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Inside The Black Box:

The Influence of Government Executive Forces on Environmental Policy Effectiveness in New Zealand

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Hugh Logan

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Abstract of a thesis submitted in partial fulfilment of the

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Inside the Black Box: The Influence of Government Executive Forces on Environmental Policy Effectiveness in New Zealand

By

Hugh Logan

The causes of variation in effectiveness of environmental public policy are subject to debate. Different levels of effectiveness in wider government policy are commonly explained by external influences. Fewer studies focus on the role of factors within the Executive, such as institutional arrangements, differing levels of capability in policy-makers, and ways ideas shape how people and institutions perceive environmental values and issues. This study aims to advance our understanding of how such factors combine to effect environmental policy in a specific national jurisdiction. The research investigates how environmental policy efforts of environmental government departments are influenced by factors within the Executive in New Zealand, and how these factors contribute to variability in environmental policy effectiveness.

Drawing on theories about the main drivers of policy change and ideas about environmental policy effectiveness, the thesis puts forward a framework to analyse three case studies of environmental policy development between the 1990s and the late 2000s: oceans policy; biodiversity policy; and water policy.

The main finding of the research is that four key intra-government variables are the primary determinants of environmental policy effectiveness in New Zealand. These are: the level of government commitment to environmental values relative to other values; the environmental commitment and capability of ministers holding environmental portfolios; the capability of officials within the environmental departments, notably their ability to provide leadership; and the extent to which environmental departments are organised and equipped to play a lead role in the development of environmental policy. These four variables are interdependent. Government will and the actions of ministers and officials can enable structural change that facilitates environmental organisations to take a leadership role, but where institutions do not allow or facilitate this to happen, environmental policy can be constrained or ineffective even where there is government commitment.

From an organisational perspective features that stand out as being most important to enhance environmental policy effectiveness are: ensuring that priority is placed on environmental imperatives in policy design; concentrating effort by reorganising and aligning operating procedures internally in a timely way to focus on the issue at hand; forming close alliances with supportive departments and drawing in opposing departments; and organising to shape and lead the policy process within the machinery of government.

Keywords: environmental effectiveness, institutions, environmental departments, environmental policy

Preface and Acknowledgements

Environmental management and governance have been part of much of my professional life: working in and leading the New Zealand Antarctic Programme, natural disaster response and emergency management in the Ministry of Civil Defence, and work with the Department of Conservation (DoC) and the Ministry for the Environment (MfE). From 1997 to 2008 I led the New Zealand Department of Conservation and then the Ministry for the Environment. In these last two roles I worked in the heart of central government in positions from where I was able to participate in and observe the workings of the New Zealand political and bureaucratic system.

In the period between 1997 and 2008 environmental management moved from an activity on the periphery of government to where there was some acknowledgement that it was a core role of government. Early on, there was a feeling that environmental management was somewhat small beer compared with the traditional concerns of government about economic development, justice, social cohesion, education, health and defence. This created in MfE and DoC on the one hand a defensive view that the burden of proof for environmental policies was somewhat higher than for other sectors (although in reality this feeling was shared, and expressed, by some other sectors of government, such as those working in the cultural fields of arts and heritage) and, on the other hand, a determination to try harder to argue the case for environmental quality.

At another level I observed a somewhat peculiarly formal culture and hierarchy in the senior levels of the public service. This was a very different atmosphere to others I had experienced in public service regional roles, or in life outside the public service. It was a culture bound by formal rules of legislation and the Cabinet Office Manual, and informal rules of relationship management based on an incongruous mix of collegiality and patch protection. Three "central agencies" wielded formal and informal power through the triple headed dynamics of chief executive employment and performance review (State Services Commission), resourcing (Treasury), and politics (The Department of Prime Minister and Cabinet). There was an informal hierarchy of chief executives and their departments based on relevance to the immediate policy concerns of the government of the day and perceived long run importance to national interest. The 1990s and early 2000s was also a period when New Zealand's experiment with a singular neo-liberal approach to public management reached an apogee, and then adapted itself in the face of experience and political scepticism.

In that period I participated in a wide range of environmental initiatives: some involved working within existing frameworks and implementing existing policies and procedures; some involved new ideas and new policy. There was the continuous challenge of public and interest group engagement, the challenge to deliver value, and the challenge of departmental management that value delivery

required. Working in a largely taxpayer funded environment required a high level of public scrutiny and accountability. And, as a public servant dealing with public policy, the influences of politics and political imperatives were ever present.

This experience raised for me questions about how environmental policy and implementation was advanced. I witnessed, and participated in, instances where new policies were conceived, designed and achieved, and others where proposed new policies floundered, were compromised, sank or never even emerged. Thus came the focus for this thesis. The idea at the beginning of my research was to investigate what form and mix of central and local government structures might enhance environmentally sustainable outcomes. This was based on a preliminary hypothesis (rooted in an admittedly subjective view drawn from experience over many years) that there were inadequacies in the devolved organisation of New Zealand's environmental governance caused by issues at an institutional level, and possibly by deep seated constitutional and social/cultural considerations. As I began to delve further into the subject, however, my thinking began to shift onto the workings of central government. Environmental policies were sometimes initiated, and certainly designed, within a political bureaucratic system. That system was responsive, in varying degrees, to the wider forces and interests in society but it also had its own internal dynamics. The more I thought about it, the more those internal dynamics seemed significant in how the government's environmental departments behaved and performed. These factors together – the working of the political bureaucratic system and the way central government agencies behaved and performed - seemed as important in helping understand how environmental issues are addressed in New Zealand as the structural and organisational issues that had been my original focus. Hence the subject of this thesis: forces within government that influence environmental policy development in New Zealand.

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Acronyms

BIM   Brief to the Incoming Minister
CBD   Convention on Biological Diversity
CEO   Chief Executive Officer
DoC   Department of Conservation
DPMC   Department of Prime Minister and Cabinet
EEZ   Exclusive Economic Zone
EECA   Energy Efficiency and Conservation Authority
EPA   Environmental Protection Authority
GDP   Gross Domestic Product
GMO   Genetically Modified Organism
HASNO   Hazardous Substances and New Organism Act 1996
LAWF   Land and Water Forum
LINZ   Land Information New Zealand
MAC   Ministerial Advisory Committee
MAF   Ministry of Agriculture and Forestry
MBIE   Ministry of Business, Innovation and Employment
MED   Ministry of Economic Development
MFAT   Ministry of Foreign Affairs and Trade
MfE   Ministry for the Environment
Minfish   Ministry of Fisheries
MMP   Mixed Member Proportional system of parliamentary representation
MPI   Ministry for Primary Industry
NES   National Environmental Standard
NGO   Non-government organisation
NPM   New Public Management
NPS   National Policy Statement
NZCA   New Zealand Conservation Authority
OECD   Organisation for Economic Cooperation and Development
OTS   Office of Treaty Settlements
PCE   Parliamentary Commissioner for the Environment
QMS   Quota Management System
RMA   Resource Management Act 1991
SSC   State Services Commission
TPK   Te Puni Kokiri
UNCLOS   United Nations Law Convention on the Law of the Sea

A Note on Referencing Style

In this thesis I have opted to use the Chicago 15th A style. This style involves referencing using footnote numbering in the text and then the full reference in the footnote at the foot of the page. Subsequent references to the same work contain only the first author name and the main title. The reason I have used this formatting is twofold: to avoid disrupting the narrative flow with extensive in-text referencing by setting all the references at the bottom of the page; and more importantly, allowing opportunity to include additional (but not essential) information and commentary in the footnotes.

Chapter 1

Introduction

This is a study of environmental policy-making in central government in New Zealand. It looks at the role played in policy development by the government's main environmental agencies, at forces within government that influence that role, and the results.

In 1963, American public policy academic Lynton Caldwell predicted that environmental issues would become a major focus for public policy.[1] Caldwell's prediction has proved right. In the last fifty years there has been a worldwide rise of policies, institutions and agencies designed to maintain or improve environmental services and quality. Global, national and local environmental issues challenge national economies and social harmony. Human induced climate change, pollution, and depleted freshwater resources, for example, threaten human welfare. Whereas once such issues were peripheral to government actions, now their social and economic implications, and greater public awareness, combined with technical complexity and public good orientation, have moved them to the heart of government worldwide. The challenge for government, and for society, is how to order affairs in a way that effectively supports the environmental basis of human welfare and sustainable economic activity.

New Zealand, like much of the rest of the world, has set up government departments and a wider governmental system for environmental management. New Zealand's present arrangements, and the way they operate, owe much to radical and innovative institutional changes made in the mid 1980s and early 1990s. Design of legislation and departments was based on identifiable and distinctive (yet variable) environmental management criteria, and identifiable (yet variably applied) public management criteria.

For a country which exhibited innovation in environmental management in the late 1980s and 1990s, and where a national culture is reportedly supportive of environmental quality,[2] it has been argued

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[1] L.K. Caldwell, "Environment: A New Focus for Public Policy," *Public Administration Review* 23, no. 3 (1963).

[2] T. Bührs, Bartlett, R.V., *Environmental Policy in New Zealand: The Politics of Clean and Green?* (Auckland: Oxford University Press, 1993), P. Ali Memon and Harvey C. Perkins, eds., *Environmental Planning and Management in New Zealand* (Palmerston North, N.Z.: Dunmore Press,2000), N. J. Ericksen, Berke, P., Dixon, J. , ed. *Planning for Sustainability: New Zealand under the RMA* (Aldershot (England): Ashgate Publishing,2003), Growth and Innovation Advisory Board GIAB, "Research on Growth and Innovation," ed. Ministry of Research Science and Technology (Wellington2004).The claim for innovation is based on a radical overhaul of New Zealand's environmental management system involving integrated preservation-oriented management of New Zealand's large holdings of state-owned protected land (Conservation Act 1987); integrated resource management based nation-wide on a concept of sustainable management (the Resource Management Act 1991); sustainable management of fish stocks based on environmental principles (the Fisheries Act 1996);

that, paradoxically, New Zealand has been slow since then to develop new policies to address environmental problems. Environmentally effective principles are displayed to varying degrees in any new policies that are developed, and there has been a reluctance to adopt rules or standards.[3] How can this be explained?

Although this research involves one country, its basis is implicitly comparative. Studies in Europe and in OECD countries show there is considerable difference in environmental policy development and policy innovation between seemingly similar countries, hence the value in ongoing country-specific research.[4] Lafferty, Jänicke, and Jacob amongst others have examined the types and complexity of environmental problems and how they are addressed at a national level.[5] Their explanations for variability echo a wider literature that says in a general sense government policy is driven by a country's socio-economic conditions and the structure of power in a society, constitutional/institutional arrangements, and the capacities, views and resources of protagonists involved with any given issue.[6] Another explanation for variability is the nature and effect of policy developed within the government itself. Detailed rules and processes exist to develop government policy. Policy decision-making is a central role for ministers and officials. All this suggests two things

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single purpose environmental protection agencies; an independent auditor of environmental management reporting to parliament; and Cabinet portfolios for environmental matters (although this dates back to the 1970s) and conservation.

[3] T. Bührs, *Environmental Integration: Our Common Challenge* (New York: State University Of New York Press, 2009). P.179 & 199. For examples about the length of time it takes to develop policy see D. Bullock, "The New Zealand Emissions Trading Scheme: A Step in the Right Direction?," (Wellington: Institute of Policy Studies, 2009), M.V. McGinnis, "Oceans Governance: The New Zealand Dimension - Summary Report," in *Emerging issues programme* (Wellington: Institute of Policy Studies, VUW, 2012). For reluctance to develop national standards, see Ericksen, ed. *Planning for Sustainability: New Zealand under the RMA*, OECD, *OECD Environmental Performance Review: New Zealand* (Paris: OECD, 2007). And for the variable exhibition of environmental effectiveness see G. Bertram, Terry S., *The Carbon Challenge: New Zealand's Emission Trading Scheme* (Wellington: Bridget Williams Books, 2010), T. Bührs, "From Diffusion to Defusion: The Roots and Effects of Environmental Innovation in New Zealand," *Environmental Politics* 12, no. 3 (2003).

[4] L. Scruggs, *Sustaining Abundance: Environmental Performance in Industrial Democracies* (Cambridge: Cambridge University Press, 2003), D.C. Esty, Porter, M. E., "National Environmental Performance: An Empirical Analysis of Policy Results and Determinants," *Environment and Development Economics* 10: 391-434 (2005), A. Jordan, Lenschow, A., "Environmental Policy Integration: A State of the Art Review," *Environmental Policy and Governance* 20 (2010). P.156

[5] W.M. Lafferty, Meadowcroft, J., *Implementing Sustainable Development: Strategies and Initiatives in High Consumption Societies* (Oxford: Oxford University Press, 2000), M. Jänicke, Weidner, H., ed. *Capacity Building in Environmental Policy: A Comparative Study of 17 Countries* (Berlin: Springer,2002), K. Jacob, Volkery, A., Lenschow, A., "Instruments for EPI in 30 OECD Countries," in *Innovation in Environmental Policy?*, ed. A. Jordan, Lenschow, A. (Cheltenham: Edward Elgar, 2008).

[6] M. Jänicke, Jörgens, H., "National Environmental Planning in OECD Countries: Preliminary Lessons from Cross-National Comparisons," *Environmental Politics* 7, no. 2 (1998), C. Ham, Hill, M., *The Policy Process in the Modern Capitalist State* (Hemel Hempstead: Harvester Wheatsheaf, 1984). Jänicke, "National Environmental Planning in OECD Countries: Preliminary Lessons from Cross-National Comparisons.", Lafferty, *Implementing Sustainable Development: Strategies and Initiatives in High Consumption Societies*, J. Barry, Eckersley, R., "W(H)Ither the Green State?," in *The State and the Global Ecological Crisis*, ed. J. Barry, Eckersley, R. (Cambridge, Mass.: The MIT Press, 2005), Jacob, "Instruments for EPI in 30 OECD Countries.", R.E. Goodin, Rein, M., Moran, M., "The Public and Its Policies," in *The Oxford Handbook of Public Policy*, ed. M. Moran, Rein, M., Goodin, R.E. (Oxford: Oxford University Press, 2006), E.C. Page, "The Origins of Policy," in *The Oxford Handbook of Public Policy*, ed. M. Moran, M. Rein, R.E. Goodin (Oxford: Oxford University Press, 2006).

at work on environmental policy: external factors that governments respond to, such as interest group pressure, the media, the views of other political parties, or disrupting events; and internal factors: things inside government comprising the preferences of office holders (be they politicians or bureaucrats) exercised within boundaries established by institutional arrangements, and individual or group values arising from the authority vested in governments.[7] The effect of these internal features is to condition the characteristics and development of environmental policy.[8] While recognising the role of wider forces in society, the internal government features are what much of this study focuses on in seeking explanations for variable environmental performance in New Zealand over the past twenty years.

In New Zealand's case, its political system is characterised by a high level of concentration of formal central government power compared with many other developed nations. This has been cited as one of the explanations for the speed and radical nature of the environmental changes of the late 1980s and early 1990s.[9] Other explanations are the global nature of environmental institutional change at that time, the neo-liberal orientation of New Zealand government policy, and an argument that such changes occur sporadically either because of windows of opportunity, or because specific issues attract political and policy attention as an *issue de jour*, and then dissipate.[10] Despite concentration of power, the New Zealand political system is partially constrained by a three-year electoral cycle, and has been modified somewhat since the introduction of a mixed member proportional representation system in 1997. Even so a government could, with sufficient coalition majority, develop, adopt and change policy more easily than in many other countries because of Cabinet and Prime Ministerial dominance of the Executive, a unicameral legislature, and absence of a written constitution.[11]

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[7] E.A. Nordlinger, *On the Autonomy of the Democratic State* (Cambridge, Mass.: Harvard University Press, 1981).

[8] J. Barry, Eckersley, R., ed. *The State and the Global Ecological Crisis* (Cambridge MA: MIT Press,2005). P.256. A. Weale, "Governance, Government and the Pursuit of Sustainability," in *Governing Sustainability*, ed. W.N. Adger, Jordan, A. (Cambridge: Cambridge University Press, 2009). P.62.

[9] J. Boston, Martin, J., Pallot, J., Walsh, P., *Public Management; the New Zealand Model* (Auckland: Oxford University Press, 1996).

[10] J.W. Kingdon, *Agendas, Alternatives, and Public Policy* (HarperCollins, 1984), F.R. Baumgartner, B.D.Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993), O'Riordan, "Reflections on the Pathways to Sustainability," in *Governing Sustainability*, ed. W.N. Adger, Jordan, A. (Cambridge: Cambridge University Press, 2009), T. Bührs, "New Zealand's Capacity for Green Planning: A Political-Institutional Assessment and Analysis," *Political Science* 54, no. 1 (2002).

[11] G. Palmer, M.Palmer, *Bridled Power: New Zealand's Constitution and Government*, 4th ed. (Melbourne: Oxford University Press, 2004), F. Barker, "Political Culture: Patterns and Issues," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2010). P.15. J. Haywood, "Leadership and the Prime Minister," in *New Zealand Government and Politics*, ed. Miller R. (Melbourne: Oxford University Press, 2010).P.228. E. McLeay, "Cabinet," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne Oxford University Press, 2010). P.202. Although there is no single written constitution there a number of constitutional instruments that provide boundaries, notably the Constitution Act 1986 and the Bill of Rights Act 1990.

