasons (Federated Farmers (Taranaki), 432).

A range of submitters considered that the NPS adds significant complexity, constraints and costs to biodiversity management and the RMA process, beyond those justified by the biodiversity benefits that would result from the NPS.

Other reasons for opposing the NPS included that it:

- should provide more balance between biodiversity values and social, economic and cultural values
- has the potential to adversely affect the operation, maintenance and development of new and existing renewable electricity generation schemes
- does not adequately reflect the role of tangata whenua and exercise of kaitiakitanga as expressed in the RMA
- does not consider the outcome of the Wai 262 claim
- should focus resources on maintenance of biodiversity on the public conservation estate
- will only result in the bare minimum, as it does not encourage the protection/restoration of biodiversity
- places further restraints on the ability of Māori landowners to generate commercial returns from their land and will have more general negative effects on farming activities
- should be amended to allow for the clearance of regenerating vegetation such as mānuka and kānuka scrub (covered in more detail in Policy 2)
- will lead to an erosion of property rights
- is contrary to the purpose and principles of the RMA
- is too broad in scope and should be more specific.

17 Other issues and effects

17.1 Balance between biodiversity protection and landowners' rights

About 150 submitters commented on the importance of balancing biodiversity protection with landowners' rights. The views of submitters who commented on this section mostly fell within three broad groups:

- those who considered any regulation on private landowners was an unacceptable reduction in landowner's rights
- those who considered that the NPS is weighted towards biodiversity protection at the expense of landowners' rights
- those that considered the NPS is weighted towards landowners' rights at the expense of indigenous biodiversity.

The majority of submitters who commented on this issue were of the opinion that the proposed NPS was weighted towards biodiversity protection, without providing for landowners' social and economic wellbeing. Many submitters stated that the landowner is the legal guardian of their property, and they had the right and responsibility to use and manage their property as they saw fit. These submitters were generally of the view that any regulation on private land is unacceptable. Greenhills Trust (396) and A. Stevenson (314) summed up the views of these submitters:

Freehold tenure of Land/Property is the cornerstone foundation of our society. To erode that right is criminal (396).

To not allow a farmer to care for his farm the way he sees fit and use his judgement on protecting indigenous vegetation is not fair (314).

Many submitters expressed concern that the NPS was unfair because it affected private property rights and undisturbed use of land without commensurate compensation. For example:

The Proposal includes no compensation for the losses that would be incurred at farm level and no compensation for the GDC for its implementation (S. and H. Cave, 50).

While this has direct and significant implications for landowners and encroaches on the rights and historic use of freehold titleholders, the objective does not clarify how landowners would be compensated for the protection of these "significant areas" (Peter Chartres, 53).

There should not be any commercial loss as a result of areas being regarded as needing protection. That freehold rights of the land owners be preserved and that if the land is to be protected then the landowner be compensated accordingly (Chris Olley, 242).

Most submitters who made comments regarding compensation considered that, because the benefits of biodiversity were mostly national, it was unfair that private landowners should shoulder the costs without support. They believed compensation should therefore come from central government. For example, New Zealand Farm Forestry Association (217) submitted:

The main form of assistance that is needed is that of financial compensation to private individuals who lose their rights of use of a portion of their land as a result of the application of a NPS or NES. As this document deals with ecosystems and environments on a national basis, so funding should be provided from a national rather than a local source to affected individuals.

Some submitters were concerned that the proposed NPS unfairly disadvantaged farmers who had protected their indigenous biodiversity, in comparison to farmers who had no biodiversity on their land. For example, Bruce Hayes (125) stated:

I fear I will be increasingly penalised for my environmentally friendly farming practices and disadvantaged in comparison to the farmer who has no native bush or undrained swamp on his 100% effective property.

Some submitters stated that the proposed NPS was unfairly balanced towards the interests of forest owners who grow indigenous forests for commercial purposes. They objected to these forests being exempt from the NPS.

A minority of submitters considered that the proposed NPS was balanced towards landowner's rights to use land at the expense of indigenous biodiversity. For example:

Use far out balances protection. To be serious there needs to be enhancement (Te Ao Marama Inc, 328).

... the NPS appears to favour the landowner's rights above that of indigenous biodiversity. Landowners are guardians, purchasing a title to a piece of land should not give a landowner the right to destroy pre-existing indigenous flora & fauna for financial gain (Vivienne and Greg Kerr, 152).

The NPS as it stands... leaves much room for landowners to undertake activities to the detriment of biodiversity (Christchurch City Council (staff submission), 54).

17.2 NPS process

Public submissions on the proposed NPS are being considered under a process set out in section 46A(1)(b) of the RMA. Under this process, Ministry for the Environment officials will receive and review submissions and prepare a report and recommendations for the Minister's consideration under section 51 of the RMA. The Minister then decides whether or not to proceed with the NPS, or make changes informed by the section 51 report. Previous NPS development processes have followed the process set out in section 46A(1)(a), under which a Board of Inquiry considers submissions and makes recommendations to the Minister. Submitters have also had the opportunity to make oral submissions at hearings.

