



Ministry for the Environment
PO Box 10362
Wellington 6143

Indigenusbiodiversity@mfe.govt.nz

Proposed National Policy Statement for Indigenous Biodiversity: Submission from the New Zealand Institute of Forestry

Introduction

The New Zealand Institute of Forestry (NZIF) represents the views of its membership, forest sector managers with experience and qualifications centred on the professional management of forest lands for a broad range of outcomes. NZIF members are practiced in the management of land and forests to achieve a diverse range of private and public benefits. Indigenous biodiversity is often one outcome of forest management but rarely the sole focus and frequently a secondary objective amongst the range of social, economic and environmental considerations making up “sustainable management”.

Submissions

Selective Singular Focus Unhelpful

NZIF is concerned at the singular and selective focus on indigenous biodiversity as the sole objective of the Proposed NPSIB. We suggest the document and its recommendations reflect well the views of “...a stakeholder-led Biodiversity Collaborative Group (BCG) – all of whom have a strong interest in biodiversity management...”

The impression given is of a terms of reference with a singular focus on indigenous biodiversity. Where reference is made to the many other legitimate considerations impinging on land managers it is only in terms of their impact on biodiversity. For example climate change is identified as a threat to existing biodiversity without commensurate acknowledgement that dramatic climate change and avoiding its impact on biodiversity is likely beyond the management capability of all land owners including DOC. There is no acknowledgement that significant geographic shifts in rainfall patterns as a result of climate change mean the ideal habitat for particular indigenous species will also shift.

There is no meaningful acknowledgement in the discussion document of the reality of landowners and managers obligations being broader than biodiversity. Without an income and profit the private landowner cannot meet capital-value-based rates demands and risks the market-based land value enabling mortgage-based financing. the national interest in increased export receipts, derived from NZ’s productive rural land is put at risk by excessive regulation, notwithstanding that export-based taxable income is the original source of funding of many valued public services including the funding available to biodiversity protection through Vote Conservation.



The Expected Public Benefits from Public and Private Land Are Different In Scale and Intensity

The Proposed NPSIB discussion document “.....recognises that public conservation land has legal protection already(which) removes the cost of identifying SNAs on this land.” (Table 7, p 82). It appears the authors of the discussion document are convinced of the superiority of public ownership and management of biodiversity, notwithstanding the declines in mainland biodiversity on conservation land due to inadequate pest control in some areas; this despite conservation being the primary objective of conservation land management and the public funding of public land management including pest control.

Public ownership of indigenous habitat (including forests) can and should assist in reducing the rate of loss of such habitat. The presumption throughout the discussion document is that greater levels of valued biodiversity are achievable through increasing the regulatory burden on those private landowners (including forest owners) who have retained valued indigenous habitat. The discussion document does not contemplate ‘payment for environmental services’, where the same or similar biodiversity outcomes of public and private land management are achieved by contracting the provision of biodiversity from those managing indigenous habitat, whether on private or public land.

A related and potentially more cost effective strategy for paying for ecosystem services could be achieved through use of the Public Works Act 1981, which allows the compulsory purchase of public interests in private land, presumably including indigenous biodiversity. . There is no discussion of the applicability or precedent of the Public Works Act, including the established principle under that Act of leaving the individual unharmed. The absence of discussion of payment for public services suggests the authors doubt the worth of increased indigenous biodiversity as compared to other demands on taxpayer funds such as health, education and social welfare.

Reduction in Indigenous Biodiversity Outcomes are a Possibility.

NZIF is concerned that implemented as proposed, the NPSIB risks hastening the decline in biodiversity. It will achieve this by materialising and increasing the cost to landowners of existing and potential habitat attractive to indigenous biodiversity. The Climate Change Response Bill (CCRB) materialised a carbon emissions liability and or significant loss of capital value in land planted in forests before 1990. The CCRB motivated the widespread legal destruction of forests ahead of the Bill being enacted. Something similar could happen to indigenous biodiversity habitat if the proposed NPSIB materialises ‘valued’ habitat as a commensurately priced liability to the individual encumbered with the liability to maintain and enhance biodiversity.

Reinforcing the critical concern noted above, the CCRB as an Act demonstrated the ‘sovereign risk’ of uncompensated expropriation of the opportunity value of private land. The Act serves to discourage investment in afforestation where land has a capital value determined on the basis of greater flexibility of land use and management. The same outcome can be anticipated from the imposition of maintenance of indigenous biodiversity as a significant financial and potentially criminal liability under the RMA.



Production forests including of exotic species are documented as providing habitat to a wide variety of valued native species. Populations of native falcons, bats and many other species have been shown to benefit from the varied habitat provided by production forest management. Such populations do occur in production forests even under a regime of benign neglect. Better yet, indigenous biodiversity is often actively provided for in forest management at cost to the forest manager. Considerable effort has gone into understanding valued fauna such as native bats and falcons including forest management that facilitates their presence. The Forest Accord 1991 is a voluntary agreement retiring from conversion native habitat of defined quality. It equates to the protection afforded private land under the QEII Trust, another longstanding voluntary effort overlooked by those seeking to impose additional obligations via the proposed NPS.

The capacity of forest managers to absorb the cost of indigenous biodiversity management will vary with the scale of the operation. It will also vary depending on the market value of forest products, this being a fundamental difference between public and private forest management. Increasing the regulatory and related unavoidable cost of indigenous biodiversity management in production forests will act to discourage its identification by some forest managers if biodiversity comes to represent an unknown and unavoidable financial obligation.