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Given the amount of formal administrative power that resides at the political level in New Zealand, the degree of government commitment to environmental policy development is likely to be a key variable amongst those things that influence the nature of environmental policy.[12]

Another variable is the degree of influence exercised by government departments. Most literature says that government agencies play a formal and informal role - to what extent is frequently debated - in all of the processes of policy development.[13] Hence central government environmental agencies presumably can influence the nature of environmental policy. The detail and dynamics of their institutional settings, the role of individuals or groups within the agencies, and values and norms within the agencies and other agencies of government are influential internal government factors in the processes of policy development. The role played by government environmental agencies in policy development is an under-researched field in study of environmental policy development in New Zealand since the period of policy innovation of the late 1980s and early 1990s.[14] More recently, the role of intra-Executive forces play in environmental policy has been referred to obliquely[15] but the main body of environmental policy research in New Zealand has concentrated on policy effectiveness and wider social and economic drivers,[16] and rather than jurisdictional and administrative features that have characterised a range of European-based studies.[17]

 Two government departments deal with environmental policy as their primary *raison d'être*. These departments are the Ministry for the Environment (MfE, the main environmental policy ministry), and the Department of Conservation (DoC, the nature conservation operations and policy department). One or both of these departments are usually at the centre of environmental policy development. That policy development takes place in the absence of a formal institutionalised supra-agency or horizontal environmental policy coordination of the type found in many other countries.[18]

[12] M. Nilsson, Persson, A, "Framework for Analysing Environmental Policy Integration," *Journal of Environmental Policy and Planning* 5, no. 4 (2003).

[13] M. Howlett, Ramesh, M., *Studying Public Policy: Policy Cycles and Policy Subsystems* (Don Mills, Ontario: Oxford University Press, 1995). P.64. A. Heywood, *Politics*, 3rd ed. (Houndsmill, England: Palgrave, 2007), B. Guy Peters, *The Politics of Bureaucracy*, 6th ed. (London: Routledge, 2010).

[14] See T. Bührs, "Working within Limits: The Role of the Commission for the Environment in Environmental Policy Development in New Zealand" (University of Auckland, 1991).

[15] J. Boston, "The Complicated Politics of Climate Change," in *In the Public Interest: Essays in Honour of Professor Keith Jackson*, ed. M. Francis, Tully, J. (Christchurch: Canterbury University Press, 2009). Pp.215-216 & 218, Bertram, *The Carbon Challenge: New Zealand's Emission Trading Scheme*.

[16] See for example, Memon and Perkins, eds., *Environmental Planning and Management in New Zealand*. Or for example the detailed study of the effectiveness of oceans policy by M.V. McGinnis, "Living up to the Brand: Greening Aotearoa's Marine Policy," *Policy Quarterly* 8, no. 1 (2012), ———, "Oceans Governance: The New Zealand Dimension - Summary Report."

[17] Jordan, "Environmental Policy Integration: A State of the Art Review."

[18] Jacob, "Instruments for EPI in 30 OECD Countries." Pp.40-41.
 A form of environmental policy co-ordination has existed at a central government level in New Zealand since 2008 through an interdepartmental mechanism known as the Natural Resources Sector. As a mechanism for coordination its environmental focus is comparatively weak. Its primary purpose is to, "ensure that, across government agencies, a strategic, integrated and aligned approach is taken to natural resources development

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Hence these central government environmental agencies can influence the nature of environmental policy.[19] The detail and dynamics of their institutional settings, the role of individuals or groups within the agencies, and values and norms within the agencies and those of other government agencies with whom they interact are internal government factors in the processes of policy development.

The aim of this research is to investigate how New Zealand's central environmental agencies contribute to developing environmental policy, and how Executive government influences the extent of that contribution, to see whether this explains the apparently slow and variable nature of environmental policy development over the past twenty years. The main proposition of the thesis is that given New Zealand's political system, the sporadic and variable nature of environmental policy development can be explained foremost by two factors: the degree of government commitment to environmental values; and the ability of central environmental agencies to develop policy that results in positive environmental outcomes. Thus the central question of this research is how are efforts by New Zealand's central government environmental agencies to develop effective environmental policy influenced by internal factors within government and has this contributed to policy variability?

To test these ideas a framework, based on concepts of structure and agency, has been developed for analysing the role and effectiveness of the main New Zealand government environmental agencies in environmental policy development. It also incorporates a wider suite of influencing factors both within government and externally. This framework is then applied empirically in selected case studies drawing on analysis of departmental files, departmental and Cabinet papers, and corroborating evidence from press releases, websites and secondary published sources.

Chapter 2 defines key terms, reviews literature about environmental effectiveness and policy effectiveness, and examines what other literature has to say about sources of policy variability and especially environmental policy. Chapter 3 discusses the New Zealand government context for environmental policy, looking at macro socio- economic- environmental drivers, the political and policy-making system, and the administrative arrangements that deal with environmental matters, particularly focusing on MfE and DoC. Chapter 4 sets out an analytical framework and the more

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and management." Its approach involves a "commitment to achieving natural resource outcomes in ways that support strong social, economic and cultural development to the greatest extent possible consistent with sustainable natural resource management." http://www.mfe.govt.nz/about/natural-resources-purpose-functions.html. The argument that it is comparatively weak is because the use of the term "consistent with sustainable natural resource management" is not as strong a directive to integrate environmental principles in all policies as used many OECD countries. See Jordan, "Environmental Policy Integration: A State of the Art Review." and Jacob, "Instruments for EPI in 30 OECD Countries."

[19] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. Howlett and Ramesh (P.64) say the structure of the bureaucracy has perhaps the strongest effect on public policy processes, especially at the sectoral level.

detailed questions it gives rise to, the qualitative research methods used, and describes what the case studies are and why they have been chosen. The case studies are: the development of a New Zealand biodiversity strategy; the development of a New Zealand oceans strategy; and efforts to develop national policies to address decline in freshwater quality. Chapters 5, 6 and 7 deal with each of these case studies in turn. They outline the context for the particular environmental issue, give a narrative of the development of the policy, and then discuss what took place using the analytical framework as a structure for analysis. Finally, Chapter 8 discusses the characteristics and patterns that emerged collectively from the case studies, the value of the analytical framework, and general findings and conclusions.

Chapter 2

Literature Review

2.1 Introduction

Study of the literature for this thesis involves two parts: policy variability, and sources of policy variability. The focus is on environmental policy and internal government influencing factors.

The chapter begins with definitions of public policy, institutions, ideology, government agencies and the concept of agency, and how these terms will be used. The first part of the chapter then examines different perspectives on what constitutes policy effectiveness and environmental effectiveness, as this is a key to understanding variability.

The second part of the chapter looks at sources of variability: what literature says about the role and impact of environmental agencies; the influence of complexity on policy development; factors that shape public policy (emphasising those that operate within government); and comparative environmental performance between similar developed countries. The chapter concludes with an assessment of the merits and limitations of the literature as far as the research question is concerned.

2.2 Policies, institutions, government agencies/departments, and agency

The concepts of public policy, institutions, ideas and ideology, and government agencies/departments require a brief explanation, as they are central to this studyThe definition of public policy used here is one commonly used to describe intentional courses of government action (which include intentional non-action) directed towards goals.[20]

How policy is produced and the results of that production help shape whether, how, and in what way environmental problems are addressed. Policy can arise from any part of a political system, including inside and outside government. It involves the interaction of ideas and values with the exercise of power, the actions of individuals, groups and office holders, and the effect of institutions. These

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[20] A.L. Schneider, Ingram, H., "Policy Design: Elements, Premises, and Strategies," in *Policy Theory and Policy Evaluation: Concepts, Knowledge, Causes, and Norms*, ed. Stuart S. Nagel (New York: Greenwood Press, 1990). P.79. R. Shaw, Eichbaum, C., *Public Policy in New Zealand: Institutions, Processes and Outcomes*, 3rd ed. (Auckland: Pearson Education New Zealand, 2011). P.2.

categories - ideas, interests and institutions - have been described as a trinity of operating conditions that affect how public policy is produced.[21]

Institutions are an important part of this study because institutions channel public policy.[22] Internal forces within government derive in part from institutional drivers and help explain the performance of public agencies and their approach to policy formulation and implementation.[23] Legislation and procedures determine the boundaries and frameworks for policy formulation, the nature of the work of individual or groups of agencies, and the organisation of the public service and its agencies.

There is debate about what institutions are. Some of the debate comes from differing disciplinary views, for example from rational choice economics, or game theory.[24] One perspective is that institutions are rules, and distinct from organisations.[25] However, organisations, particularly government ones, are strongly rules-based.[26] Government agencies are built on formal rules of purpose (often but not always established in legislation), specified aims, structure, authority, internal operating procedures and processes.[27] For these reasons, this study treats government agencies as institutions.

Ideas, beliefs and viewpoints of people in government (and elsewhere) influence environmental policy. In this study these ideas and beliefs will be termed ideologies. Negative connotations sometimes accompany this term because it has been used by adherents to one set of beliefs to criticise alternatives. However this study will endeavour to apply the term in a neutral sense by using a social science definition of ideology as sets of beliefs and ideas about how society is, how it should be, and how they guide political and government action.[28]

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[21]Heywood, *Politics*. P.430. A.R. Zito, *Creating Environmental Policy in the European Union* (New York: Palgrave Macmillan, 2000). P.8.

[22] J.G. March, Olsen, J.P., "The New Institutionalism: Organisational Factors in Political Life," *American Political Science Review* 78 (1984). B. Guy. Peters, Pierre, J., "Handbook of Public Policy Introduction," in *Handbook of Public Policy*, ed. B. Guy. Peters, Pierre, J. (London: Sage, 2006). P.6.

[23] R.E. Goodin, *The Theory of Institutional Design* (New York: Cambridge University Press, 1998). P.21. A. Boin, Kuipers, S., "Institutional Theory and the Public Policy Field: A Promising Perspective for Perennial Problems," in *Debating Institutionalism*, ed. J. Pierre, Peters, G.B., Stoker, G. (Manchester: Manchester University Press, 2008). P.46.

[24] B. Guy Peters, "Institutional Theory: Problems and Prospects," in *Debating Institutionalism*, ed. J. Pierre, Peters, G.B., Stoker, G. (Manchester: Manchester University Press, 2008). Pp.2-5.

[25] R. Connor, Dovers, S. , *Institutional Change for Sustainable Development* (Cheltenham, England: Edward Elgar, 2004). P.14, based on the definition of D.C. North, *Institutions, Institutional Change, and Economic Performance: The Political Economy of Institutions and Decisions* (Cambridge: Cambridge University Press, 1990).

[26] Bührs, *Environmental Integration: Our Common Challenge*. P.224. Bührs discusses the debate about institutions and the rationale for why organisations have institutional characteristics.

[27] Ibid. P.224.

[28] Heywood, *Politics*. P.45.

The terms, <u>agencies</u> and <u>departments</u>, are used in this study to refer to the organisations of government. Whether a government organisation is a ministry, a department, an agency, or a bureau, authority, or commission, can be a matter of constitutional standing, purpose, role, or history. The study uses the term agency when referring to government organisations in a conceptual sense (as occurs in most of this chapter), and departments when referring to the New Zealand situation. This is because the title "department" is used generically in New Zealand in Schedule 1 of the State Sector Act 1988 to describe those government organisations most closely aligned to the Executive.

The term agency, when used in its organisational sense, is distinct from the concept of <u>agency</u> in a social sense. Agency in the social sense refers to the capacity of individuals(real people) to make independent choices.[29] Agency is an important factor within departments because people can choose the degree or nature of the rules they apply. Hence when departments don't do what ministers want it is a choice, or when they choose to advance policies ahead of ministers or the government it is a form of agency, albeit one that generally is exercised and influenced by the structure or institutional arrangements within which they work. Organisations, as institutions, cannot exercise agency. Nevertheless, there are institutional organisational characteristics that can condition how people exercise agency and what choices they might make.[30]

2.3   Policies and environmental effectiveness

The apparently slow development and variable effectiveness of environmental policy is part of this study's main question. What constitutes effective environmental policy? The following section discusses views about evaluation of public policy, and about what effective environmental policy involves. It deals with two linked concepts: general policy effectiveness, and environmental effectiveness.

2.3.1   Policy effectiveness

The usual description of policy effectiveness is whether the policy goals are achieved.[31] Based on this description, environmental policy effectiveness logically is whether environmental goals are

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[29] A. Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Cambridge: Polity Press, 1984). P.12. C. Barker, *Cultural Studies: Theory and Practise* (London: Sage, 2005). P.448.

[30] Goodin, *The Theory of Institutional Design*. P.21. B. Guy Peters, "Institutional Theory and the Study of the Political Executive," in *Debating Instiutionalism*, ed. Peters Pierre J., G. B., Stoker, G. (Manchester: Manchester University Press, 2008). P.199.

[31] J. S. Dryzek, *Rational Ecology: Environment and Political Economy* (Oxford, U.K; New York: Blackwell, 1987). P.12. R. Denhardt, B., *Theories of Public Organisations* (Pacific Grove: Brooks/Cole, 1984). P.133.

achieved. Analysising and evaluating policy effectiveness and environmental effectiveness depend, however, on what goal is sought, what is being measured, and evaluation criteria.

There are different sorts of systematic public policy evaluation but they are generally categorised under two broad headings; impacts, and processes.[32] Bartlett, in reviewing environmental policy effectiveness, split the second category arguing there were three broad headings;

1. Outcomes (equivalent to impacts);

2. Values of the processes used to define problems, set agendas, formulate alternatives, select actions and govern implementation; and

3. Political architecture that influences outcomes, structures, processes, and constructs and elaborates meaning.[33]

Jordan and Lenschow have reviewed literature about effectiveness of environmental policy integration and similarly use categories of outcomes, policy process, and political systems.[34] The benefit of the third category is that it emphasises important political and institutional dimensions of public policy creation and implementation that can be forgotten in policy evaluation.[35]

Of these three categories, policy outcomes in environmental terms ultimately involve changes in the state of the environment. Desirable outcomes are what matter for many environmentalists.[36] Outcomes are reported in various models of State of Environment reports and comparative country studies.[37] But the literature says that establishing and therefore asserting causal links between outcomes and policies is difficult.[38]

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[32] S.Z. Theodoulou, "How Public Policy Is Made," in *Public Policy: The Essential Readings*, ed. S.Z. Theodoulou, Cahn, M.A. (New Jersey: Prentice Hall, 1995). P.91.

[33] R.V. Bartlett, "Evaluating Environmental Policy Success and Failure," in *Environmental Policy in the 1990s*, ed. N.J. Vig, M.E. Kraft (Washington DC: CQ Press, 1994). Pp.170, 176 & 179. There are other versions of policy categorisations, for example Hogwood and Gunn's scheme involving ten categories (B.W. Hogwood, Gunn, L.A., *Policy Analysis for the Real World* (Oxford: Oxford University Press, 1984). Pp.13-19.

[34] Jordan, "Environmental Policy Integration: A State of the Art Review." The authors distinguish between policy as a process of governing (involving policy processes and the politically system within which it works), and policy as outcome.

[35] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. P.178.

[36] Jordan, "Environmental Policy Integration: A State of the Art Review." P.154. Policy might seek to influence behaviours. And changed behaviours could be a policy outcome, but ultimately the changed behavior is for a purpose.

[37] For a list of a wide range of international indicator reports, see Esty, "National Environmental Performance: An Empirical Analysis of Policy Results and Determinants." P.392 Footnote. In New Zealand, State of Environment reports are produced by many regional councils. See for example ECAN, "Canterbury Regional Environment Report " (Christchurch: Environment Canterbury, 2008). At a national level, see MfE, *Environment New Zealand 2007* (Wellington: Ministry for the Environment, 2007).

[38] Bartlett, "Evaluating Environmental Policy Success and Failure." P.170. F. Berkhout, Leach, M., Scoones, I., "Shifting Perspectives in Environmental Social Science," in *Negotiating Environmental Change: New*

The second category of evaluation involves studying processes and the structural logic of policy, especially the assumptions, tools, rules and support involved in policy design and implementation.[39] A strand of scholarship, believing this category can be an instrument of social control, argue that it can be used to transform and develop social potential.[40] Whichever way it is looked at, this second category of evaluation attempts to be predictive about the likely effectiveness of policy. It may, however, under-emphasise outcomes and the influence of the institutional effects on policy development and implementation.[41]

The third category of evaluation, the political architecture perspective, was promoted by Bartlett because of the way institutions consolidate long term change. He said, "It is the transformation of institutions to be ecologically rational and sustainable that poses the ultimate test for environmental policy."[42]

As Bartlett points out, though, each category is appropriate to different kinds of questions and different kinds of policies.[43] In each case they rely on what is being evaluated and what criteria are being applied.

What is being evaluated depends on why and how the policy has been conceived, developed, and affected. In turn, there are different evaluation criteria. These include efficiency, legitimacy, equity, or effectiveness – with the term effectiveness understood in this context as the extent something advances its objective.[44] Different approaches to evaluation have their own set of values and criteria that, if applied, influence the nature and result of that evaluation.

Perspectives from Social Science, ed. F. Berkhout, Leach, M., Scoones, I. (Cheltenham, UK: Edward Elgar, 2003). P.1. W. Jackson, L., "Integrating Ecological Impacts into Evaluations of the Effectiveness of Environmental Regimes: The Example of Cites" (Lincoln University, 2011). P.29. Jordan, "Environmental Policy Integration: A State of the Art Review." P.154.