Over 60 submitters commented on the process for the current NPS. The issues raised in their submissions are outlined below.

17.2.1 The Section 46A(1)(b) consultation process

The majority of submitters on the NPS process raised concerns about use of the section 46A consultation process. Most submitters were concerned that the process was truncated compared to the NPS process under section 46A(1)(b) of the RMA. Many submitters were of the opinion that the process chosen by the Minister under 46A(1)(b) was deficient and weakened the democratic process. Their reasons included:

- it reduced opportunities to test the NPS’s policies and assumptions and to minimise the risk of perverse outcomes
- it provided no opportunity for stakeholders to hear each other’s views and respond to them
- it did not allow key stakeholders to be involved in initial development of the proposed NPS
- it lacked the opportunity for submitters to make oral submissions and present evidence at hearings to be heard in context
- the lack of Board of Inquiry reduced transparency and inclusiveness. It also removed a layer of robustness in analysing submissions
- the consultation period was too short to allow detailed analysis and feedback
- there was inadequate consultation with tangata whenua in accordance with Treaty of Waitangi principles and guarantees.

In addition, several submitters (particularly landowners) considered that notification of the proposed NPS was inadequate because they had no knowledge of it through official channels and therefore did not feel adequately consulted. For example, J. Redshaw (271) commented: “The NPS meeting held in our province was not advertised in such a way that the public were aware of it and only through word of mouth did many get to be informed.” Di Roadley (278) stated: “I am concerned that there hasn’t been consultation with landowners, a conversation at the farm level to ensure owners buy into this policy ...”.

17.2.2 Integration with WAI 262 process and consultation with tangata whenua

In addition to the 46A(1)(b) process, submissions from several iwi organisations raised concerns that the NPS drafting and consultation process finished before the Government’s response to the WAI 262 Treaty claim (part of which relates to rights in respect to indigenous flora and fauna). These submitters generally believed this left them in a difficult position because they did not know how the Government would respond. For example, Patuharakeke Te Iwi Trust (423) submitted: “... the drafting and notification processes of the NPS should be realigned to take into account the release of the WAI262 report which will have a significant bearing on the content of the NPS.”

Ngati Kahungunu Iwi Incorporated (227) was concerned that the Government failed to acknowledge Māori through the United Nation’s Declaration on the Rights of Indigenous Peoples in the scope of the proposed NPS or its preparation. Ngati Tuwharetoa (BOP) Settlement Trust (228) submitted: “The consultation methodology needs to be more clearly articulated. Simply providing tangata whenua with a draft NPS and expecting that a submission is consultation is erroneous.”

17.2.3 Suggestions for ongoing process

A number of submitters made suggestions for the ongoing process to finalise the NPS. A common suggestion was for the Ministry for the Environment to conduct a further round of consultation on a revised proposed NPS. Contact Energy (59) suggested that this consultation could be limited to those parties who had lodged a submission, or use a collaborative model such as the Land and Water Forum process.

Some submitters pointed out that the Government needed to engage with independent experts in analysing submissions and developing a new version of the NPS. TrustPower Ltd (344) suggested the formation of a technical advisory group to resolve technical and drafting issues associated with the proposed NPS. The New Zealand Conservation Authority (214) suggested that the Ministry for the Environment seeks and applies the ecological expertise of DOC throughout the development process.

Several submitters suggested the Government engage specifically with Māori and local authorities, as key stakeholders, in reviewing the NPS before it was finalised. Some submitters requested more comprehensive consultation with affected landowners “at farm level”.

West Coast Regional Council (374) suggested running a case study (“test drive”) prior to gazetting an NPS to ensure that the policies work in practice, achieve the objective and do not have perverse outcomes.

17.3 Existing work related to indigenous biodiversity

Some submitters commented on the existing work being done by them and/or their communities to protect or enhance indigenous biodiversity in their regions.

A number of submitters noted the work they were doing to protect indigenous flora and fauna on their properties. This included allowing parts of their properties to regenerate, excluding stock from areas through fencing, pest control initiatives, and working with the QEII Trust and the local council. For example, Dianne Milne and Robert Leonard (198) submitted:

“Huge progress has been made both nationally and on the West Coast in protecting thousands of hectares of indigenous vegetation by private landowners... This is despite the requirement that farmers in the recent past were required to clear the land from indigenous vegetation and turn it into pasture.”