The discussion document reflects an apparent presumption that the decline in indigenous biodiversity can be reversed by increasing the punitive regulation of those land managers whose past land use choices have resulted in the indigenous biodiversity remaining today. As discussed above in relation to the CCRB, the NPSIB could motivate landowners to legally manage habitat so as to decrease its value to indigenous biodiversity, including through neglect. The absence of effective and targeted pest control is widely recognised as a threat to both biodiversity and the maintenance of valued habitat. The cost of effective pest control can be significant, as evidenced by the fact that many Regional Pest Management Pest Strategies exclude from control those pests deemed unmanageable and or beyond control. Koi carp is frequently excluded from pest control strategies notwithstanding its devastating effect on the habitat values of public waterways.

The use of regulation as contemplated in the proposed NPSIB to force the maintenance of existing valued habitat could have the effect of increasing the total cost to the economy of indigenous biodiversity management. The value of current expenditure on pest control is often maximised by coordinating control programmes across multiple properties and the cooperation of public and private land managers' efforts. Such collaborative and voluntary actions do not materialise as a legal or financial risk to the asset manager. By contrast, regulation is a material liability. The use of regulation to compel actions previously undertaken in good faith may result in private land managers limiting their actions to only those provided for and enforceable through Resource Consent. The risk is that today's additional and voluntary behaviours will become a regulatory obligation at some time in the future.



Selective Regulation Based on Existing Patterns of Land use Cannot Reverse the Decline and Will Lead Too Perverse Outcomes for Biodiversity.

Section C.6 (page 53 and 54) detail the historic injustices inflicted on Maori through the use of selective regulation. The discussion document suggests the nature and scale of past injustices are sufficient to propose “further disadvantage” “through the more permissive Part 3.9(2) management...” of Maori land.

It is stated in the discussion document that “The intent of the proposed NPSIB is to ensure that significant biodiversity values are maintained, while allowing for existing uses of land and certain activities. (Page 17). This is elaborated on at page 50 where it is stated that the intention is “.....to allow existing farming activities to continue, while making sure the impact to indigenous biodiversity does not increase.”

The logical interpretation drawn from the above 2 paragraphs is that the NPSIB is intended to impose an obligation to provide for biodiversity only where it already exists. The intention is to exclude constraints on farmland and to exclude the obligation to protect biodiversity on land owned by Maori. Specifically, the proposal provides for inequitable treatment of plantation forestry on private land, as compared to that same land used for pastoral farming. The proposal is more confused with respect to Maori owned land used for commercial forestry. In that case the proposal is unclear whether the assumption of ‘maintain and enhance’ would apply, or whether a loss of indigenous habitat would be allowed in recognition of ‘historic injustice.’ There is no contemplation of constraints imposed under the NPSIB on forests in Maori ownership as a ‘contemporary injustice’.

The Proposed Statement requires pastoral farming simply to “ensure the impact of biodiversity does not increase”. That is “no matter how bad you are doing, just make sure it doesn’t get any worse”. For forestry it seems the requirement is much more demanding, that is: “any increase in biodiversity that occurs as the result of your activities will become the new minimum standard which you will be required to meet”. Apart from the inequity of placing much less severe constraints on farming than forestry, the Proposal will prevent land use change that is in New Zealand’s best interest and will also act to reduce indigenous biodiversity overall.

The discussion document states at page 15 that “The proposed NPSIB is intended to give consistency to councils’ interpretations and application of the RMA. Figure 2 on the same page describes the “Effect of proposed NPSIB is to standardise a ‘bottom line’ of the good practice needed to reverse the decline in indigenous biodiversity...”. The need for clear standards is expanded on to the extent that “The lack of clear standards for protecting SNAs has led to a lack of certainty for councils and resource management users and, in some cases, to inadequate protection for significant indigenous biodiversity. This is contributing to a continued decline of biodiversity.” (page 42)



The logical interpretation to be drawn from the statements quoted in the paragraph immediately above is that regulation protecting and enhancing indigenous biodiversity needs to be applied in a nationally consistent manner to all classes of land ownership equally. NZIF reinforces the view that regulating for indigenous biodiversity (and any other public interest in private land) needs to be applied equally to all landowners to avoid distorting investment patterns and motivating perverse behaviour. To the extent that biodiversity is valued by the public it should be paid for, utilising the principles and provisions of the Public Works Act.

Conclusions

NZIF has made a deliberate decision not to respond to the specific questions posed in the discussion document to draw attention to fundamental flaws in the proposed approach. We suggest the proposed NISIB needs to be reconsidered and to better account for the social, economic and ecological reality that:

1. Not all areas of NZ's productive land can or should be managed for indigenous biodiversity
2. Significant areas of NZ are managed at public cost for conservation and the many other public interests including biodiversity. The area of public conservation estate has been added to by philanthropic efforts such as QEII and the NZ Forest Accord. Such voluntary efforts could be further enhanced by way of the Public Works Act 1981, recognising that the individual affected by Public Works acquisition is left unharmed, at least financially.
3. The suggestion that a NPSIB be applied selectively in the form of punitive regulation of those landowners and managers whose past actions have retained biodiversity is perverse; morally, legally and financially. The imposition of punitive regulation on those whose actions have maintained and created biodiversity will serve as a motivation to financially astute land managers and their mortgage holders to manage land in a manner that precludes as far as possible the opportunity for future regulatory expropriation under the guise of increased indigenous biodiversity.

Yours sincerely

David Evison
President