[39] Schneider, "Policy Design: Elements, Premises, and Strategies." Pp.80-89. The term "structural logic" used by Schneider and Ingram seems more comprehensive than the term "intervention logic" often used in New Zealand policy evaluation and design. "Intervention logic" focuses more on rationalist assumptions used to justify policy initiatives. There is an active debate about the term and its own assumptions. See K. Baehler, "What Are the Limits to Public Service Advising? The "Public Argument" Test," *Policy Quarterly* 1, no. 3 (2005). And R. Gregory, "Politics, Power and Public Policy Making: A Response to Karen Baehler," *Policy Quarterly* 1, no. 5 (2005).

[40] F. Fischer, *Evaluating Public Policy* (Chicago: Nelson-Hall, 1995). Pp. 7-10 & 23. Fischer describes this as "policy relevance", requiring constructivist methodologies, rather than what he perceived to be dominance of positivist and scientific/technical evaluation approaches.

[41] Bartlett, "Evaluating Environmental Policy Success and Failure." P.178.

[42] Ibid. P.178.

[43] Ibid. P.176.

[44] See G.D. Brewer, DeLeon, P., *The Foundations of Policy Analysis* (Chicago: The Dorsey Press, 1983). Pp.332-340. Bartlett, "Evaluating Environmental Policy Success and Failure." P.176. W.N. Adger, Brown, K., Fairbrass, J., Jordan, A., Paavola, J., Rosendo, S., Seyfang, G., "Governance for Sustainability: Towards a 'Thick' Understanding of Environmental Decision Making," in *CSERGE Working Paper EDM 02-04* (2004). P.1. E. Ostrom, *Understanding Institutional Diversity* (Princeton: Princeton University Press, 2005). P.66. Ostrom, for example, says outcome effectiveness can be assessed by economic efficiency (measuring the magnitude of

Given the different categories of evaluation, different understandings about what to evaluate, and different criteria of evaluation, there is no single approach to evaluation or effectiveness. The same condition can be interpeted differently by different evaluations.[45] It is a matter of choice.

In the case of this study, choices arise from the research question. That question centres on policy development rather than policy implementation, and particularly on how rules and norms influence policy development. Consequently the evaluative categories of structural logic and political architecture are more applicable than an outcomes focus. This is not to dismiss outcomes and they will be discussed as part of the research. But given the emphasis of the research question, general policy effectiveness is seen in light of structural logic (ideas and assumptions) and political architecture (rules, processes and tools, and support).These two elements will inform the way the study will interrogate the case studies that follow later.

The research question is not just a generic study of policy though. It also concentrates on environmental issues, which helps us define what goals are being sought. This depends on what we mean by the environment and environmental effectiveness.

2.3.2 Environmental effectiveness

Environmental effectiveness, like policy effectiveness in general, is determined by what goal is sought, what is being measured, and evaluation criteria. Fundamentally it relies on interpretation of the term "environment." How the term is defined will influence evaluations of effectiveness, because different definitions contain different parameters.

The concept of "the environment" is socially constructed.[46] There are definitions involving quality-of-life, and social, cultural and economic intepretations, although these have been criticised both on grounds of non-environmental assumptions and more particularly that they are so all-encompassing that they become the basis for policies for everything.[47] The more commonly used definition refers to the natural biophysical world and the way bio-physical conditions impact on people and vice versa.[48] A definition of environment that emphasises biophysical issues and their human dimensions is more applicable to this research; first because it creates clearer boundaries than wider definitions for assessing environmental policy and, second, because it is generally how New Zealand's

change in terms of net benefits), equity (equality of contribution and benefits received, and differential abilities to pay), adaptability, resilience and robustness (originally developed in ecology), accountability (often used in a process sense), conformance to general morality (whether procedures are fair?), and the need for trade-offs (what else has had to be forgone?).

[45] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. P.169.
[46] Bührs, *Environmental Integration: Our Common Challenge*. P.10.
[47] Ibid. P.16.
[48] D.L. Johnson, Ambrose, S.H., Bassett, T.J., Bowen, M.L., Crummey, D.E., Isaacson, J.S., Johnson, D.N., Lamb, P., Sual, M. Winter-Nelson, A.E., "Meanings of Environmental Terms," *Journal of Environmental Quality* 26, no. 3 (1997). P.582.

environmental agencies view the term.[49] It does present a challenge however, because logically it leads to assessing effectiveness in terms of biophysical outcomes. But, as explained in the previous section, this research focuses on effectiveness in terms of what flows from ideas, assumptions and rules, not in terms of outcomes. When seen in this light, environmental effectiveness includes other assessment features.

The first of these assessment features is the <u>values involved in environmental policy</u>. Public policy has an intentional component.[50] Verweij suggests there is commonality in the various theoretical typologies of human responses to public policy issues.[51] These comprise what Peters and Pierre describe as rationalities, or types of reasoning or assumptions.[52] Because rationalities involve values, and standards of evaluation, they can lead to choices to include some things and exclude others and to view the world in a particular way.[53] Such ideological views can end up being internalised in public policy to the extent they become defined in accepted tools, methodologies, and procedures, which of themselves end up shaping intentions and what decisions are made.[54]

Rationalities can take different forms and are described differently, usually because of disciplinary perspectives. The most common descriptions in political science are: economic rationality that places primacy on efficiency; effectiveness rationality that focuses on result or technical output or outcome; equity or social rationality that values social harmony; legal or legitimacy rationality that values conflict resolution and a system of rights and rules or process; and political rationality that aims to resolve conflict between interests.[55]

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[49] See for example DoC, "Department of Conservation: Statement of Intent 2011-2014," (Wellington: Department of Conservation, 2011). P.8. MfE, "Statement of Intent 2011-2014," (Wellington: Ministry for the Environment, 2011). P.6.

[50] Bührs, *Environmental Integration: Our Common Challenge*. P.17. Things may occur unintentionally but this is not public policy if it is not an objective or goal.

[51] Verweij (M. Verweij, Douglas, M., Ellis, R.,Engels, C., Hendriks, F., Lohmann, S., Ney, S., Rayner, S., Thompson, M., "Clumsy Solutions for a Complex World: The Case of Climate Change," *Public Administration* 84, no. 4 (2006). Pp.820-821.) discusses how people approach all kinds of public policy issues, often in contradictory ways. He cites, for example, patterns of economic action (market, redistribution, and reciprocity, based on the work of Polyani, 1945), categorisation of types of 'goods' (private, public, common pool, and club, drawn from Snidal, 1994), and solutions to collective problems (market and contract, hierarchy, and community, based on Lichbach, 1995). Werweij's analysis in turn is based on the ideas of culture theory of Douglas (1987), and of Thompson, Ellis and Wildavsky (1990), with its typology of hierarchy, individualism, egalitarianism, or fatalism, as four basic ways that people justify social relations.

[52] Peters, "Handbook of Public Policy Introduction." P.7.

[53] P. Diesing, *Reason in Society: Five Types of Decisions and Their Social Conditions* (Urbana, Ill.: University of Illinois Press, 1962). D. Stone, *Policy Paradox: The Art of Political Decision Making*, Revised ed. (New York: W.W.Norton, 2002). P.378.

[54] Peters, *The Politics of Bureaucracy*. P.201.

[55] Diesing, *Reason in Society: Five Types of Decisions and Their Social Conditions*, Brewer, *The Foundations of Policy Analysis*.Pp. 332-340 (Brewer and DeLeon refer to notions of effectiveness, efficiency, equity and adequacy, rather than explicitly using the term rationality). Dryzek, *Rational Ecology: Environment and Political Economy*, Brewer, *The Foundations of Policy Analysis*. P.56. Adger, "Governance for Sustainability: Towards a 'Thick' Understanding of Environmental Decision Making." P.1.

Efficiency focuses on cost and welfare but often this focus can have difficulty in trading off multiple sets of values and, for example, in dealing with the cognitive, spatial, and temporal complexities often involved in environmental decision-making.[56] Effectiveness refers to technically optimal results, environmentally seen in biophysical or behavioural terms.[57] Commentators say this can lead to a technocratic and sometimes absolutist approach with negative consequences if pursued without acknowledging other values.[58] Equity can enhance the social outcomes of decisions but may compromise efficiency or effectiveness.[59] Legitimacy is concerned with legal procedural components of decision-making, but it carries a risk of potential capture.[60]

Achieving environmental results, say advocates of environmental effectiveness, relies on reasoning that accepts the ecological foundation of human welfare and survival. Bartlett, citing the example of the United States National Environment Policy Act (NEPA), says its effectiveness lay in the way it exhibited a functional ecological rationality. Other more traditional forms of reasoning applied to public policy, such as economic or social rationalities should not be ignored, he said, but rather, "…their dependency on, and hoped for consistency with, ecological rationality is emphasized."[61]

Dryzek takes a similar view arguing that the way that environmental issues are treated at a governmental level tends to affect the outcomes that are achieved. Dryzek says that an ecological rationality should have primacy because the enhancement of the material and ecological base of society is necessary not only for the functioning of societal forms such as economically, socially, legally, and politically rational structures, but also for action in pursuit of any value in the long term.[62]

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[56] ———, "Governance for Sustainability: Towards a 'Thick' Understanding of Environmental Decision Making." P.5.

[57] Ostrom, *Understanding Institutional Diversity*. P. 66.

[58] J. S. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000). P.143.

[59] B. I. Bryant, "Introduction," in *Environmental Justice: Issues, Policies and Solutions*, ed. B. I. Bryant (Washington DC: Island Press, 1995). Pp.5-6. D. Schlosberg, *Environmental Justice and the New Pluralism:The Challenge of Difference for Environmentalism* (Oxford: Oxford University Press, 1999).

[60] For an argument about how procedure can be captured, in this case by powerful interests in society, see Ham, *The Policy Process in the Modern Capitalist State*.

[61] R. V. Bartlett, "Rationality and the Logic of the National Environmental Policy Act," *Environmental Professional* 8, no. 2 (1986). P.110. A companion paper by Bartlett expands on the argument about the significance of "ecological" rationality in advancing environmental effectiveness in policy in the face of competing rationalities. See R.V. Bartlett, "Ecological Rationality: Reason and Environmental Policy," *Environmental Ethics* 8 (1986). A similar argument has been made that the New Zealand Resource Management Act 1991, as originally drafted, exhibited an ecological rationality by having sustainable environmental management as its primary principle (Bührs, *Environmental Policy in New Zealand: The Politics of Clean and Green?* Pp.146-149).

[62] Dryzek, *Rational Ecology: Environment and Political Economy*. P.58.

2: Literature Review

The role of ecological rationality both in what governments do and in the reasoning applied to crafting government action forms a thread of much environmental literature.[63] It has a normative basis, but so too does any rationality. Within the machinery of government, and in the dynamics of policy consideration and decision-making, different rationalities about the form of policies, as well as their purpose, come into play. The degree to which different rationalities are applied to solving environmental problems can affect the nature of the solution and creates variability in environmental terms. Amongst the competing logics present within governments, ecological rationality provides the type of environmental imperative to collective choice mechanisms which, it has been argued, is required to determine effectiveness in a more general sense.[64]

Another assessment feature of environmental effectiveness involves <u>integration</u>. Literature going back to the 1960s continually raises it as a principle of effective environmental policy.[65] How successfully environmental issues are addressed depends on the degree of integration of ecological considerations in belief systems, assumptions, knowledge and information that underlie policies.[66]

The arguments supporting environmental integration come from two viewpoints: one is normative and, in the same way as ecological rationality, holds that all human welfare is based on the long term carrying capacity of nature. The other view is that the disjointed character of government policies (either accidently or deliberately) pose problems for policy goals (and hence effectiveness) and requires coordination.[67] The second argument applies to many fields of government policy, not just an environmental one. However, in the environmental domain of government policy it is argued that there are specific integrative challenges because of cognitive factors involving competing values and

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[63] Caldwell, "Environment: A New Focus for Public Policy." Bartlett, "Rationality and the Logic of the National Environmental Policy Act.", Dryzek, *Rational Ecology: Environment and Political Economy*, Jordan, "Environmental Policy Integration: A State of the Art Review." Pp.148-150.

[64] D.W. Bromley, *Economic Interests and Institutions: The Conceptual Foundations of Public Policy* (New York: Basil Blackwell, 1989). P.79.

[65] Caldwell, "Environment: A New Focus for Public Policy."P.139. Bartlett, "Rationality and the Logic of the National Environmental Policy Act." P.106. Bartlett, "Evaluating Environmental Policy Success and Failure." P.181. Dryzek, *Rational Ecology: Environment and Political Economy*. P.58. Connor, *Institutional Change for Sustainable Development*. P.71. W.M. Lafferty, Hovden, E., "Environmental Policy Integration: Towards an Analytical Framework," *Environmental Politics* 12, no. 3 (2003). P.9. S. Dovers, *Environment and Sustainability Policy: Creation, Implementation, Evaluation* (Sydney: The Federation Press, 2005). P.164. W. Grant, D. Matthews, P. Newell, *The Effectiveness of European Environmental Policy* (London: Palgrave, 2000). P.209-210. Bührs, *Environmental Integration: Our Common Challenge*. P.9.

[66] For example, see Dovers, *Environment and Sustainability Policy: Creation, Implementation, Evaluation*. P.30. Bührs, *Environmental Integration: Our Common Challenge*. P.11.

[67] B.Guy. Peters, "Managing Horizontal Government," *Public Administration* 76 (1998), A. Weale, "Foreword," in *Innovation in Environmental Policy?*, ed. A. Jordan, Lenschow, A. (Cheltenham: Edward Elgar, 2008). P.xv. A normative view of the coordination argument is that environmental integration involves more than policy coordination because coordination lacks a sense of environmental priority that is required for effective environmental policy (Bührs, *Environmental Integration: Our Common Challenge*. P.19). Policy coordination, as a mechanism for environmental integration without an environmental priority, raises the risk of reverse integration where other priorities prevail. Jordan, "Environmental Policy Integration: A State of the Art Review." P.154.

hence priorities, and/or that the span of policy and institutional mandates is arguably wider than for other typical domains of government activity.[68] There could be an element of special pleading in such an argument. Whether the environment domain is more complex than, for example, problems of social justice or economic management may be debatable. However, there is a sound technical argument in environmental policy about the temporal scales (usually long), spatial scales (multi layered), perception issues (often hidden until too late to effect remedies), and very significant uncertainties about cause and effect given that physical and biological processes involved are not fully understood, or understood at all.[69]

There are at least two schools of thought about the degree of integration required for overall effectiveness. One is that it should involve integration both within policy (described as internal integration) and across the array of government policy (characterised as external integration), especially that dealing with traditional non-environmental policy dimensions with significant environmental implications, such as transport and energy.[70] The other view is that effective environmental policy depends on policy-makers focusing on achieving specific objectives and sometimes limited policy outcomes.[71] Differences seem to be more about means rather than ends, however.[72] The rationale for limited objectives is based on cognitive and methodological shortcomings, not necessarily the principle of comprehensiveness itself. Those who argue for wider integration objectives would say that, conceptually at least, means for internal and external policy integration exist and the challenge lies not with the principle itself but in addressing cognitive and institutional factors.[73]

Linked to the principle of integration is *what* gets integrated. The substance of what gets integrated is important because it influences goals, assumptions and tools, and hence assessments of effectiveness. While there can be many different ways of thinking about what should, or does, get integrated, two dominant frameworks are the concepts of sustainable development, and ecological modernisation.[74] Sustainable development aims to combine seemingly incompatible goals of economic development, social harmony and opportunity, and environmental protection. Ecological modernisation seeks environmental sustainability by the use of technology or new techniques that reduce environmental impacts. Of these two, sustainable development enjoys the greatest currency

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[68] Dovers, *Environment and Sustainability Policy: Creation, Implementation, Evaluation*. P.164.
[69] See for example A. Vatn, *Institutions and the Environment* (Cheltenham, England: Elgar, 2005). P.419.
[70] Bührs, *Environmental Integration: Our Common Challenge*. Pp.18 &31-35.
[71] Weale, "Governance, Government and the Pursuit of Sustainability." P.72.
[72] A. Schout, Jordan, A., "Administrative Instruments," in *Innovations in Environmental Policy?*, ed. A. Jordan, Lenschow, A. (Cheltenham: Edward Elgar, 2008). P.65.
[73] See for example the contributed chapters in A. Jordan, Lenschow, A., ed. *Innovation in Environmental Policy?* (Cheltenham: Edward Elgar,2008). And Bührs, *Environmental Integration: Our Common Challenge*.
[74] Adger, "Governance for Sustainability: Towards a 'Thick' Understanding of Environmental Decision Making." P.1. Bührs, *Environmental Integration: Our Common Challenge*. Pp.73-95.

internationally.[75] There are different interpretations of the meaning of sustainable development ranging from those that attribute a priority to environmental objectives, to others that emphasise trade-offs or substitution of natural capital.[76] Most recent environmental reviews argue that whatever the rhetoric, pro-environmental interpretation finds less common expression in government policy than other interpretations.[77]

On the basis of the literature canvassed in this section, environmental effectiveness in the way it is used in this study involves three elements. First, for purposes of clarity and focus, the environment as a concept is defined in biophysical and associated human dimension terms rather than in any alternative ways. Second, it draws on normative understandings that human welfare depends on a physical and ecological base. Third, integration of that normative perspective in the actions of government is essential if those actions are to be effective environmentally.