As noted in the Section 32 Report section of this report, a number of submitters raised concerns that the proposed NPS and the supporting Section 32 Report did not give sufficient regard to identifying the progress already made by landowners in protecting biodiversity, particularly through allowing or encouraging the regeneration of indigenous vegetation. Several submitters considered that the existing work to protect indigenous biodiversity was sufficient and that additional guidance through an NPS was not needed. For example, Michelle King (154) submitted: “Most land owners with native bush and or significant areas and habitats want to protect them and many have already done so. Do you not trust us to protect these areas? We can do as good a job as DOC, local government, QEII and Forest and Bird.”

Some local authorities noted their work to protect indigenous biodiversity. This included plan provisions, significant natural areas programmes, biodiversity strategies, funds, as well as the employment of dedicated biodiversity officers.

Some submitters raised concerns about management of indigenous biodiversity on the public conservation estate. For example, Michael and Kristen Gerard (105) submitted: “There is so often an assumption amongst the NZ public that Crown/DOC land is well managed compared to private land, but this is not so.” A common view was that it would be more efficient putting further resources into improving the conservation estate, rather than regulating activities on private land.

17.4 Potential effects of the NPS

A large number of submitters commented on possible effects of the proposed NPS if it were implemented in its current form. Submitters highlighted a range of possible impacts, from the NPS's potential to increase costs, to its effect on the goodwill of landowners to voluntarily protect biodiversity. A much smaller number of submitters commented on potential positive effects of the NPS.

Negative effects raised by submitters fell primarily into three groupings: costs to councils, industry/business and landowners; undermining of goodwill of landowners and other stakeholders; and constraints on farming, business or other activities. These are outlined under separate subheadings below.

17.4.1 Positive effects

Some submitters stated that the NPS would place greater emphasis and importance on biodiversity protection. More specifically, several environmental groups noted that the NPS may mean greater recognition and resources are directed to priority areas, such as dunes and wetlands.

Some landowners considered the NPS may lead to positive effects in terms of reminding landowners of their responsibilities towards biodiversity and taking action to protect it. For example, Heather Wallace (362) stated that “This will hopefully allow us to challenge effectively any risk we see to loss of indigenous biodiversity”.

Hutt City Council (138) said it was positive that the NPS specified minimum criteria for identifying significant areas. It considered the NPS would assist in its upcoming district plan review of significant areas. The Matamata-Piako District Council (335) stated: “The NPS will affect landowners adversely, but will likely have positive effects for the community at large”.

Newmont Waihi Gold (225) considered that the NPS would have very positive effects because:

“... it has the potential to allow mineral-related activities to occur... while ensuring no net loss and potentially indigenous biodiversity gains. If that is the outcome, the effect of the NPS will be very positive... .NWG is of the view that the NPS generally does a good job of initiating a necessary process for the protection of indigenous biodiversity on private land.”

17.4.2 Negative effects: costs to councils, industry/business and landowners

A range of local authorities commented on possible negative effects to their organisations and communities. A major concern was costs for councils to implement the NPS. Council submitters identified a range of costs including identification of significant areas (including technical research), mapping/scheduling, consulting and negotiating with landowners, potential for litigation, plan amendments or reviews, monitoring and enforcement, and establishing reporting systems. Some submitters also highlighted cost implications for councils that have already commenced a process of assessing significant areas, as they may have to start again to meet the requirements of the NPS. Waimate District Council (352) noted that geographically large districts with small rating bases would bear disproportionate costs in implementing the NPS.

A number of councils were also concerned about additional costs falling on landowners (particularly farmers) through requirements for additional specialist reports or evidence related to significant areas on their land. Wairoa District Council (354) went as far as stating that the NPS would involve “huge financial cost to locals for no real benefit ...”.

The New Zealand Transport Agency (239) expressed concern that, as a major national infrastructure provider, the NPS’s lack of clarity could lead to national inconsistency in its application and significant issues for their organisation. It noted that this would likely lead to additional costs, which could be prohibitive for consents and designations, and add more administrative churn.

As well as costs associated with restrictions on their activities, several landowners and landowner groups raised concerns regarding the additional costs that would be incurred as a result of the NPS. These included costs associated with rates increases, compliance, resource consents and carrying out mitigation measures.

Some landowners also submitted that a decrease in income as a result of the NPS would lead to less capital being available to spend on pest and weed control. This will result in negative biodiversity effects. For example, Southdown Holdings Ltd (306) submitted:

... the proposed policies in the NPS will impact on its farming operations by limiting the amount of sustainable development that can occur on its property. This will vastly undermine the amount of capital that is available to spend on weed and pest control in other parts of the properties that are currently in indigenous cover but are under serious threat from wilding pines and other invasive weeds.

17.4.3 Negative effects: undermining of goodwill

Another major concern amongst local authorities, landowners and others was that additional costs and regulation could threaten the existing relationships and goodwill between councils and landowners regarding the protection of indigenous biodiversity. These submitters suggested that this could jeopardise non-regulatory initiatives that are critical to successful conservation on private land. New Plymouth District Council (211) summed up these concerns by stating: “The NPS will impact negatively on this Council’s relationship with significant natural area landowners, who are already upset about regulations being imposed on them”.