2.3.3 Summary

Policy effectiveness and environmental effectiveness are contingent concepts. This section of the chapter has canvassed a range of literature on both subjects in order to develop consistent criteria that can be used as the basis for assessing variability in environmental policy.

Policy effectiveness boils down to whether the policy or proposed policy combines assumptions, objectives, rules and support underlying the selection of the means to achieve desired ends.

Environmental effectiveness, in the terms used in this study, involves a biophysical/human dimension perspective on the environment, normative understandings of the environment as critical to human welfare, and integration of that perspective in government action.

Environmental policy effectiveness combines these concepts. Chapter 4 will describe how they will be combined, and the questions that will used to assess environmental effectiveness in light of potential internal causes of environmental policy variability.

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[75] ———, *Environmental Integration: Our Common Challenge*. P.27. Jordan, "Environmental Policy Integration: A State of the Art Review." Pp.147-150

[76] N. Hanley, Atkinson, G., "Economics and Sustainable Development: What Have We Learnt, and What Do We Still Need to Learn?," in *Negotiating Environmental Change: New Perspectives from Social Science*, ed. Leach M. Berkhout F., Scoones I. (Cheltenham, UK: Edward Elgar, 2003). P.83. Statistics NZ, "Measuring New Zealand's Progress Using a Sustainable Development Approach: 2008," (Wellington: Statistics New Zealand, 2009). Pp.134-143. Jordan, "Environmental Policy Integration: A State of the Art Review." P.148-150 (particularly citing ———, "Integrating the Environment for Sustainable Development," in *Innovation in Environmental Policy?*, ed. A. Jordan, Lenschow, A. (Edward Elgar: Cheltenham, 2008). Lafferty and Hovden argue that the intention of the original 1987 manifesto for sustainable development, the Brundtland Report *"Our Common Future",* gave priority to environmental objectives.)

[77] ———, "Environmental Policy Integration: A State of the Art Review." P.150.

Environmental policy and its effectiveness are one component of this research. The key component, however, is causes of variable effectiveness. This is the subject of the rest of the chapter.

2.4 Causes of variability in environmental policy

2.4.1 Introduction

There are many views and different disciplinary perspectives about what shapes policy and about the causes of variable effectiveness in public policy.[78] This study seeks to understand political and organisational causes of variability. Consequently, it draws primarily on political science literature (although it also involves behavioural elements).

Public policy is a highly complex phenomenon, involving at its broadest level interactions between agency and structure. Giddens argues that agency produces structure which in turn conditions agency.[79] Complexity in developing policy arises from the series of decisions involving a large number of actors operating within the boundaries of institutional frameworks and responding to multiple influences.[80] Bardach describes the phenomenon as policy dynamics.[81] Three major elements that influence effective policy are, according to Scharpf:

- The nature of the policy problem;

- The orientation of the policy actors;

- Characteristics of the institutional settings.[82]

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[78] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. Pp.2-4. P. Gorringe, " Economics for Policy: Expanding the Boundaries," in *Economics for Policy: Expanding the Boundaries*, ed. A. Grimes, Jones, A., Procter, A., Scobie, G. (Wellington: Institute of Policy Studies, 2001). P.132. Peters, "Handbook of Public Policy Introduction." P.2. For example, Pierre (J. Pierre, "Disciplinary Perspectives," in *Handbook of Public Policy*, ed. B. Guy. Peters, Pierre, J. (London: Sage, 2006). Pp.481-492.) says that neo-classical economics, for example, can account for individual behaviour but has difficulty accounting for cooperation and institutions. Political science focuses on the role of political power and the institutions where it is vested. There are different schools of thought within political science with varying foci and emphases. Peters and Pierre argue that compared with other disciplines political science may miss connecting structure and agency, and possibly over-emphasise the role of the State in governance. It can also tend to promote process to the detriment of ideology and vision. Sociology can assist with understanding the structure of the focus of public policy, for example social dilemmas, and the sociology of public institutions and organisations. Behavioural psychologists say that classical economics, in its focus on human rationality in choices, does not reflect actual human behaviour or what drives how people make choices. A. Tversky, Kahneman, D., "Rational Choice and the Framing of Decisions," *The Journal of Business* 59, no. 4 (1986).
[79] Giddens, *The Constitution of Society: Outline of the Theory of Structuration*, W.A. Galston, "Political Feasibility: Interests and Power," in *The Oxford Handbook of Public Policy*, ed. M. Moran, M. Rein, R.E. Gooding (Oxford: Oxford University Press, 2006). Pp.546-548.
[80] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. P.198.
[81] E. Bardach, "Policy Dynamics," in *The Oxford Handbook of Public Policy*, ed. E. Goodin, M. Rein, M. Moran (Oxford: Oxford University Press, 2006). P.338.
[82] F. W. Scharpf, "Institutions in Comparative Policy Research," *Comparative Political Studies*, no. 33 (2000). P.772.

Policy is driven by the influence of interests, ideas and institutions, and the exercise of power in various guises, impacting on the processes of policy production.[83] Policy development itself, and how policy changes, can be described as a contest of ideas between different groups of actors, usually involving iterative recalibrations of policies within a dominant paradigm, occasionally broken by sudden and sometimes unforeseen events, but still conditioned by institutionally bounded forms of policy innovation, producing distinctive and enduring repertoires of policy approaches.[84] Within this contest, power is all pervasive. Public policy making is a political process, and politics involves the exercise of power in a formal way (in a structural institutionalised context of Cabinet rules and rules surrounding formal decision-making) and in informal ways of decision-making, agenda setting, and/or in influencing beliefs and values.[85] It is a central force in the operation of policy practises and, ultimately, dominates policy decision-making.[86] As such, it is a constant phenomenon in this research, revealed in the chapters that follow, but is not of itself a primary focus for study.

Scharpf's description of elements that influence policy effectiveness, and the ideas about drivers of policy and how policy develops, are useful conceptually for understanding overall causes of policy effectiveness. But for this research we need more specifics. To understand internal government influences and how environmental agencies contribute to developing environmental policy we need to know what literature has to say about those features. We need to know more about the interaction between agencies, policy processes and decision-making, about political contexts, and to what extent all these features influence policy variability.

This part of the chapter begins with a brief overview of different ideas about the role, and impact, of environmental agencies. It then looks at ideas about how the nature of the policy problems influence policy variability. This is followed by discussion about policy processes and public institutions, the actors involved in policy, and policy assumptions and rationalities, and how these all combine to

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[83] Ham, *The Policy Process in the Modern Capitalist State*. Zito, *Creating Environmental Policy in the European Union*.

[84] A. Jordan, Wurzel, R.K.W., Zito, A.R., ""New" Instruments of Environmental Governance? National Experience and Prospects," *Environmental Politics* 12 Special Issue (2003). P.21. M. Mintrom, Norman, P., "Policy Entrepreneurship and Policy Change," *The Policy Studies Journal* 37, no. 4 (2009). P.650. P. Cairney, "The New British Policy Style: From a British to a Scottish Political Tradition?," *Political Studies Review* 9 (2011). Pp.211-212. These references draw on widely cited ideas that policy development involves incrementalism C. E. Lindblom, "The Science of Muddling Through," *Public Administration Review* 19 (1957).; policy streams and windows of opportunity, Kingdon, *Agendas, Alternatives, and Public Policy*.; formal and informal institutional influences,; March, "The New Institutionalism: Organisational Factors in Political Life.": punctuated equilibrium occasioned by sudden events, Baumgartner, *Agendas and Instability in American Politics*.; policy networks and policy learning, P. Sabatier, H. Jenkins-Smith, *Policy Change and Learning: An Advocacy Coalition Approach* (Boulder CO: Westview Press, 1993).; and policy style, J.J. Richardson, Gustafsson. G., Jordan, G., "The Concept of Policy Style," in *Policy Styles in Western Europe*, ed. J.J. Richardson (London: Allen & Unwin, 1982).

[85] S. Lukes, *Power a Radical View* (Basingstoke: Palgrave McMillan, 2005), Peters, "Institutional Theory and the Study of the Political Executive." P.202. Arts provides a useful summary of the various alternative ideas about power, and its relationship with policy (B. Arts, van Tatenhove, J., "Policy and Power: A Conceptual Framework between the 'Old' and 'New' Policy Idioms," *Policy sciences*, no. 37 (2004).

[86] ———, "Policy and Power: A Conceptual Framework between the 'Old' and 'New' Policy Idioms." P.340.

affect environmental agencies and environmental policy. Finally the section looks at wider contextual issues that help shape the political settings in which environmental public policy is formed.

2.4.2 The role of environmental agencies

Two propositions that underlie this study are that causes of variability in environmental policy, in New Zealand at least, arise within government from the degree of government commitment to environmental values and the ability of central environmental agencies to develop policy that is likely to be effective environmentally. The first proposition, about the influence of government on public policy is rarely contested, although causes and effect are subjects of an extensive literature. The second proposition is contested. There are divided views on the impact of environmental agencies on environmental policy.

In the early period of study of environmental policy, from the 1960s to the 1980s, weight (or hope) was placed on the efficacy of government action to address environmental problems, and what was (or might) be required of central government environmental agencies.[87] Especially, literature emphasised the need for agencies to have adequate influencing or directive powers, sufficient resources, and technical capacity (especially scientific capability).[88] Over time, however, the role of concentrated authority in policy development by governments, and government agencies, became de-emphasised. Instead literature highlighted the significance of decentralised influences arising from ideas about wider societal governance and a view that the role of government lay in direction setting (steering) informed from outside government.[89] More recently, there has been some move back to acknowledging the significance of the role played by government and agencies.[90]

The divided views on the role of agencies include ideas that:

- Because governments are essentially driven by economic growth imperatives they, and hence their agencies, are inherently non-environmental (an ideological perspective).[91]

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[87] N.J. Vig, "Environmental Policy from the Seventies to the Nineties," in *Environmental Policy in the 1990s: Towards a New Agenda*, ed. N.J. Vig, Kraft, M.E. (Washington DC: CQ Press, 1990). Pp.16-17 & 19.
[88] Ibid.
[89] A.M. Kjaer, *Governance* (Cambridge: Polity Press, 2004). Pp.24-30. Schout, "Administrative Instruments." Pp.50-51. Weale, "Governance, Government and the Pursuit of Sustainability." Pp.58-62.
[90] Barry, "W(H)Ither the Green State?." P.256. P. Christoff, "Green Governance and the Green State: Capacity Building as a Political Project," in *Managing Leviathan*, ed. R. Paehkle, Torgerson, D. (Peterborough, Canada: Broadview Press, 2005).P.292. Weale, "Governance, Government and the Pursuit of Sustainability." Pp.55-75. F. Fukuyama, "What Is Governance," *Governance* 26, no. 3 (2013). Pp.347-348.
[91] W. Ophuls, *Ecology and the Politics of Scarcity: Prologue to a Political Theory of the Steady State.* (San Francisco: W.H.Freeman, 1977). Pp.315-319.

- The nature of government, involving as it does hierarchical relationships, institutionalised processes and the exercise of power effectively disempowers or else neutralises the effect of environmental agencies (a power and process perspective).[92]

- In contrast to the first two bullet points, government agencies are (my emphasis) significant because governments are significant. But there are characteristics that make them more or less significant (an administrative perspective). There is no settled agreement on what these characteristics are, but some ideas put forward argue for agencies with an across-government policy coordination role, or alternatively for sufficient capacity for an environmental agency to be a nimble operator in the field of policy development.[93] Another view argues that environmental agencies work best when they have an overriding purpose to promote environmental values within government systems.[94] There are different views on the most effective form of agencies: some promoting mixed functional ministries (on the grounds this structure provides greater potential influence and cross fertilisation of ideas); and others dedicated environmental ministries (on the grounds this structure supports clarity of purpose).[95] Three functions in particular are said to be priorities for effectiveness: policy evaluation and analysis; standard setting based on sound science; and compliance monitoring. [96]

While there are, therefore, different views in the literature about the influence of environmental agencies, there is a sufficient strand of opinion to suggest that they can (my emphasis) make a difference in developing environmentally effective policies. Whether they do make a difference, however, remains rather opaque. The contention in this study is that it depends on internal characteristics and the government system within which they work.

 The rest of this chapter focuses on what literature has to say about internal characteristics, and how these and contextual features, both within government and beyond, condition environmental agencies and what they do.

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[92] Nilsson, "Framework for Analysing Environmental Policy Integration." P.342
[93] Weale, "Governance, Government and the Pursuit of Sustainability." P.69.
[94] J. Hukkinen, *Institutions in Environmental Management: Constructing Mental Models in Sustainability* (London: Routledge, 1999).
[95] Ibid. Nilsson, "Framework for Analysing Environmental Policy Integration." P.354. Weale, "Governance, Government and the Pursuit of Sustainability." P.70.
[96] Nilsson, "Framework for Analysing Environmental Policy Integration."P.342. Weale provides a summary of views about attributes of effective environmental agencies (Weale, "Governance, Government and the Pursuit of Sustainability." Pp.68-71).

2.4.3 The nature of the policy problem: complexity as a factor in variability

Some environmental problems are inherently more or less complex, or politically more or less benign, than others.[97] This can be for any number of biophysical reasons and/or social or economic reasons. A well-known example of a complex environmental problem is the issue of human induced climate change. Its complexity arises from a disjunction between the understanding, visibility, and timing of costs and benefits of collective action.[98] Addressing a similar biophysical class of issue, ozone depletion, has been less complex than human induced climate change because the disjunctions of knowledge, awareness, and costs and benefits are considerably lower.[99]

Complexity (sometimes referred to as "wickedness") is often cited as a significant factor in an environmental problem, or for that matter any public policy problem, because it can involve any combination of technical, social, economic or cultural barriers to resolution.[100] A 2002 study of international environmental regimes found that where a high-capacity system deals with a non-malignant problem that is well understood there is a 19 to 1 probability of success, compared to a 12 to 1 probability with a low-capacity system with a malign problem clouded with uncertainty.[101] The level of understanding of an issue affects the significance of clarity of assumptions and objectives. Roe says that in the face of high uncertainty and complexity the essence of analytical choice is to "underwrite and stabilize" the assumptions for decision-making. [102]

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[97] A. Underdal, "One Question, Two Answers," in *Environmental Regime Effectiveness*, ed. E. L. Miles, Underdal, A., Andresen, S., Wettestad, J., Skjaeseth, J.B., Carlin, E.M. (Cambridge, Massachesetts: MIT Press, 2002). P.6. Jänicke and Weidner also identified the nature of a given environmental problem as a factor in national capacities for the environment. They say that utilisation of capacity is likely to be conditional on the structure of the environmental problem in terms of its urgency and power, resources and options of target groups M. Jänicke, Weidner, H., "The Political System's Capacity for Environmental Policy: The Framework for Comparison," in *Capacity Building in National Environmental Policy*, ed. M. Jänicke, Weidner, H. (Berlin: Springer, 2002). P.8.

[98] Boston, "The Complicated Politics of Climate Change." P.204.

[99] J. Wettestad, "The Vienna Convention and the Montreal Protocol on Ozone -Layer Depletion," in *Environmental Regime Effectiveness: Confronting Theory with Evidence*, ed. E. L. Miles, Underdal, A., Andresen, S., Wettestad, J., Skjaeseth, J.B., Carlin, E.M. (Cambridge , Massc.: MIT Press, 2002). Pp.149-170.

[100] C.W. Churchman, "Guest Editorial: Wicked Problems," *Management Science* 14, no. 4 (1967). Pp. B141-142 Underdal, "One Question, Two Answers." P.4. B. Mitchell, *Resource and Environmental Management*, 2nd ed. (Harlow, Essex: Pearson Education Ltd, 2002). P.20. Jackson, "Integrating Ecological Impacts into Evaluations of the Effectiveness of Environmental Regimes: The Example of Cites". Pp.38-40. Nilsson, "Framework for Analysing Environmental Policy Integration." Pp.345-346.

[101] A. Underdal, "Conclusions: Patterns of Regime Effectiveness," in *Environmental Regime Effectiveness: Confronting Theory with Evidence*, ed. E. L. Miles, Underdal, A., Andresen, S., Wettestad, J., Skjaeseth, J.B., Carlin, E.M. (Cambridge , Massc.: MIT Press, 2002). P.471. The contexts for international environmental regimes are different from the context of environmental management at a national level, the former arguably more complex, and involving different types of interests. The general point, however, about the nature of the problem/complexity as a factor in degrees of effectiveness would seem to apply in both contexts.

[102] E.. Roe, *Taking Complexity Seriously: Policy Analysis, Triangulation and Sustainable Development* (Boston: Kluwer Academic Publishers, 1998). P.6.

Complexity has wider determinants than things that just take place within government.[103] Hence it is a general background factor rather than a specific intra-government factor in policy variability. It can apply to many public policy questions. Complexity is something that governments and environmental agencies have to grapple with. For governments, Nilsson and Persson argue that complexity can either weaken or strengthen political will, meaning issues are less likely to be addressed or else result in less certain outcomes.[104] For agencies, complexity has implications for their roles, powers and capacities. The greater complexity, the greater the need for problem solving capacity, and, combined with complexity's impact on political will, the increased possibility of policy variability.[105]

2.4.4 The Internal milieu: factors within government that may help explain what influences environmental agencies

Amongst ideas about how policy decisions get made, three influences come to the fore: the role of rules (institutions), the role of decision-making actors (the exercise of agency), and the role of ideas (cognitive influences). Various models of policy decision-making reflect these three influences, for example incrementalist and bureaucratic organisation models, rational actor models, and belief system models.[106] This section examines what literature has to say about the effect of these three features within government on the work of environmental agencies, with a caveat that it is difficult to separate them too strictly because they are often closely intertwined.

2.4.4.1 Role of institutional features in shaping policy

The role of institutional features will be looked at in two ways: from an organisational perspective, and from a policy process perspective.

Organisational perspectives:

There are a wide range of ideas about how government agencies exercise influence. Peters provides six criteria for an agency, or a bureacracy generally, to influence government. They are: an ability to formulate intentions for action; the intentions must be workable; competition for resources to drive priorities between alternative options; sufficient numerical strength; managerial skills; and implementation abilities.[107] But what determines how these criteria are met? Answers to this question frequently point to capacity and how organisations perform and behave.

A challenge for organisational analysis is that it is often highly generalised, or alternatively prone to fads or fashion, at least in the popular business literature. James Q. Wilson qualified the theoretical basis of his book, *Bureaucracy: what government agencies do and why they do it*, by saying,

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[103] Nilsson, "Framework for Analysing Environmental Policy Integration." P.346
[104] Ibid. P.355.
[105] Ibid. P. 345, citing Zito, *Creating Environmental Policy in the European Union*.
[106] Heywood, *Politics*. Pp.426-430
[107] Peters, *The Politics of Bureaucracy*. P.197.

After all these decades of wrestling with the subject, I have come to have grave doubts that anything worth calling "organization theory" will ever exist. Theories will exist, but they will usually be so abstract or general as to explain rather little.[108]

Although Wilson's comment may have been a throw-away remark, the type of general theory to which Wilson was referring includes complexity and systems theory, and economic, sociological or anthropological explanations of what motivates people and the behaviours that flow from this. A point common to this theoretical base, however generalised, is that organisations are not automatons, but respond to institutional influences. Consequently, it is possible to derive features that account for differential performance, as Wilson himself does.

One approach to understanding capacities of agencies is to apply business oriented analytical or diagnostic frameworks, commonly examining organisational strategy, design, resources, and culture. An example of this is a framework developed in the McKinsey management consulting firm to assess organisations' strategy, staff, systems, structure, style, skills, and shared values, and how they are linked.[109] The argument runs that these features need to be aligned for the organisation to be successful. Business oriented analyses, while valuable as an internal management tools, can miss some of the specifics that come from the institutionalised drivers and incentives inherent in public administration and public policy, such as the political nature of government agency work.

Another approach, relatively formalistic and echoing traditional institutionalism, is to examine roles, powers and resources. Assumptions here are that:

- Clearer purpose promotes better performance ;[110] and/or

- Stronger powers or positions of authority in the political decision-making hierarchy give agencies greater authority to pursue their objectives;[111] and/or

- Resources or, more particularly, lack of resources (often couched in financial terms) assist or inhibit departments.[112]

Analysis of roles, powers and resources provides a perspective on the configurations and potential formal influence of agencies, but says less about characteristics that might enable a relatively lightly

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[108] J.Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* (BasicBooks, 1989). P.xi.
[109] R. H. Waterman, Peters,T.J., Phillips, J.R., "Structure Is Not Organisation," *Business Horizons*, no. June 1980 (1980).
[110] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* P.48.
[111] R. Arnold, Whitford, A. B., "Organisational Dilemmas of the U.S. E.P.A.: Why Structures Matter for Environmental Protection," *Environmental Politics* 14, no. 1 (2005). P.121.
[112] Peters, *The Politics of Bureaucracy*. P.232. Peters comprehensively discusses issues associated with budgetary processes that affect public agencies. Pp. 232-262.

resourced agency with, say, ambiguous powers to be effective whereas another agency seemingly in a more advantageous position isn't.

This question, why some agencies succeed and others fail, is difficult because of the challenge of establishing cause. The subject has stimulated research into the less obvious internal drivers of performance by government agencies.

Government agencies operate in a climate in which goals are often ambiguous, where diverse public interest considerations are part of decision-making, which together make measuring effectiveness, and efficiency, challenging. Success in these circumstances, hinges around agencies' information and expertise, and their internal characteristics.[113] Also, external constituencies can affect internal performance. One argument is that interest groups capture and drive government agencies, their influence becomes internalised, and this in turn influences the creation of new policies and tightens the grip of interest groups further[114], although as Peters says there are many and more complex factors that drive agencies than interests or agency self-interest.[115] Wilson argues that key <u>internal</u> (my emphasis) drivers of government agency performance are a mix of experience, professionalism and agency ideology. These can be harnessed, he said, by effective internal management comprising clarity of stated goals, freely inferred tasks for staff underpinned by good leadership (traditional business-oriented factors of performance mentioned earlier), combined with understanding the agency's culture.[116]

Culture, Wilson argues, is especially important in performance and arises from professional norms, and/or the origins of the department, and/or the institutional settings or purpose of the agency.[117] Government agencies are certainly not ciphers. They have their own characteristics that influence how they behave and how they perceive and seek to address issues. They frequently have their own well-developed ideas about what governments should do drawing on their own experience and expertise usually linked with their role or on-going programmes, which Peters describes as agency

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[113] Denhardt, *Theories of Public Organisations*. P.16.

[114] This is the classical argument about departmental capture by interest groups mounted by Theodore Lowi. T.J. Lowi, *The End of Liberalism: Ideology, Policy and the Crises of Public Authority* (New York: WW Norton, 1969).

[115] Peters, *The Politics of Bureaucracy*. Pp.13-15.

[116] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* P.89. For a summary of the many facets of leadership, see K. Grint, *Leadership: Classical, Contemporary, and Critical Approaches* (Oxford: Oxford University Press, 1997). Pp. 1-17.

[117] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* Pp.63-68. Government agency culture was the subject of the pioneering study of the USA forest Service by Kaufman (H. Kaufman, *The Forest Ranger: A Study of Administrative Behaviour* (Baltimore: John Hopkins University Press, 1960). For another example of two government environmental agencies, see R. McMahon, *The Environmental Protection Agency: Structuring Motivation in a Green Bureaucracy: The Conflict between Regulatory Style and Cultural Identity* (Brighton: Sussex Academic Press, 2006).

"ideology".[118] There is also often a patterned persistent way of thinking about their central tasks.[119] Boin says that in these situations agencies can develop a certain identity, which, in turn, informs to a significant extent the administrative behaviour of its members.[120] They share "decision premises." Hence agencies can create their own "discourse", or world-view.[121] These characteristics can flow from: the orientation of their client or interest groups;[122] from operating routines, internal socialisations and the historical and policy conditions in which these agencies are created;[123] from structure;[124] from leadership;[125] and from their professional norms.[126]

Culture is certainly not confined just to government agencies. Nevertheless, it has been argued that it can be especially prevalent in government organisations because of their strongly institutionalised operating environment.[127] Johnston's view is that agency operating environments can embody different value systems and different assumptions about people and relationships.

In my experience, when bureaucrats clash and personalise those clashes, pointing fingers at each other for sins they share, they are often acting out of the different value systems implicit in their legislative and institutional frameworks, but the difference is personalised (or organisationalised) because of a lack of awareness of the underlying values and discourse.[128]

The main conclusion about internal organisational institutional features is that agency roles and their formal and informal strategies, design, resources, and cultures are likely to have an influence on the nature of policy, and hence effectiveness. Furthermore, this may be greater than that suggested by traditional models of bureaucracies that separated administration and politics, and ideas that they

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[118] Peters, *The Politics of Bureaucracy*. P.197.
Examples of ideas and policies promoted by departments appear in New Zealand at least every three years in post-election departmental Ministerial Briefings.

[119] H.A. Simon, *Administrative Behaviour* (New York: Free Press, 1945). P.123. Simon termed this "shared decision premises". Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* P.91. McMahon, *The Environmental Protection Agency: Structuring Motivation in a Green Bureaucracy: The Conflict between Regulatory Style and Cultural Identity*. P.9.

[120] Boin, "Institutional Theory and the Public Policy Field: A Promising Perspective for Perennial Problems." P.46.

[121] K.N. Johnston, "Complexity of Thinking and Levels of Self-Complexity Required to Sustainably Manage the Environment" (doctoral thesis, ANU, 2008). P.23.
In a 2005 science fiction novel, *Fifty Degrees Below* (P.186), author Kim Stanley Robinson described this phenomenon as follows, "Driving back to the office Frank considered how interesting it was to see the way people enjoyed becoming the avatar of the institution they worked for, expressing the institutional personality like an actor in the role they love. Most people played their institution's personality with diligence but no particular flair; sometimes, however, he met good actors in a role well matched to them". He was referring in this instance to the US National Science Foundation.

[122] Peters, *The Politics of Bureaucracy*. Pp.169-175.

[123] McMahon, *The Environmental Protection Agency: Structuring Motivation in a Green Bureaucracy: The Conflict between Regulatory Style and Cultural Identity*. P.2 & 17.

[124] Arnold, "Organisational Dilemmas of the U.S. E.P.A.: Why Structures Matter for Environmental Protection." P.118.

[125] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* P.90.

[126] Kaufman, *The Forest Ranger: A Study of Administrative Behaviour*. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* Pp.58-63.

[127] Johnston, "Complexity of Thinking". P.24.

[128] Ibid.

are (or should be) rational neutral policy advisory units in a way that is debated by some literature of the schools of public administration and public policy.[129] All this suggests that empirical studies of policy development need to account for internal capacities and characteristics of government agencies when assessing policy variability.

Policy process perspectives

The previous section examined internal agency factors that contribute to policy variability. In getting things done, however, departments operate in the arena of government. That arena is a labyrinth, through which agencies run a policy gauntlet and where institutional factors also contribute to determining the nature of policies and their variability.

The process of producing policy can be quite formal and bound by sets of rules and conventions regarding initiation, consultation, and decision-making.[130] Such rules impose order, hierarchy and boundaries. They in turn create the strategic position of bureaucrats in the policy process, give rise to their status and expertise, and shape the logistical relationship with ministers.[131] Nevertheless, while the literature suggests public servants can be influential and sometimes highly so, the same literature warns against over-emphasising the role of the bureaucracy. Cabinet, ministers and politicians usually play a larger part.[132] Cases of high profile issues, manifesto commitments, or the talents of individual ministers encourage greater roles for the political executive.[133] Kingdon argues that a top down model, with elected representatives at the top is more accurate than government-by-bureaucracy critiques. [134]

The formal rules of policy-making are one institutional feature of agency influence. Another institutional feature arises from the size and diverse functions of government. These lead to specialist sub sectors (or domains) of government policy, which in turn potentially creates room for greater influence by those involved in the domain. For example, environmental policy often tends to be a specific domain. Domains of government policy, although frequently interconnected, respond to different sets of pressures and urgencies, fostering the operation of distinctive policy and advocacy

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[129] Denhardt, *Theories of Public Organisations*. P.117. Peters, *The Politics of Bureaucracy*. P.166 & 215. G. Scott, Duignan, P., Faulkner, P., "Improving the Quality and Value of Policy Advice," (Wellington: Treasury, 2010). P.6
[130] See for example DPMC, "Cabinet Manual 2008," (Wellington: Department of Prime Minister and Cabinet, 2011).Pp.65-66.
[131] Heywood, *Politics*. P.393. Peters, *The Politics of Bureaucracy*. P.198.
[132] Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. Pp.76-91.
[133] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. P.199. Cairney, "The New British Policy Style: From a British to a Scottish Political Tradition?." P.211.
[134] Kingdon, *Agendas, Alternatives, and Public Policy*. Pp.208-211. Kingdon's assertion is not uncontested however. There is an extensive literature about the questions of bureaucratic government and how it might, or might not operate, and be controlled. For a summary of these arguments, see Heywood, *Politics*. Pp.384-386 & 392-395.

coalitions in the manner identified by Sabatier.[135] This can encourage processes, and to some extent power, to be spread across and within government amongst sub-sectors. It also can lead ministers and senior public servants to devolve the bulk of decision-making to less senior officials in agencies.[136] There is a degree of difference in the literature about whether the locus of influencing decisions lies at a lower or higher hierarchical level. Some, for example Richardson, Page, and Cairney, focus on the role played by lower level officials whereas Scharpf sees a greater degree of exercise of power and decision-making at a higher level, which aligns with Kingdon's view (cited earlier) that it tends to be a top-down process.[137] Nevertheless, the idea of policy domains and their dynamics supports the proposition of Richardson, and Page, that some of the origins of policy (and by inference aspects of its likely effectiveness) lie in the day-to-day decisions being taken in less visible government arenas, including within government agencies.[138]

A further potential cause of policy variability is the tendency to follow standard operating procedures for policy content, style, and structure, based on frameworks of ideas about the nature of policy problems and goals, the manner in which decisions are made (described by Richardson as policy style), and instruments or tools that fit within these frameworks.[139] Policy content, style and structure arise and persist in policy domains, reinforced by incrementalist patterns of policy development (distinct from the rarer form of radical policy departure). Such standard operating procedures are simpler procedurally and cognitively (and less challenging of the dominant internal actors). In a complex government system it is easier to follow established policy trends.[140] These policy approaches (a term I will use to describe this phenomenon later in the thesis) arise from institutional and cognitive perspectives, but the fact that they become a standard means they take on institutionalised form, reinforced by those dominant powers within government.[141]

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[135] Sabatier, *Policy Change and Learning: An Advocacy Coalition Approach*. Jordan, ""New" Instruments of Environmental Governance? National Experience and Prospects." P.18. Goodin, "The Public and Its Policies." P.11. R.A.W. Rhodes, "Policy Network Analysis," in *The Oxford Handbook of Public Policy*, ed. M. Moran, Rein, M., Goodin, R.E. (Oxford: Oxford University Press, 2006). P.426.

[136] E.C. Page, Jenkins, B., "Policy Bureaucracy." (Oxford: Oxford University Press, 2005). P.151.

[137] F. Scharpf, W., *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research* (Boulder: Westview Press, 1997). P.198. J. Richardson, "Government, Interest Groups and Policy Change," *Political studies* 48, no. 5 (2000). Pp.1019-1020. Cairney, "The New British Policy Style: From a British to a Scottish Political Tradition?." Pp.211-212.

[138] Richardson, "Government, Interest Groups and Policy Change." P.1019. Page, "Policy Bureaucracy." P.184. Page and Jenkins, however, accept that the apex of decision-making lies with the political executive, but that delegation of detailed decision-making can make it difficult draw where substantive content decisions in fact are made. Boin, "Institutional Theory and the Public Policy Field: A Promising Perspective for Perennial Problems." P.46. Peters, *The Politics of Bureaucracy*. P.167.

[139] Richardson, "The Concept of Policy Style." Jordan, ""New" Instruments of Environmental Governance? National Experience and Prospects." Pp.16-17.

[140] Cairney, "The New British Policy Style: From a British to a Scottish Political Tradition?." Pp.211-212.

[141] Jordan, ""New" Instruments of Environmental Governance? National Experience and Prospects." Pp.17-20.

Power positions and internal politics in the policy process are an important part of policy variability. Certain agencies and office holders exercise more influence than others. How this occurs takes different forms in different jurisdictions.[142] Governmental decision-making power structure hinges around: the relational dynamics within Cabinet; the seniority, capabilities, and relationship dynamics between ministers; the relative authorities, strengths and capabilities of public service "central" agencies; and the relative strengths, capabilities and internal and inter-agency dynamics of government departments. In particular, it is commonplace for a government's key economic management agencies to exercise considerable influence because most new policies are likely to have economic implications and because of the power of economic considerations in the political process.[143]

Different power relationships among agencies and their ministers mean that public service managers have to engage in the politics surrounding the purposes of their organisations and the policies that arise in association with those purposes. The rules and expectations of policy development (including its initiation) mean agencies need to have sufficient internal capacity to undertake engagement at multiple levels in the processes of policy negotiation and bargaining if they are to be effective. Moore has described this as engaging with the "authorising environment", where forces can lend legitimacy and support or alternatively can interfere or withdraw support or authority for what an agency, or for that matter a minister, is attempting to achieve.[144]

The idea that policy process plays a role in shaping policy, and hence its effectiveness, is well rehearsed and widely recognised, even though there are diverse views about how that role is played. Government agencies, and government decision-makers are bound by rules, formal and informal relationships, and modes of operating that prescribe freedom of action. The precise details of boundaries, how they operate in practice, and their effect on policy depend on the nature of the jurisdiction in which they operate. This will be elaborated on in the chapter dealing with the New Zealand government context.

What the literature tells us is that institutional features cause variability in policy at two levels: through processes that take place within government and; within agencies. Thus, when seeking causes of policy variability and policy effectiveness, we need to look to internal agency capacities, and to the formal and informal rules of engagement of policy-making including the decision-making rules, policy domains and policy networks, policy approaches, and power relationships.

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[142] Peters, *The Politics of Bureaucracy*. P.126.

[143] Ibid. P.199.

[144] M. H. Moore, *Creating Public Value: Strategic Management in Government* (Cambridge Mass.: Harvard university Press, 1995). P.20. Moore's description of an authorising environment encompasses both the intra government (including staff and ministers, and elected representatives) and the external environment including citizens, media, and interest groups.