Several landowners and landowner organisations also raised concerns regarding the potential impact of the NPS on relationships with stakeholders. Submitters highlighted that the introduction of rules and their monitoring and enforcement will create tension between stakeholders and alienate landowners. Some also submitted that it would provoke resistance and undermine goodwill that has been built up in carrying out current work in the area.

A robust process, with farmer buy-in, has been developed in our area. Extensive on-farm consultation has been under-taken by the Grey District Council and any changes made now would set back the relationship and hence the protection of indigenous biodiversity (Federated Farmers (West Coast) 86).

The mapping of SNA sites on our property was carried out for practical management purposes. Some landowners might not be happy if these sites and their locations were made public in the local district plan. This would potentially undermine the good will that Council has built up with farmers during this process and the progress that has been made (Simon and Linda Harvey, 119).

A range of submitters commented that the NPS could lead to pre-emptive land clearance. Queenstown Lakes District Council (261) suggested that some landowners might seek to remove areas of potentially significant indigenous vegetation before they are officially mapped as areas of significance, while Invercargill City Council (141) submitted:

“The mapping of new areas of significant indigenous vegetation and habitats of significant indigenous fauna could be counterproductive in terms of protection of such areas. Some property owners may take exception to their property being ‘tagged’ as containing significant indigenous biodiversity and could remove the biodiversity so as to remove the ‘problem’, or block access to the biodiversity areas etc.”

This concern was not limited to councils and landowners, but shared by some other organisations, including those with an interest in conservation. The Wellington Botanical Society (31) was of the view that the effects might be negative where landowners see the implementation of the NPS as an unreasonable intrusion on their rights and potential economic and social wellbeing. This submitter considered that these landowners might block access to their properties or deliberately destroy indigenous biodiversity as a form of protest.

Some submitters suggested that there should be a process to prevent any clearance before the NPS comes into force.

17.4.4 Negative effects: constraints on farming, business or other activities

Large numbers of landowners and farming industry organisations raised concerns regarding the potential for the NPS to prohibit the clearance of regenerating scrub, particularly mānuka and kānuka. Submitters stated that the inability to clear regenerating vegetation and carry out general farm maintenance would have negative implications for their business. For example:

Clearance of indigenous vegetation such as rapidly regenerating species such as Manuka is an essential part of farm management. We submit that the farm and other business activities that result in the clearance of certain classes of indigenous vegetation must be explicitly excluded from the NPS (Deer Industry NZ and Beef and Lamb NZ, 406).

We have serious concerns of the potential effects this proposed NPS could have on the economic viability of the Wairoa District, and in particular many landowners, needing to clear reverting manuka and kanuka ... Manuka and kanuka, are low value species and are not threatened species, and should not be included in the proposed NPS (Leslie Thompson, 340).

Submitters commented that a failure to clear regenerating scrub would lead to a decrease in available pastureland, reduction in the ability to carry stock and encroach on the ability to maintain fence lines, boundaries and access ways. These effects would lower productivity and result in the reduction of the economic viability and long term productive capability of farms.

... the NPS directs local authorities to place unreasonable constraints on privately owned farming properties, particularly hill properties with regenerative scrub that can be classified as indigenous. Due to the changing economics of hill country farming, there have been times where vegetation has been cleared for grazing but is difficult to maintain in a cleared state. As economics improve, as has recently occurred in the sheep and beef sector, expenditure is devoted to improving the land again to restore or increase the stock carrying capacity (Ravensdown, 265).

A number of iwi/Māori landowner submitters raised concerns about the NPS imposing restrictions on their ability to use and develop their land. A common concern was that their ability to farm areas would be restricted. In particular, several submitters were concerned that the NPS would prevent the ability to clear regenerating native vegetation as part of normal farm maintenance. Some submitters specifically noted the impact on shareholders of Māori owned land. Other submitters noted this might have negative economic impacts for their communities, such as closure of meat processing plants. Tainui Hapu ki Whaingaroa (Tainui) (319) also commented that it would impact on the hapū's ability to build houses: "It will impose further negative restrictions on our ability to gain consents to build homes on our own hapu land where our ancestors lived previously."

Some landowners submitted that the NPS would limit development options and effectively stop growth. This would also affect landowners who purchased property with development potential which would no longer be possible. It would serve to devalue both the business and the property.

Our economic growth for the region relies heavily on Agriculture and a reduction of the marginal land that has potential to come into earning capacity is still quite large. The loss of this resource would be detrimental to the local economy going forward. Westland Milk Products with its 487 suppliers have made a huge investment in plant based on the anticipated growth in milk supply as marginal land is developed. Until the proposed NPS the co-operative had no indication that the more draconian rules would remove some of this marginal land from potential conversion into productivity (Federated Farmers (West Coast) 86).