2.4.4.2 The role of individuals in shaping policy

The previous section covered ideas about how rules and processes work to influence policy. But policy is also the result of actions of people. Their skills and their preferences, values, personal agendas, and idiosyncrasies can also have an effect. Individuals or groups can influence policy by drawing attention to policy problems, advancing policy solutions, building support, and securing action.[145] This is commonly labelled as policy entrepreneurship.[146] How this happens is a result of choices, the exercise of will, skill, and leadership (often backed by formal or informal influence and power, which in turn often has an institutional basis).

Baehler, and Scott, argue that both effective policy and variability in policy rely, at least in part, on the quality of policy advice from public servants (suggesting the exercise of agency).[147] Mintrom and Norman argue that there are four elements involved when individuals are successful in driving policy: social acuity, defining problems, building teams, and leading by example. They say how these elements are used is conditional on policy processes and cognitive frameworks.[148]

There is, though, an empirical challenge about the influence of individual actions in that the choices of individuals and groups, and the contexts within which those choices are made, are closely linked, as pointed out in the introduction to this section.[149] One way of looking at the role of individuals is to view the role of the bureaucracy as one of an agent and the role of formal decision-makers as one of principal. This is where politicians (and senior public servants), not having all the necessary knowledge and skills to develop a policy, delegate to an agent, in turn giving rise to information asymmetries and then efforts to control and manage the agent (and hence institutionalise relationships).[150] Another way to analyse policy decision-making is to view it as collaboration between the political and administrative parts of the Executive, even though the political executive is at the apex of such collaboration. Page and Jenkins suggest that in practice, elements of both principal-agent and collaborative dynamics are at work, the former within the latter.[151] They say,

> *Making policy is a collaboration between the two parts of the executive. The officials do their best to develop practical measures that will meet what they perceive as their political masters' priorities and intentions. For their part, ministers depend heavily on what their officials suggest.[152]*

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[145] Mintrom, "Policy Entrepreneurship and Policy Change." P.649

[146] Ibid.

[147] Baehler, "What Are the Limits to Public Service Advising? The "Public Argument" Test." Pp.3-8. Scott, "Improving the Quality and Value of Policy Advice." Pp.104-105.

[148] Mintrom, "Policy Entrepreneurship and Policy Change." Pp.650-657.

[149] Ibid., Jordan, "Environmental Policy Integration: A State of the Art Review." P.151.

[150] Page, "Policy Bureaucracy." P.151. In some jurisdictions senior unelected public servants can have formal policy decision-making powers, for example the ability of the Governor of the Reserve Bank in New Zealand to set interest rates.

[151] Ibid.P.158.

[152] Ibid.P.183.

But whether the context for individual choices arises from principal/ agent or, as Page suggests, more likely from a combination of principal/agent and collaborative contexts, both involve persuasion and negotiation. The first is a contest of ideas, and the second a process of bargaining. Both, too, involve a mix of skill and influence. Scharpf describes this process as,

> …policy proposals usually being produced through a 'nexus' of horizontal negotiations among lower level units within and across ministries and with outside actors in parliament, in political parties, as well as in interest organisations. Conflicts are either are avoided unilaterally by the practices of negative coordination or are settled through distributive bargaining over compromise solutions that allow the units involved (often the different government agencies) to present common proposals to the minister or cabinet, where they are then likely to be accepted summarily.[153]

Scharpf says the processes of horizontal self-coordination involves vertical dialogue in which the political concerns of ministers are communicated downwards and issues regarding the technical feasibility and appropriateness of available options are communicated upwards.

How ministers and agencies work together can be an important feature in forming policy.[154] A capable agency, or a group of capable officials, in sync with a capable minister can achieve a great deal, because they tend to optimise a mixture of knowledge, skill and decision-making authority. A capable agency/officials in sync with a capable minister and backed by the whole government can achieve even more.[155]

The nature of the relationship is in part institutional and in part personal. It is institutional because of respective roles of ministers and agencies. It is personal because of the issue of trust. Trust assures the two parties that certain types of behaviour will or won't be displayed and simplifies interactions and expectations.[156] Peters highlights the significance of this issue in an opposite way.[157] He points out the rather obvious fact that there can at times be conflict or <u>mistrust</u> (my emphasis) between a minister and public servants. Peters observes that many incoming political leaders feel they cannot trust the advice of public servants who served under a previous administration of a different political persuasion. He argues this is especially true for ministers from leftist political parties who tend to regard the public service as a conservative institution (which lies behind Marxist critiques of bureaucracies[158]), although, as Heywood points out, the same can be just as true for rightist

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[153] Scharpf, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. P.198. My own experience with policy proposals in New Zealand's central government is that negotiated compromise solutions increase the likelihood of acceptance, rather than Scharpf's characterisation of them being summarily accepted.
[154] Peters, *The Politics of Bureaucracy*. Pp. 167-168.
[155] Ibid. Al Morrison pers com.
[156] Palmer, *Bridled Power: New Zealand's Constitution and Government*. P.101. J. Rommel, Christiaens, J., "Steering from Ministers and Departments," *Public Management Review* 11, no. 1 (2009). P.81.
[157] Peters, *The Politics of Bureaucracy*. Pp.223-224.
[158] Ibid.

administrations on the basis of an alternative critique that public servants are inherently self-interested and promote growth of budgets or agencies.[159] This is not, in Peters' view, that public servants necessarily obstruct or sabotage a programme. Rather, he says, that perhaps their support of a programme, policies or even a Minister might not be as energetic as it might be.[160]

But to return to the positive perspective of trust, a tactical objective for agencies and officials if they want to advance policy interests is to build and maintain an atmosphere of mutual trust with ministers. Once achieved, it assists both parties in processes of negotiation and bargaining, and hence increases the possibility of advancing policy.

Finally, choices, persuasion, and bargaining also involves politics. The idea of public servants engaging with the politics of situations might seem to run counter to an administrative tradition of a neutral public servant. There are many who argue the idea of a neutral public servant is a myth.[161] Moore's position is that in arguing for, or making the choices involved in, policy development public servants must engage with politics, not necessarily to drive politics (but as described earlier their institutional base can often do this), but to understand it so they can perform better. Others go beyond the organisational effectiveness viewpoint that Moore focused on and argue that public servants have an individual role, almost a moral duty, to advocate policies. Scott, for example, says that the role of public service leaders is to "negotiat(e) the boundary between good politics and good policy- not only giving Ministers what they want, but what they need".[162] It is debatable how "political" this is. Scott seems to be making a distinction between party politics and broader notion of politics as the creation of general rules for society.[163] But what "good" policy is and what is meant by what ministers "need" might itself be political.[164]

The overall point that the literature makes is that individuals and groups,the choices they make, and their skill and will are factors in advancing environmental policy, and need to be considered in the analysis of intra-governmental influences on the nature of such policy.

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[159] Heywood, *Politics*. Pp.384-386. W. Niskanen, *Bureaucracy and Representative Government* (Chicago: Aldine/Atherton, 1971).

[160] Peters, *The Politics of Bureaucracy*. Pp.223-224. Peters argues that there is little evidence of bureaucratic obstruction. From my own observations of Minister-departmental interactions, to suggest that it doesn't happen from time to time is a bit naive.

[161] Denhardt, *Theories of Public Organisations*. Pp.47-49. Goodin, "The Public and Its Policies." P.8. Peters, *The Politics of Bureaucracy*. P.166.

[162] Scott, "Improving the Quality and Value of Policy Advice." P.104.

[163] Heywood, *Politics*. Pp.4-13.

[164] Stone, *Policy Paradox: The Art of Political Decision Making*. P.328.

2.4.4.3 The role of cognitive factors in shaping policy

Government involves the contest of ideas and beliefs about the role of government itself, about what governments should do, and about the way they should do it.[165] How these ideas form and are applied to public policy arise from combinations of cognitive perspectives and the choices of individuals and groups, and from institutional/process influences.[166] Normative positions and values drive both the ideas and the policy choices made.[167] This shapes how issues are conceived, the forms of knowledge produced and used, the type of governing authority established, the techniques and other means employed to achieve specific ends sought, and the outcomes and consequences of pursuing those ends.[168]

Two aspects of cognitive factors within government are relevant for this research. This first is about priorities for action - what is important to governments. The second is the reasoning applied to those priorities. This section addresses both these aspects.

The core functions of the state/government in most modern societies involve: national security and foreign policy; fiscal, monetary and trade policy; social support, public health, and education; civil and criminal justice; and environmental and natural resources policy, which, put in a different way, encompass security, justice, redistribution, economic advancement, and environmental values.[169] These functions assume different levels of priority as a result of a multitude of drivers.

Advocates of environmental values argue that the priority of the environmental function needs to be higher/paramount in the long-term interests of human welfare.[170] Their criticism of the traditional administrative arrangements of governments is that they are fundamentally non-environmental, driven by other imperatives and particularly by a paradigm based on economic growth. The result is that environmental considerations are traded off in the face of the other imperatives.[171] Government priorities, from this viewpoint, result in administrative confinement and marginalisation of non-

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[165] Heywood, *Politics*. P.99.

[166] Zito, *Creating Environmental Policy in the European Union*. P.8. Bührs, *Environmental Integration: Our Common Challenge*. P.12.

[167] Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. P.10.

[168] R. Frame, Russell, S., "Governmentality," in *Hatched: The Capacity for Sustainable Development*, ed. B. Frame, Gordon, R., Mortimer, C. (Lincoln, NZ: Landcare Research, 2009). P.200. Frame and Russell draw on M. Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage, 1999).

[169] Scharpf, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*. Pp.17-18. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. P.84.

[170] ———, *Rational Ecology: Environment and Political Economy*. H. E. Daly, "Valuing the Earth," in *Valuing the Earth*, ed. H.E Daly, Townshend, K.N. (Cambridge, Massc.
: MIT Press, 1993). Bührs, *Environmental Integration: Our Common Challenge*.

[171] See Footnotes 91 to 93.

dominant interests, problem decomposition, and failures of policy coordination and integration. This critique is a component of the rise of modern environmental politics and "Green" political parties.[172]

The critique that traditional administration and economic growth *per se* is non-environmental is not universal, however. For example, it is also argued that there is a growing recognition of environmental risk. Ideas of sustainable development or ecological modernisation assume that governments, citizens, and some economic interests are amenable to incorporating environmental perspectives.[173] Increasingly, some in government argue that social, financial and natural capital are all equally important to prosperity, while others adopt the 'Green' critique.[174] The empirical evidence about the nature and type of economic growth and its environmental effect is debated, and will be discussed in a later section.

The point of relevance for this research is that ideologies promoting economic growth are an important feature within government.[175] This not to argue however, as some of the literature cited above does, that it is always paramount. Security, justice, redistribution or environmental priorities can override economic considerations from time to time.[176] Nevertheless, priorities and perspectives of economic growth ideologies colour thinking about the role of government, what government action should be, and how it should be done. This affects the nature of engagement with those in government seeking to apply other policy choice criteria.This includes environmental values. Indeed, all governments interpete and prioritise environmental values in some way, witnessed by the various cognitive frameworks adopted by governments' around the world, such as sustainable development. What is not so clear is the degree to which they are valued and what effect they have on agencies and policy. This is more of an empirical question and the subject of this research.

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[172] Heywood, *Politics*. P.64. Some analyses are optimistic that government administration can become environmentally oriented e.g. Barry, ed. *The State and the Global Ecological Crisis*. Whereas others are pessimistic e.g. R. Paehkle, Torgerson, D., "Environmental Politics and the Administrative State " in *Managing Leviathan: Environmental Politics and the Administrative State*, ed. R. Paehkle, Torgerson, D. (Peterborough, Canada: Broadview Press, 2005).

[173] P. Hawken, *The Ecology of Commerce* (New York: HarperBusiness, 1992). Christoff, "Green Governance and the Green State: Capacity Building as a Political Project." P.290.

[174] Green Growth Advisory Group G.G.A.P., "Greening New Zealand's Growth," (Wellington: Ministry of Economic Development, 2011). P.63.

[175] There are differences in views on the role of the State in the economy, for example neo-liberalism or Keynesianism evidenced in ideologies and translated by political parties in to government, that in turn influence whether a government might act, the nature of any action, and perceptions of what is desirable or legitimate action.

[176] A New Zealand example was the decision to prohibit logging of state-owned old growth forests on the west coast of the South Island. G.A. Wilson, Memon, P. Ali., "Indigenous Forest Management in 21-St Century New Zealand: Towards a 'Postproductivist'indigenous Forest-Farmalnd Interface?," *Environment and Planning A* 37 (2005). Pp. 1507-1508.

A second way cognitive factors can have an effect within government is the contention that thinking during policy development is pre-structured by established set of ideas.[177] This results in the same, or similar, "frames of reference" being applied to policy problems, the processes of policy development, and policy instruments. A manifestation of this is the concept of both in policy style and policy approaches, discussed in Section 2.4.4.1. Paehkle and Torgerson go further and argue that the administrative sphere, both because of conservatism and the dominance of economic growth as a value within government is successful in promoting the established pattern of economic development, but has not shown itself to be effective in either restraining or qualitatively redirecting that development in a way that meets environmental needs.[178]

This chapter described earlier in Section 2.3.2 how policy is shaped by different types of reasoning and world views.[179] Between ministers and officials, within government departments, within the machinery of government, and in the dynamics of policy consideration and decision-making, different rationalities about the <u>form</u> of policies, as well as their purpose, come into play. The degree to which some rationalities dominate the administrative sphere of government, the way these may be a barrier in advancing environmental normative views or efficiency arguments about integrating environmental considerations, can affect the nature of the solution and create variability in environmental terms.

In summary, cognitive features shape environmental policy because of the way values and beliefs drive government's political priorities, and because of established frameworks of ideas operating during the process of policy development.

2.4.4.4 Summary

Factors within government that lead to variablity in policy are diverse, complex, and open to interpretation. There is a broad field of scholarship and literature on this. In a broad sense it can be regarded as a debate about the respective influences of agency and structure. This section of the chapter has endeavoured to do justice to the subject by dividing it into institutional (in organisational and process terms), agency-centred, and cognitive categories. What is evident is that each category alone is insufficient to explain the intricacies of causes of policy variability. On the basis of the literature discussed in this section, they operate in combination. Rather than being definitive about causal factors at this stage, it seems better to follow the advice offered by Jordan (who has researched causes of environmental policy variability in European countries[180]), and Page (who has

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[177] Jordan, "Environmental Policy Integration: A State of the Art Review." P.152, quoting Lenschow A. 2002. Greening the European Union: an introduction. In *Environmental Policy Integration*, Lenschow A (ed.). Earthscan: London; P.17.

[178] Paehkle, "Environmental Politics and the Administrative State ". P.315

[179] Dryzek, *Rational Ecology: Environment and Political Economy*.

[180] Jordan, "Environmental Policy Integration: A State of the Art Review." P.156.

researched drivers of policy within the bureaucracy of the United Kingdom and elsewhere[181]) and undertake empirical case studies using these three categories of intra-government causal factors as a framework for analysis. There is, however, an important preliminary step. This is to examine a key additional factor, that most literature says conditions how governments work: the influence of wider forces in society.

2.4.5 The influence of wider forces in society

Diverse political, social and economic forces at the international, national and sub-national level help shape what governments do.[182] The influences of wider forces are not the direct focus of this research, but they shape the system of government and administrative arrangements, influence cognitive perspectives, and actual or perceived environmental issues. For these reasons, it is instructive to examine what literature has to say may be the most relevant wider national factors, to the extent they influence internal government capacities. It draws on studies comparing environmental performance of different countries.[183]

There are significant differences and unevenness in environmental capacity, policy innovation and environmental policy development between seemingly similar countries.[184] Comparative studies collectively have identified the following variables: levels and nature of economic development; the nature of social and economic interests and their relationships to government; constitutional arrangements; social, cultural and historical features; levels of knowledge and scientific and technical capabilities; and the sophistication of institutional arrangements (including regulatory regimes).[185]

There is by no means unanimity about the relative importance of features of national variables. Lafferty and Meadowcroft suggest culture and historical determinism are significant variables, whereas Jänicke and Weidner say that while culture and historical values are important, more recent post-materialist values are more significant.[186] Esty and Porter found that richer countries achieve

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[181] Page, "The Origins of Policy." P.224.

[182] Heywood, *Politics*. Pp.92-98.

[183] See Jänicke, "National Environmental Planning in OECD Countries: Preliminary Lessons from Cross-National Comparisons." Lafferty, *Implementing Sustainable Development: Strategies and Initiatives in High Consumption Societies*. Jänicke, ed. *Capacity Building in Environmental Policy: A Comparative Study of 17 Countries*. Scruggs, *Sustaining Abundance: Environmental Performance in Industrial Democracies*. Connor, *Institutional Change for Sustainable Development*. Dovers, *Environment and Sustainability Policy: Creation, Implementation, Evaluation*, Barry, ed. *The State and the Global Ecological Crisis*. Christoff, "Green Governance and the Green State: Capacity Building as a Political Project." Esty, "National Environmental Performance: An Empirical Analysis of Policy Results and Determinants." L. Scruggs, "Democracy and Environmental Performance: An Empirical Analysis," in *Annual meeting of the Mid West Political Science Association* (Chicago: Mid West Political Science Association, 2009).

[184] Barry, "W(H)Ither the Green State?." P.286.

[185] See references in Footnote183.

[186] Lafferty, *Implementing Sustainable Development: Strategies and Initiatives in High Consumption Societies*. Pp.423-427. Jänicke, "The Political System's Capacity for Environmental Policy: The Framework for

better environmental results than poorer ones. They suggest there is a tipping point though. Among countries above a certain level of economic development or of similar levels of development, national income or developmental stage influences but does not alone determine environmental outcomes.[187] In contrast, Jänicke and Weidner argue that economic conditions are contradictory in environmental terms. In times of economic recession, they say, environmental policy and management tend to be constrained. Also, economic growth and strength can enhance technological solutions to environmental problems, but they can also create indirect problems such as soil contamination, transport pollution, and indirect impacts on water quality.[188] Research by Scruggs supports a correlation between income and performance, but also an inverse correlation between economic growth and lesser performance.[189] A counterpoint to the critique of the negative effect of high economic growth on the environment are the studies which argue that it is not necessarily economic growth *per se* that is the issue, but rather the nature of that growth. This viewpoint is evident in ideas of ecological modernisation and sustainable development and the concept of "strong sustainability".[190]

Scruggs's comparative studies suggest that significant independent variables in national environmental performance are: per capita income and economic growth; differences in the political geography of countries; organisation of economic interests and their relations with the government; and that more centralised, democratic political institutions may produce better environmental outcomes than institutions that fragment constitutional political authority.[191] This last point is also a factor noted by Christoff who found that countries with neo-corporatist and strong state institutions with the ability to reach out to a full range of actors seem to have established and maintained a lead in terms of environmental performance.[192] Scruggs has found alternatively that there is little

Comparison." P.6. R. Inglehart, *Culture Shift in Advanced Industrial Society* (Princeton: Princeton University Press, 1990).

[187] Esty, "National Environmental Performance: An Empirical Analysis of Policy Results and Determinants." P.396 & 403.

Perhaps little or no economic development is associated with strong naturally functioning natural ecosystems. I once asked two African national park managers about the state of wildlife in tropical West Africa, a region with low levels of economic development. Their reply was, "There isn't any. It's all been eaten!" Conversely part of the Russian island of Novaya Zemlya was described to me as having a thriving natural environment. No one lived there since the end of atom bomb testing in the 1950s.

[188] Jänicke, "The Political System's Capacity for Environmental Policy: The Framework for Comparison." P.6 & 11.

[189] Scruggs, "Democracy and Environmental Performance: An Empirical Analysis." P.26.

[190] "Strong sustainability" is where the overall stock of natural capital is maintained, compared with "weak sustainability" where natural capital can be run down as long as human capital and produced capital are increased sufficiently. There are many critiques of these concepts. Hanley, "Economics and Sustainable Development: What Have We Learnt, and What Do We Still Need to Learn?" Pp.81-83 & 92. G.G.A.P., "Greening New Zealand's Growth." Pp.11-13.

[191] Scruggs, *Sustaining Abundance: Environmental Performance in Industrial Democracies*. Pp.205-208.

[192] Christoff, "Green Governance and the Green State: Capacity Building as a Political Project." P.303. In a 2009 review of more than fifty published papers Scruggs argues that the idea that there is a correlation between democracy and positive environmental performance is not borne out by results. In contrast, Jänicke and

evidence that variations in public awareness, public opinion or cultural attitudes are robustly associated with differences in national environmental performance, in contrast to another view that high social attachment to environmental values supports environmental performance.[193]

Despite the debates, there appears to be agreement in the literature cited that the national conditions that <u>most</u> (my emphasis) affect environmental performance are the levels and nature of economic development (including technical and scientific capacity); constitutional arrangements and institutional characteristics; and, more arguably, social, cultural and historical features.

There is an additional consideration, however. It is a situational feature where events can affect environmental performance. Events are often sudden, sometimes unanticipated incidents that create shocks and lead to new directions. Some events are not unanticipated and can follow a pattern but nevertheless also lead to new directions. The most obvious examples of patterned "events" are elections leading to change of governments and elected officials. Kingdon argues that combinations of national mood and elections are more powerful agenda setters than organised interests.[194] Events can either work to create new opportunities, or create conditions that hinder or assist action.[195] Prominent examples of environmental shocks leading to rapid policy changes include the discovery (rather accidently) of the ozone hole in the mid-1980s, and the Three Mile Island nuclear power plant partial melt down in the United States in 1979.[196] On a very different scale, the collapse of the communist system of governments in Eastern Europe in the late 1980s is argued to have been a shock that had a positive effect on environmental management in those countries.[197] These events had consequences, usually positive, for environmental performance. Alternatively, other events can have negative consequences, such as the way economic downturn might increase

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Weidner argue that the most important precondition for addressing environmental problems was the existence of democratic institutions and rules. Scruggs noted, however, that his 2009 statistical analysis and literature review was insufficiently fine grained to provide any indication of individual national conditional factors. Jänicke and Weidner may provide an answer to this debate and one that also echoes Christoff's view. This is that democratic forms of government tend to be associated with freer flows of ideas, but what is important is not necessarily the form of specific type of democratic government (for example unitary or federal) but whether the institutional bases seek to promote consensus, cooperation and integration of environmental values. Jänicke and Weidner say the Unitary- Federal debate is a secondary issue, but this may be rather too dismissive of the evidence provided by Scruggs and Christoff. See Jänicke, ed. *Capacity Building in Environmental Policy: A Comparative Study of 17 Countries*. Pp.420, 421 & 433 and Scruggs, "Democracy and Environmental Performance: An Empirical Analysis." P.22.

[193] Jänicke, "The Political System's Capacity for Environmental Policy: The Framework for Comparison." P.10.

[194] Kingdon, *Agendas, Alternatives, and Public Policy*. Pp.207-208.

[195] Baumgartner, *Agendas and Instability in American Politics*.

[196] The ozone hole discovery led to the banning of ozone depleting substances internationally. The Three Mile incident influenced public opinion against nuclear energy. P. Dauvergne, "Globalisation and the Environment," in *Global Political Economy*, ed. J. Ravenhill (Oxford: Oxford University Press, 2005). P.377.

[197] Scruggs, "Democracy and Environmental Performance: An Empirical Analysis."

the likelihood of relaxed environmental standards, or increase unsustainable exploitation of natural resources.[198]

In summary, comparative studies show how events and wider forces in society create interests that condition the nature of environmental issues and policy responses. The implications of the discussion in this section are that the intra government factors in policy variability need to be understood against a wider background, if we are to develop a comprehensive understanding of environmental policy variability.

2.5 Conclusions

This chapter has traversed two fields of study: first, overlapping ideas of policy effectiveness and environmental effectiveness, and, second the much broader field of causes of policy variability.

The first field is important because the research depends on establishing a standard for effective environmental policy, against which to assess variability. The focus of the research on policy-making rather than policy-implementation, for example, drives it towards policy process categories of evaluation. The environmental focus drives it to using established normative understandings about the role of environmental values and their integration.

The second field, about causes of variability, is the central part of the research. Its scholarly canvass is very large, and it is complex. What is well traversed is the dynamics of policy-making in general, and the various components that drive general policy variability, for example though institutional arrangements, differing levels of skill and will in policy-makers, and ways ideas shape how people and institutions perceive environmental values and issues. What seems less clear, however, is their specific application in the environmental policy sphere. Jordan and Lenschow's literature review, for example, says that in environmental policy answers are unclear to many questions about what constitutes policy effectiveness, about relationships between political and administrative influence, and about appropriate balance of policy interventions.[199] Jordan and Lenschow are reluctant to proclaim a "best practice", but argue for a multi-dimensional approach, involving explanations that combine the various elements of drivers of policy formation and how, together, they influence policy formation and its variability. Jordan and Lenschow, and others such as Jänicke, also say that because of the political dimension of policy-making, environmental policy is situational, providing justification for jurisdiction-specific studies, such as New Zealand.[200]

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[198] Jänicke, "The Political System's Capacity for Environmental Policy: The Framework for Comparison." P.6.
[199] Jordan, "Environmental Policy Integration: A State of the Art Review." P.156.
[200] Ibid. Jänicke, "The Political System's Capacity for Environmental Policy: The Framework for Comparison." Pp.3.15 & 409.

Another area where there seems to be limitations, or at least debate, is the influence of environmental agencies and particularly about characteristics that lend themselves to greater agency effectiveness in terms of environmental policy. Schout and Jordan say that there may be answers in general organisational dynamics literature, and Weale mounts an argument (not uncontested, as outlined in Section 2.4.4.2) for separate environmental agencies of sufficient capacity and authority to mix it with other agencies of central government. But, Schout and Jordan argue, there is no specific blueprint.[201]

What this means is that some explanation of variability in environmental policy can be found in the various well-known causes described in the literature, but that a more rounded picture lies in combining those causes, placing them in a jurisdictional setting, and seeking further empirical evidence about administrative features, particularly organisational ones, that enhance or inhibit environmental effectiveness.

Chapter 4 will pull together these factors and develop a framework for analysing cases studies of policy responses to environmental issues to test the idea of policy variation-causing combinations. But first, Chapter 3 will look at the contextual circumstances of New Zealand to identify additional factors that may be relevant.

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[201] Schout, "Administrative Instruments." Pp.65-66. Weale, "Governance, Government and the Pursuit of Sustainability." Pp.68-70.

Chapter 3

Players, Processes and Drivers: The Context of National Level Environmental Management in New Zealand

3.1 Introduction

Public policy varies according to the nature of the political system and its links with society.[202] Consequently, it helps to know about the context of the political system within which policy develops. This chapter examines the New Zealand government context for environmental policy. It looks at four subjects: macro socio-economic influences and the nature of environmental issues; the political and policy-making system and machinery of government; administrative arrangements within government that deal with environmental matters; and finally the two key departments that deal with environmental issues – the Ministry for the Environment (MfE) and the Department of Conservation (DoC). The purpose of the chapter is to provide a context for the case studies that follow in later chapters, and also to identify whether there are specific New Zealand features that influence environmental policy variability and the role played by environmental departments.

3.2 Environmental issues and macro socio-economic influences in New Zealand

New Zealand environmental pressures comprise a mix of:

- Those found in many developed countries (although the intensity of manufacturing industrial environmental pressures are comparatively lower because this sector is not such a large proportion of the overall economy);

- Those arising from New Zealand's particular developmental history;

- The large size of primary industry/ natural resource use as a proportion of the overall economy and;

- New Zealand's biophysical uniqueness.[203]

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[202] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. Pp.7-9.

[203] MfE, *Environment New Zealand 2007*, OECD, *OECD Environmental Performance Review: New Zealand*. New Zealand's biophysical distinctiveness comes from being an isolated island archipelago combining both island and semi-continental geological and climatic characteristics, tectonically highly active, with globally significant levels of terrestrial and marine endemism, and a non-mammalian dominated indigenous flora and fauna. Human and significant mammal presence seems to date from only 800 years ago. While there has been very large modification of the pre-human landscape and ecology over a very short period of time resulting in

The state of New Zealand's environment is variable. The country has a reputation for being "clean and green".[204] New Zealand's environmental governance is well rated in some studies.[205] Intensity of resource use is low by OECD standards. New Zealand's freshwater and air quality are generally better than many other developed or developing countries. There is a large network of protected natural areas. But there are qualifications to this reputation. New Zealand has a serious invasive species problem. Water quality, indigenous biodiversity, the nature of urban development, energy use and consumption, net greenhouse gas emissions, and some environmental aspects of waste minimisation and material flows show negative trends. [206]

New Zealand is also different from many developed countries. Its economy is small, strongly dependent on primary production, and on its services sector, particularly tourism. It has a small industrial and manufacturing sector. New Zealand is also isolated, far from international markets, and depends on international trade to import many manufactured products. Exports contribute 29% of GDP and biologically-based exports (from agriculture, forestry, fishing and aquaculture) contribute 60% of those exports.[207]Agriculture accounts for 9% of New Zealand's GDP, ten times higher than other developed countries. Internally, dissected landscapes create transport and communication challenges for the economy. New Zealand has limited high quality soils (about 5%), despite the economy's agricultural emphasis.[208] There are comparatively abundant resources to generate renewable electricity, and, to date at least, moderate levels of economic mineral and petroleum resource extraction. This context helps provide some explanation for why natural resource issues are

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high rates of extinctions, habitat and ecotype destruction and physical soil and water impacts, nevertheless large areas of semi intact pre-human ecology remain. See M.S. McGlone, Wilmshurst, J., "Dating Initial Maori Environmental Impact in New Zealand," *Quaternary International* 59, no. 1 (1999), N. Myers, Mittermeier, R. A., Mittermeier, C.G., da Fonseca, G.A.B., Kent, J., "Biodiversity Hotspots for Conservation Priorities," *Nature* 403 (2000), D. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand* (Dunedin: Otago University Press, 2004).

[204] K.F.D. Hughey, Kerr, G.N., Cullen, R., "Public Perceptions of New Zealand's Environment: 2010," (Christchurch: EOS Ecology, 2010). P.iii.

[205] Yale Centre for Environmental Law & Policy Yale, "Environmental Performance Index Report," (Cambridge,Mass.: Yale, 2006, 2008, 2010, 2012). Although this particular index says New Zealand has moved from the top performer, in the pilot study in 2006, to fourteenth place in 2012.

[206] MfE, *Environment New Zealand 2007*, NZ, "Measuring New Zealand's Progress Using a Sustainable Development Approach: 2008.", New Zealand Institute, "Nzahead," (Auckland: The New Zealand Institute, 2010). The Statistics New Zealand report says that indicators of social sustainability are improving, as are indicators of economic performance. A suite of indicators of natural resource condition and use show some improvements. However, the greater proportion show decline. While not saying so in the report, a conclusion that could be drawn is that environmental conditions are being traded off against improvements in social and economic conditions.

[207] Statistics New Zealand, "New Zealand in Profile: 2012," ed. Statistics New Zealand (Wellington: Statistics New Zealand, 2012).

[208] University of Waikato, "Soils: The most complex ecosystem in the world", http://sci.waikato.ac.nz/farm/content/soils.html (accessed 21/4/2013).

a focus of greater environmental debate than, for example, issues arising from the use of new technology or transport.[209]

It has been suggested that economic growth is the single most important government priority in New Zealand.[210] There are examples where social considerations have overridden economic ones, such as halting logging of native forests in the 1980s and late 1990s. [211] Nevertheless, the importance of the primary sector and other forms of natural resource use and extraction, and reliance on international trade (a small producer far from markets) with a capital-light economy, mean that these issues can influence New Zealand's environmental policy agenda, often strongly.

Distinctive social development characteristics also colour environmental issues in New Zealand. New Zealand has a human history that parallels some of the settlement and development patterns of the United States, Canada and Australia over the past two hundred years, and yet also has its own special features. It is a history of recent successive waves of colonisation followed by adaptation and development.[212] New Zealand was one of the last places in the world that humans colonized. The first human habitation began with Polynesian Maori migration probably in the late 1200s.[213] Population prior to 1830s grew to an eventual pre-European level of perhaps 200,000 within an island system roughly the size of Britain or Japan.[214] Maori technology was based on stone, bone and wood. Fire, used deliberately and accidently, caused widespread ecological change. Agriculture was limited by climate and crop type to parts of the North Island and northern South Island. Despite low population density and limited technology, Maori settlement was accompanied by widespread deforestation and a large number of faunal extinctions, some resulting in food resource depletion.[215] Maori society adjusted to New Zealand environmental conditions and evolved values, standards and

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[209] OECD, *OECD Environmental Performance Review: New Zealand*. P.1. J. K. McNeill, "The Public Value of Regional Government: How New Zealand Regional Councils Manage the Environment" (Massey University, 2008). P.96. Statistics New Zealand, *New Zealand in Profile 2012* (Wellington: Statistics New Zealand, 2012).
[210] T. Bührs, "The Environment and the Role of the State," in *Environmental Planning and Management in New Zealand*, ed. P. Ali Memon and Harvey C. Perkins (Palmerston North: Dunmore Press, 2000). Pp. 32-34. "Our economic priorities" Speech by John Key, Prime Minister 26 January 2012, http://www.national.org.nz/priorities2012.aspx (accessed 21/5/2013).
[211] Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. Pp.213-214.
[212] See J. Belich, *Making Peoples: A History of the New Zealanders: From Polynesian Settlement to the End of the Nineteenth Century*, 2nd ed. (Auckland: Penguin, 2001), ———, *Paradise Reforged: A History of the New Zealanders from the 1880s to the Year 2000* (Auckland: Allen Lane: Penguin Press, 2001), M. King, *The Penguin History of New Zealand* (Auckland: Penguin, 2003).
[213] J.M. Wilmshurst, A.J.Anderson, T.F.G.Higham, T.H.Worthy, "Dating the Late Prehistoric Dispersal of Polynesians to New Zealand Using the Commensal Pacific Rat," *Proceedings of the National Academy of Sciences of the United States* 105, no. 22 (2008). P.7676.
[214] I. Poole, *Te Iwi Maori: A New Zealand Population Past, Present and Projected* (Auckland: Auckland University Press, 1991).
[215] M.S. McGlone, "The Polynesian Settlement of New Zealand in Relation to Environmental and Biotic Changes," *New Zealand Journal of Ecology* 12, no. Supplement (1989).

behaviour (tikanga) responding to resource depletion, maintenance of food supply, as well as protection of human health. Management was kinship and culturally based.[216]

Elements of tikanga continue today in Maori society and, as a result of Treaty of Waitangi jurisprudence and recent legislation changes, Maori cultural and economic interests have been increasingly institutionalised and empowered in modern New Zealand society.[217] The degree of "first people" empowerment and the extent of restitution for past injustices in New Zealand is distinctive.[218]

Maori social, economic and customary norms were rapidly supplanted after the late 1830s by European (almost entirely British) ones. European immigration, initially from Britain, Scotland and Ireland, later in the 20th century from other parts of Europe, and most recently immigration from Asia, quickly overtook Maori in numbers and control.[219] Population rose to one million by the early 1900s and to four million by 2000. The new waves of colonisation again dramatically changed the face of New Zealand. The landscape was transformed by cities and towns, and by pastoralism and more intensive forms of agriculture. Modern infrastructure developed. European (until recently predominantly British) institutions of government were introduced, and vast areas of original indigenous natural habitats destroyed or radically diminished, with yet more species extinctions.