General concerns about the potential knock-on effects of the proposed NPS on businesses such as agricultural landowner service industries and the ability to operate competitively in export markets were also raised.

Several submitters expressed concerns about the potential for the NPS, in its current form, to have a significant negative impact in regions reliant on agriculture. This was of particular concern to landowners in the Wairoa District and the West Coast District (as noted above). Submitters highlighted that the NPS would have wide-ranging negative impacts on both the local economy and social infrastructure.

Farmland reverting into scrub will result in less stock numbers which in turn will create a catastrophic snow ball effect. Less employment such as Wairoa Affco who employs 700 staff would be in danger of closing, this alone would have massive implications to Wairoa township. All the supporting services would struggle. There would simply be less employment for stock firms, farm managers, shepherds, fencing contractors, truck firms, the list goes on. Retail Businesses would close. Under NPS most hill country farms simply would not survive (Cyril Brownlie, 37).

If the NPS is approved Forestry will not be able to get consents to cut scrub either, this will mean whenever a downturn in pastoral farming coincides with reasonable forestry returns, clear land will make what is usually a one-way change in land use from pastoral to forestry. At the same time each downturn will result in more hill country reverting to kanuka than the cycle before (each time there will be an increased area of reverted land producing seed) which under the rules proposed would also be a one way process. Farming will only exist on the flats and possibly the small area of very easy hill country in our district. The local meatworks will close, very few service industries will survive and Wairoa will no longer be a town big enough to support a secondary school (Dave Read, 268).

The downstream effects of the NPS policy in its pure form would be devastating to the community known as the Wairoa District. The introduction of large scale forestry in this area has had a huge effect on diminishing infrastructure in the same region. Forestry is not labour intensive over a 30 year period and we have seen schools, farmers, shepherds, fencers, stock agents, contractors and other farm related servicemen leave the area. The NPS policy would encourage a second wave of retrenchment to this farming community for a biodiversity dream that is already in place but just not formalised (Gerald and Claire Bull, 41).

If farmers are not allowed to maintain their farms, Wairoa is going to be ghost town reliant on government benefits for survival (Colleen, Jonathan and Daniel Knauf, 156).

Other industries highlighted negative effects that the NPS would have on their activities. Submitters included forestry, power lines, electricity generation, mining, water and outdoor experience companies.

Rayonier New Zealand Ltd (267) considered that the NPS would increase compliance and consenting costs and ultimately decrease investment in the forestry industry. New Zealand Forest Owners Association (218) submitted that the economic viability of forestry operations would be negatively affected because the majority of plantation forests would fall under the criteria of significant habitat types and threatened/at risk species.

Margaret Baynes (21) and Winstone Aggregates (387) expressed concerns regarding the potential difficulty that mining companies would have in obtaining resource consents over wide areas and that this would constrain their activities.

Electricity Networks Association (77) and Transpower New Zealand Ltd (343) submitted that the NPS would increase costs, uncertainties and delays associated with the maintenance, relocation and development of power lines. Trustpower Ltd (344) stated that the NPS would hinder its ability to secure resource consents.

Watercare Services Limited (368) submitted that the NPS would increase the costs of installing and replacing infrastructure in areas of significant indigenous biodiversity.

New Zealand Defence Force (216) expressed concerns that the NPS might lead to a significant portion of its training areas being identified as significant by councils, thereby restricting the organisation's ability to carry out operational and management activities.

Queen Charlotte Wilderness Park (260) submitted that the NPS would negatively affect its business as it would prevent it from maintenance and development such as trail building for trekking and create barriers to future opportunity.

17.4.5 Other negative effects

Waitakere Ranges Protection Society (355) considered that a lack of financial support would mean the NPS did not achieve its objectives. It thought this would lead to a loss of indigenous biodiversity and irreparably harm New Zealand's international image.

Other potential negative effects raised by submitters were:

- costs falling on local districts and landowners when the benefits of biodiversity could be local, regional and/or national
- potential to create uncertainty and concern amongst landowners regarding limitation on the use of their land
- reduction in council flexibility in protecting indigenous biodiversity, particularly councils' ability to use voluntary methods
- undermining of property rights
- increased fire risk from reestablishment of native vegetation
- a decrease in farm productivity.

Appendix 1: List of submitters

Submission #	Submitter (numerical order)
1	Adaptive Resource Management Ltd
2	Advisory Committee for the Waikato Regional Environment (ACRE)
3	AFFCO NZ Ltd
4	Aggregate and Quarry Association of New Zealand (AQA)
5	Alec Milne
6	Alexander Hilton and Jo
7	Andrews Gay
8	Armitage Ian
9	Ashburton District Council
10	Forest and Bird (Ashburton Branch)
11	Aston Penelope
12	Auckland Airport
13	Auckland Council
14	Bainbridge Julianne
15	Balle Group of Companies Pukekohe
16	Barnett Alan
17	Barrett Tim
18	Bay of Plenty Regional Council
19	Bayly Humphry James
20	Bayly John
21	Baynes Margaret
22	Baynes Colin R
23	Baywatch Group Hawkes Bay
24	Beech R Bowron C Gerard K
25	Beech Lloyd
26	Benfield WF
27	Berryman Noall
28	Birch David
29	Blair JS and PM
30	Blakely Pacific Ltd
31	Wellington Botanical Society
32	Bowen John and McKenzie Peter
33	Bowron CC and PA
34	Bowron FR
35	Brosnahan JB and HA
36	Brownlie CJC
37	Brownlie Cyril
38	Brownlie Tim

Submission #	Submitter (numerical order)
39	Bryant Beth
40	Buchanan Conall
41	Bull Gerald and Claire
42	Bulloch Bruce
43	Burnett Bryce
44	Burns Bruce
45	BusinessNZ
46	Campbell Hamish
47	Campbell Jenny (QSM)
48	Carmichael Annie
49	Cass Cynthia
50	Cave S and H
51	Central Otago District Council
52	Centre for Biodiversity and Ecology Research University of Waikato
53	Chartres Peter
54	Christchurch City Council Staff submission
55	Chumun John
56	Clarke Brian A
57	Clouston Heather
58	Clutha District Council
59	Contact Energy Ltd
60	Council of Outdoor Recreation Associations of NZ
61	Crawford JE
62	Crawshaw Grant and Sue
63	Curin Elaine
64	Ruapehu District Council
65	Davies Bernard M
66	de Lautour MB
67	de Lautour Hamish and Wynne
68	de Lautour William
69	Dennis Don and Carole
70	Dever Russell
71	Dickson Glenys
72	Don Coles
73	Dune Restoration Trust of NZ
74	Dunedin City Council
75	Forest and Bird (Eastern Bay of Plenty Branch)
76	Edens Sue
77	Electricity Networks Association
78	Ensor David
79	Environment and Conservation Organisations of NZ

Submission #	Submitter (numerical order)
80	Environment Southland
81	Environmental Defence Society
82	Evans Ngaire
83	Everton Peter
84	Far North District Council
85	Federated Farmers High Country section
86	Federated Farmers West Coast
87	Federated Mountain Clubs (FMC)
88	Field Jane
89	Finlayson N J
90	Fonterra Co-operative Group Limited (Dairy NZ)
91	Forest and Bird (HO)
92	Foster G
93	Foster Blake
94	Foster George and Warwick Wilson
95	Frank H
96	Frater Gregory
97	Friends of Oakley Creek Te Auaunga Inc
98	Frost Harry
99	Frost Peter
100	Froude Victoria
101	Fukuda Yuki
102	Gaddum Meg
103	Gallagher Pat and Even
104	Genesis Energy
105	Gerard Michael and Kristen
106	Gisborne District Council
107	Federated Farmers (Gisborne-Wairoa)
108	Forest and Bird (Golden Bay Branch)
109	Gore District Council.
110	Greater Wellington Regional Council
111	Green Peace
112	Grey District Council
113	Haliburton Alastair
114	Hall Len
115	Hamilton City Council
116	Hancock Forest Management (NZ) Ltd
117	Harold John
118	Hart Phillip
119	Harvey Simon and Lynda
120	Hastings District Council

Submission #	Submitter (numerical order)
121	Haszard Dana and David
122	Federated Farmers (Hauraki Coromandel)
123	Forest and Bird (Hauraki Islands)
124	Hawke's Bay Regional Council
125	Hayes Bruce
126	Henderson Christine Ellen
127	Henderson Neil
128	Henderson Neil and Esther
129	Hodgen Daniel
130	Hodgen Janet
131	Hodgen Michael
132	<i>(Duplicate)</i>
133	Holcim (New Zealand) Limited
134	Rangitikei Environment Group (Howard A)
135	Hurst Ivon
136	Hurunui SNA Group
137	Hutchinson Brian
138	Hutt City Council
139	Hutzler Ingrid
140	Ink Peter
141	Invercargill City Council
142	Irrigation NZ
143	Jamieson Alastair
144	Johnston A and R
145	Jones Brian L
146	Jones H. Jones E. Pokai Parera Farms
147	Juken New Zealand Ltd
148	Kaikoura District Council
149	Kaipara District Council
150	Kane Sam
151	Kapiti Coast District Council
152	Kerr Vivienne and Greg
153	King Country Energy Limited
154	King Michelle
155	Kitson Ivan
156	Knauf, Colleen, Jonathan and Daniel
157	Knight-Lenihan Stephen
158	Landcare Research
159	Lang Samuel
160	Leslie Leon and Colleen
161	Lilly Rob

Submission #	Submitter (numerical order)
162	Little Ross
163	Lindsay and Dixon Limited
164	Lissaman Philip
165	Little Craig
166	Local Government NZ
167	Longstaff Charles Max
168	Federated Farmers (Mackenzie Branch)
169	Mahurangi Station Incorporated
170	Makey Leane
171	<i>(appendix)</i>
172	Man O' War Farm (sub)
173	Manawatu, Rangitikei and Tararua District Council.
174	Marlborough District Council
175	Martin Debs
176	Martin John and Julie
177	Mason Cliff
178	Masterton District Council
179	Matthews David
180	Maxwell Merryn
181	May Rodger
182	Mayhew Karen
183	Mc Donald Mary
184	McAtamney Steve and Jo
185	McCarthy PV
186	McGlynn Vivienne
187	McGregor Rob
188	McGuinness J and A
189	McIlraith Peter
190	McIntire John
191	McKendry Russell
192	McKinnon John
193	McLaughlinm PR
194	McLennan, Jeanette
195	McLeod John and Verona
196	Mcneill, Brian
197	Mighty River Power Limited
198	Milne Dianne Robert (Bob) Leonard
199	Milne Katie
200	Morice Greg
201	Morice Stuart Digby
202	Mt Gerald Station Limited

Submission #	Submitter (numerical order)
203	Mulcock John and Mary
204	Murchison Richard
205	Murray Bryn
206	National Wetland Trust
207	Neeley Eloise
208	Neill W
209	Nelson City Council
210	Nelson Marlborough Institute of Technology
211	New Plymouth District Council
212	New Zealand Coal and Carbon Ltd
213	New Zealand Committee of IUCN
214	New Zealand Conservation Authority
215	New Zealand Deerstalkers' Association
216	New Zealand Defence Force
217	New Zealand Farm Forestry Association
218	New Zealand Forest Owners Association
219	New Zealand Freshwater Sciences Society
220	New Zealand Geothermal Association
221	New Zealand Herpetological Society
222	New Zealand Institute of Landscape Architects
223	New Zealand Plant Conservation Network Inc
224	New Zealand Wind Energy Association
225	Newmont Waihi Gold
226	Nga Motu Marine Reserve Society
227	Ngati Kahungunu Iwi Incorporated
228	Ngati Tuwharetoa (BOP) Settlement Trust
229	Ngati Whatua O Orakei Corporate Ltd.
230	Nicholas Martin
231	Forest and Bird (North Taranaki Branch)
232	North Michael
233	Forest and Bird (Northern Branch)
234	Northland Regional Council.
235	Norton David
236	Norton L
237	NZ Ecological Society
238	NZ Institute of Forestry
239	NZ Transport Agency
240	Oceana Gold New Zealand Limited
241	Ohau Protection Society Inc
242	Olley Chris
243	Orman Tony

Submission #	Submitter (numerical order)
244	Otago Conservation Board
245	Otago Regional Council
246	Pakihiroa Pohutu Waiorongomai Pohautea Rakaihoea
247	Paroa Trust
248	Patterson R.K. and A.C.
249	Pattison Jonathan Edmund
250	Percy Susan
251	Plowman Mike
252	Porirua City Council
253	Port Companies of New Zealand
254	Potangotango Foundation
255	Poulton Mike
256	Powdrell Hutton
257	Powerco
258	Prictor LJ and M
259	Proprietors of Tauwharetoi 3B1 and Adj Blocks
260	Queen Charlotte Wilderness Park
261	Queenstown Lakes District Council
262	Qwinn Anne
263	Rangitane O Tamakai Nui A Rua
264	Rangitata Diversion Race Management Limited
265	Ravensdown
266	Rayner Lloyd
267	Rayonier NZ Ltd
268	Read Dave
269	Reciprocate Biocapacity
270	Redpath Murray
271	Redshaw J
272	Redshaw Matthew D
273	Reid Charles and James
274	Richardson Pam
275	Richmond Chris
276	Riepen Wilfred
277	Resource Management Law Association
278	Roadley Di
279	Roberts Stephen
280	Rosedale Trust
281	Ross John
282	Rotorua District Council
283	Royal NZ Institute of Horticulture and Botanic Gardens of Australia and New Zealand
284	Royal Society of New Zealand

Submission #	Submitter (numerical order)
285	Federated Farmers (Ruapehu)
286	Russek Raymond Paul
287	Sanford. John and Bev
288	Schroeder T.A.
289	Schuckard Rob
290	Scion Research
291	Scott David
292	Shadbolt Vern
293	Sieling Dirk
294	Siemonek Donald Leslie
295	Siemonek Velma
296	Combined into 298
297	Combined into 298
298	Simpson Karen and family
299	Sintenie Catherine
300	Smith G and T
301	Smith Kerry
302	Smith Peter Dodson
303	South Island Eel Industry Association Inc
304	Forest and Bird (South Otago Branch)
305	South Waikato District Council
306	Southdown Holdings Ltd
307	New Zealand Farm Forestry Association (Southland Branch)
308	Southland Conservation Board
309	Southland District Council
310	Stark S and T
311	Steele David and Phillip
312	Steele Phillip
313	Stephenson Gordon
314	Stevenson A
315	Straterra Inc.
316	Stratford District Council
317	Stuart Barbara
318	Gower Leveson and Vicki
319	Tainui Hapu ki Whaingaroa (Tainui)
320	Tane's Tree Trust
321	Taranaki Regional Council
322	Taranaki/Whanganui Conservation Board
323	Tararua District Council
324	Tarrant Cotter and Co.
325	Tasman District Council

Submission #	Submitter (numerical order)
326	Tauranga City Council
327	Tauwharetoi Station
328	Te Ao Marama Inc.
329	Te Rakau Hemi
330	Te Runanga o Ngaati Ruanui Trust
331	Te Taumata Group
332	Te Uri O Hau Settlement Trust
333	Te Whakaari Incorporation
334	Thames-Coromandel District Council
335	The Matamata-Piako District Council
336	The Ornithological Society of New Zealand
337	The Proprietors of Tahora 2F2
338	The Proprietors of Tahora No. 2C1 Section 3
339	The West Coast Blue Penguin Trust
340	Thompson Leslie
341	Tippelskirch Manfred von
342	Tourism Industry Association of NZ
343	Transpower New Zealand Ltd
344	TrustPower Ltd
345	Tulloch Ian
346	Urlich Steve
347	Brasell VG and Bichan AJ
348	Vector Limited
349	Waikato Biodiversity Forum
350	Waikato District Council
351	Waikato Regional Council (Environment Waikato)
352	Waimate District Council
353	Waipa District Council
354	Wairoa District Council
355	Waitakere Ranges Protection Society
356	Waitaki District Council
357	Waitomo District Council
358	Wakatu Incorporation
359	Walker J and A
360	Walker Dean
361	<i>[Duplicate]</i>
362	Wallace Heather
363	Wallace Neville
364	Ward Anne
365	Ward A and T
366	Ward Alexander and Catherine

Submission #	Submitter (numerical order)
367	<i>[Duplicate]</i>
368	Watercare Services Limited
369	Watts Graeme
370	Weeks Jay
371	Wellington City Council
372	Forest and Bird (West Coast Branch)
373	<i>Forest and Bird (West Coast Branch) Annex C</i>
374	West Coast Regional Council
375	West Coast Tai Poutini Conservation Board
376	Western Bay of Plenty District Council
377	Westland District Council
378	Whakatane District Council
379	Whakaupoko West Franklin Landcare Group
380	Whangarei District Council
381	Wharton P
382	White WA
383	Whiting-O'Keefe QE and PM
384	Williamson Peter
385	Williamson Simon
386	Wilson Hugh
387	Winstone Aggregates
388	Wisnewski K and J
389	Withers Dave
390	Woolley P and S
391	Yellow-eyed Penguin Trust NPS submission
392	Horizons Regional Council
393	Bowen Arthur and Olive
394	Fish and Game NZ
395	Foote Edith
396	Greenhills Trust
397	Hauraki District Council
398	Murphy Alison
399	Murphy Paul and Bronwyn
400	<i>(Duplicate)</i>
401	Pollock Gillian
402	Steed Jeanette
403	Thames Valley Deerstalkers
404	Thomas Paul
405	Waimakariri District Council
406	Deer Industry NZ and Beef and Lamb NZ
407	Matthews David

Submission #	Submitter (numerical order)
408	Hurunui District Council
409	Unwin Robert
410	Canterbury-Aoraki Conservation Board
411	Johnston Robert
412	Hayes Michael
413	Martin Jean and John
414	Palmerston North City Council
415	Riddiford Dan
416	NZ Planning Institute
417	Environment Canterbury
418	Orari River Protection Group Inc.
419	Muldrew Graeme
420	Selwyn District Council
421	Ngati Hine
422	Meridian Energy
423	Patuharakeke Te Iwi Trust
424	MainPower NZ Ltd
425	Raukawa Trust
426	Tuwharetoa Māori Trust Board
427	Kaitiakitanga Te Whanau a Apanui
428	Te Arawa River Iwi Trust
429	Federation of Māori Authorities
430	National Bee Keepers Association
431	Solid Energy New Zealand Ltd
432	Federated Farmers (Taranaki)
433	Auckland Conservation Board
434	Federated Farmers of NZ