The rapid and successive waves of human colonisation have formed a theme in histories of New Zealand. How this has affected the way environmental issues are perceived has been the subject of an extensive literature. One perspective is that New Zealand was influenced by ideas of frontier and adapting to new ecological circumstances.[220] Individualism and a spirit of development involving unrestrained and often very wasteful use of resources was a feature of New Zealand's history. Some argue this spirit began to wane sometime between the 1930s and the 1980s, while others argue that the development ethos still remains embedded today.[221] Another view is that New Zealand's

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[216] A. Ballara, *Iwi: The Dynamics of Maori Tribal Organisation from C.1769 to C.1945* (Wellington: Victoria University Press, 1999).

[217] King, *The Penguin History of New Zealand*. Pp.506-507 & 514-515.

[218] A. Sullivan, "Maori Participation," in *New Zealand Government and Politics*, ed. R. Miller (Auckland: Oxford University Press, 2010). P.538.

[219] B. Curtis, C. Curtis, "The Social Setting," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2006), K. Smits, "Multicultural Identity in a Bicultural Context," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2006).
Recent migrant statistics show inflows from the United Kingdom are still the single largest group, followed by China, South Africa and India. http://www.dol.govt.nz/research/migration/lisnz/ff/DOL10705-16-LisNZ-FastFacts-1-Demographics.pdf (accessed 1/10/2012).

[220] King, *The Penguin History of New Zealand*. J. Belich, *Replenishing the Earthy: The Settler Revolution and the Rise of the Anglo-World, 1783-1939* (Oxford: Oxford University Press, 2009). E. Pawson, Brooking, T., ed. *Environmental Histories of New Zealand* (Melbourne: Oxford University Press,2002).

[221] For the former view see for example King, *The Penguin History of New Zealand*. Belich, *Replenishing the Earthy: The Settler Revolution and the Rise of the Anglo-World, 1783-1939*. For the latter view see N. Wheen, "A

dissected geography, small dispersed communities, and ideas about egalitarianism associated with aspects of European migration promoted local participation and community voice in a way paradoxically at odds with the ideas of the rights of individuals and property rights.[222] Yet another observation is that Maori society and tikanga provided examples of how a sense of place, belonging, group "ownership", and special value develop and become part of the basis of environmental management. Later migrant society also began to adopt these ideas as they acclimatised to their new surroundings.[223] Finally, New Zealand's environmental debates have been dominated historically by nature conservation issues, to the extent that other environmental issues tend to become submerged.[224] Explanations for a focus on nature conservation probably lie in a now-widespread understanding of the extent of indigenous biodiversity loss, a special but threatened indigenous fauna and flora, relative ease of access and proximity to nature and protected areas such as national parks, visually diverse and outstanding landscapes, a high value placed on quality of life and the environment, and ideas about common heritage.[225]

In summary, New Zealand has a reputation for environmental quality. But this has recently come under closer scrutiny, because increases in pressure are resulting in declining environmental conditions. There are a number of distinctive domestic economic, biophysical, cultural and historical features that seem to colour the way New Zealand society views environmental issues and problems. On the one hand, New Zealanders say they have a strong attachment to environmental values, particularly when they involve nature conservation, but on the other hand there are countervailing developmental characteristics.[226] Although there are views that the rise of social concern about environmental values is a post-modern phenomenon based in part on growing affluence in society (an argument mounted by Jänicke and Weidner[227]), New Zealand historians and geographers such as King, Belich, and Pawson argue that it has deeper cultural roots and has perhaps influenced the nature of environmental politics, and to an extent the particularities in New Zealand's government

History of New Zealand Environmental Law," in *Environmental Histories of New Zealand*, ed. E. Pawson, Brooking, T. (Melbourne: Oxford University Press, 2002).

[222] J. Johansson, *The Politics of Possibility: Leadership in Changing Times*, 1st ed. (Wellington: Dunmore Publishing, 2009). Pp.39-46.

[223] King, *The Penguin History of New Zealand*. P.517. M. Abbott, Ruru, J., Stephenson, J., "Entering Landscape," in *Beyond the Scene: Landscape and Identity in Aotearoa New Zealand*, ed. J. Stephenson, Abbott, M., Ruru, J. (Dunedin: Otago Univerity Press, 2010). Pp.13-21.

[224] Bührs, *Environmental Policy in New Zealand: The Politics of Clean and Green?* P.51.

[225] King, *The Penguin History of New Zealand*. Pp.432-446. GIAB, "Research on Growth and Innovation." P.2. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P.206. Abbott, "Entering Landscape." Pp. 13-21. DoC, "Annual Report 2012," (Wellington: Department of Conservation, 2012). P.33.

[226] GIAB, "Research on Growth and Innovation." B. Lovelock, Jellum,C., Thompson,A., Lovelock,K., "Could Immigrants Care Less About the Environment? A Comparison of the Environmental Values of Immigrant and Native-Born New Zealanders," *Society and Natural Resources* 26, no. 4 (2013).

[227] Jänicke, "The Political System's Capacity for Environmental Policy: The Framework for Comparison." Pp.5-6. B. Edwards, "The Changing Nature of Ideological Conflict in New Zealand Electoral Politics(1996-2008): The Rush to the Centre," *New Zealand Political Studies* (2009). R. Inglehart, Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies (Princeton: Princeton University Press, 1997).

institutional response and the type of issues that emerge on the New Zealand environmental policy agenda. Balanced against the idea of the strength of nature/environmental values is the view that New Zealand's resource-based economy (agriculture and natural resource uses) and its international trade dependence leads to oposition to environmental protection measures that constrain resource use.

These drivers give rise to a range of external interests and actors, in a way that occurs in any civil society.[228] But in New Zealand's case they tend to reflect the nature-conservation orientation of New Zealand's environmental non-government organisations (NGOs) and the comparative power and resources of New Zealand's agricultural and exporting sectors. Maori represent another distinct strand of recently re-empowered interests spanning indigenous peoples' rights, values, and economic considerations. These various sets of interests, growing out of the nature of New Zealand's socio-economic, cultural, and biophysical contexts, contribute to the domestic setting for environmental policy and play a role in conditioning how environmental problems are perceived and addressed within government.

3.3   Political system, machinery of government, and policy processes

Work by McLeay, Mulgan, Palmer, Miller and others describe the nature of politics, institutions and policy within government in New Zealand.[229] Shaw and Eichbaum have focused particularly on the policy process and the role played by New Zealand's (unwritten) constitution, Cabinet and Prime Minister, the Judiciary, and factors such as economic control, the electoral system and triennial elections, political parties and interests, and public servants and ministerial advisers.[230] They argue that the mechanics of policy production is formal and contractually oriented, at least outwardly. They note it is based on the concept that the public service is non-partisan, top-down in initiation and response, and subject to a range of variable internal and external checks and balances. They comment, however, that the reality of a top-down system is not quite what it seems and that, while the fiction is that officials advise and ministers decide, other dynamics may be at work. [231]

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[228] Jänicke and Weidner categorise these as groups that promote environmental protection, and groups that condition how environmental problems may or may not be addressed. Jänicke, ed. *Capacity Building in Environmental Policy: A Comparative Study of 17 Countries*. P.7.

[229] E. McLeay, *The Cabinet and Political Power in New Zealand* (Auckland: Oxford University Press, 1995). R. Mulgan, *Politics in New Zealand*, 3rd ed. (Auckland: Auckland University Press, 2004), Palmer, *Bridled Power: New Zealand's Constitution and Government*, R. Miller, ed. *New Zealand Government and Politics*, 5th ed. (Auckland: Oxford University Press,2010).

[230] Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*.

[231] Ibid. Pp.95-115 & 190. Internal checks include published departmental Statements of Intent, output plans, and Annual Reports. The external checks include: parliamentary oversight of money supply and Select Committee review; audits by the Auditor General; requests using the Official Information Act; investigations by the Ombudsman; and, in the environmental domain, audit and reviews by the Parliamentary Commissioner for the Environment.

3.3.1 New Zealand politics, constitution and implications for environmental policy

New Zealand politics alternated historically for most of the 20th century between a two party-dominated centre-right and centre-left divide, with emphases towards individual or collective action respectively, and a social culture of equality/security or "fairness" that condition political action and government priorities.[232] For over a hundred years central government was the dominant actor in promoting development, and economic and social wellbeing. This role was partially over-turned in the 1980s and 1990s with a more market oriented/smaller government consensus.[233] Since the mid-1990s European-type mixed member proportional (MMP) parliamentary representation altered an earlier single party majoritarian politics by introducing the need for a "negotiated" style of government.[234] The centre right/centre left divide has not fundamentally changed under MMP, although there are now a greater number of political parties represented in Parliament.[235]

New Zealand's constitutional context for policy development is distinctive.[236] The New Zealand system of government derived originally from the Westminster model of parliamentary democracy. Central government is dominant compared with regional or local government.[237] There is a unicameral legislature, a strong Executive, and no written constitution. These features are said to reduce the venues for sources of new policy compared with other developed countries.[238]

Dominance of the Executive in government has been somewhat tempered by MMP since 1996.[239] MMP has given more opportunity for debating environmental issues, largely because it has encouraged representation of a wider spectrum of interests in the political process.[240] Public interest in environmental matters in New Zealand appears to have grown over the past twenty five years or so.[241] The MMP system may thus have encouraged a degree of political competition to attract

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[232] Johansson, *The Politics of Possibility: Leadership in Changing Times*. Pp.28 & 40-41. And, generally, D. Fischer, M., *Fairness and Freedom: A History of Two Open Societies: New Zealand and the United States* (Oxford University Press, 2012). The centre-right and centre-left divide, while a convenient description for the purposes of this study, is in reality more multidimensional.

[233] Barker, "Political Culture: Patterns and Issues." P.19.

[234] C. James, *The Ties That Bind: The Relationship between Ministers and Chief Executives* (Wellington: Institute of Policy Studies, 2002).P.8**.** Palmer, *Bridled Power: New Zealand's Constitution and Government*. Pp.18-20. Heywood, *Politics*. P.33. Johansson, *The Politics of Possibility: Leadership in Changing Times*. P.131.

[235] ———, *The Politics of Possibility: Leadership in Changing Times*. P.131.

[236] M. Mintrom, Norman, P, "Participating in Agenda Setting," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2008). P.608.

[237] G. Bush, "Local Government," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2003).

[238] Mintrom, "Participating in Agenda Setting." P.608. Prior to the introduction of MMP, Geoffrey Palmer argued there was an extra-ordinary concentration of power in central government with one political party controlling both the Executive and Parliament, a situation he regarded as constitutionally dangerous Palmer, *Bridled Power: New Zealand's Constitution and Government*. Pp.9-13.

[239] ———, *Bridled Power: New Zealand's Constitution and Government*. P.17.

[240] Mintrom, "Participating in Agenda Setting." P.609.

[241] T. Bührs, "Environmental Policy," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2006). P.629.

support from environmental interests. Of the current three largest political parties, the centre-right National Party promotes a concept of "balancing" economic growth and environmental quality, the centre-left Labour Party argues for economic growth and social development based on a mixture of sustainable development principles,ecological modernisation and "green growth", and the Green Party promotes the centrality of "environmental sustainability for all human action."[242] Thus, virtually all New Zealand political parties now say they are advocates for the environment, although the strength, depth and nature of that advocacy varies depending on Prime Ministerial priorities, prior party commitments, interest group pressure, economic conditions, or the success of ministerial advocacy.[243]

The strength of the New Zealand Executive and dominant role of central government compared to other developed countries suggests where there is political will, policy (including environmental policy) could be developed quickly. However, there are constraints. First, under MMP, there have been as yet no single party majorities. Consequently, many policy proposals, particularly contentious ones, require negotiation with minority parties.[244] This requirement can work to either strengthen or weaken policy proposals depending on the the issue, affected interests, and their relationship with junior coalition partners. It has also diminished the ability of public servants to promote new policy in a way that was possible under the earlier majoritarian system where once a minister or Cabinet were convinced, then the policy was likely to take effect.[245] Second, a three year electoral cycle (retained as a check on government power) constrains opportunities to introduce contentious policy by increasing their electoral risk and tends to favour more easily solved issues.[246] The three year cycle increases democratic responsiveness. But, because of the need to seek an electoral mandate every three years it has been argued this works against addressing isssues of a long-run nature.[247] This would include environmental problems, because of their inherent long-run characteristics.

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[242] See http://www.national.org.nz/PDF_General/Environment_and_climate_change_policy.pdf (accessed1/10/2012) for the National Party, http://www.labour.org.nz/news/speech-green-growth: (accessed1/10/2012) for the Labour Party, and http://www.greens.org.nz/policysummary/environment-policy-summary (accessed 1/10/2012) for the Green party.
This is not simply a New Zealand phenomenon. In many countries all political parties tend to adopt the rhetoric of being in favour of environmental protection, describes as a political valence issue rather than a positional one. Weale, "Governance, Government and the Pursuit of Sustainability." P.64.

[243] Bührs, "Environmental Policy." P.636.

[244] Palmer, *Bridled Power: New Zealand's Constitution and Government*. P.17. M. Mintrom, "Policy Advice and the Pursuit of Public Value," *Policy Quarterly* 7, no. 3 (2011). P.609

[245] ———, "Policy Advice and the Pursuit of Public Value." P.609.

[246] Palmer, *Bridled Power: New Zealand's Constitution and Government*. P.12. Mintrom, "Participating in Agenda Setting." P.p.608-609. Extending the parliamentary term to four years is regularly mooted and has been defeated in at least two referendums. M. Wilson, "Reforming Parliament," in *New Zealand Government and Politics*, ed. R. Miller (Melbourne: Oxford University Press, 2008). Pp.151-152.

[247] Mintrom, "Participating in Agenda Setting." P.609. See also Chapter 2 of this thesis, Section 2.3.2.

In summary, a general feature of New Zealand politics and constitutional arrangements as far as environmental policy is concerned is that there is a combination of a comparatively strong central government and all major political parties saying, with different emphases, they support environmental quality. MMP has increased opportunities for environmental issues to emerge on policy agendas and can work as either an opportunity or constraint depending on the constellation of interests and parties that become involved in policy negotiation. The three year electoral cycle means there is a narrow window for introducing new policies, especially those of a contentious or long-run nature.

3.3.2 Intra-Government decision-makers and policy process

The Cabinet is New Zealand's senior policy-making body. It is headed by the Prime Minister (usually the most important figure in final policy decisions) leading a Cabinet of around twenty two ministers, with a small number of junior ministers outside cabinet.[248] Ministers are selected from elected members of parliament from the parties (including any junior coalition parties) that command a majority in parliament.[249] The formal mode of operating involves policy decision-making by Cabinet and ministers who in turn are advised by public servants from government departments as well as by staff that ministers have appointed to their own personal offices.[250] This suggests a top-down flow of decision-making and formal exercise of authority.[251] But other dynamics are also at work. Cabinet and ministers are driven by: election and interest/support group commitments and coalition agreements; the rules, boundaries and constraints of ministerial and cabinet decision-making; the requirements of parliamentary scrutiny; the internal hierarchy of authority amongst ministers conditioned by seniority in Cabinet; the policy ideas of the public service itself; and the variable but influential characteristics of ministerial personal ability.[252]

 New Zealand's policy system is comparatively small in terms of overall size compared to other jurisdictions. It has a reputation for transparency and low levels of corruption.[253] Transparency and absence of corruption, it has been said, increase accountability and to some extent public trust.[254] Some research also suggests that small scale systems tend more to borrow ideas from other countries on how to address domestic environmental problems, and are also more influenced by

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[248] McLeay, "Cabinet." Pp.188-190. Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. Pp.76-79.

[249] The manner of selecting ministers varies between political parties.

[250] James, *The Ties That Bind: The Relationship between Ministers and Chief Executives*. Pp.20-22. Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. P.76. Note this is a relatively recent phenomenon.

[251] See ———, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. Pp.80-90.

[252] Palmer, *Bridled Power: New Zealand's Constitution and Government*. Pp.68-94. McLeay, "Cabinet." DPMC, "Cabinet Manual 2008." Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*.

[253] See Transparency International http://cpi.transparency.org/cpi2011/results/ (accessed 12/10/2012).

[254] Heywood, *Politics*. P.389.

international environmental institutions.[255] Small scale can increase participation and responsiveness but can also mean a lack of capacity to address more complex issues and greater potential scope for individuals to affect events.[256]

Within the policy system, environmental ministers have, because of legislation, greater formal decision-making authority than their departments.[257] For twenty five years New Zealand has had two Cabinet-level ministerial positions dedicated to environmental matters: the Minister for the Environment for general environmental matters, and the Minister of Conservation for nature conservation (although the conservation portfolio extends beyond nature conservation to include some wider environmental responsibilities such as coastal policy).[258] The Environment portfolio has tended to be a middle ranking position, but has occasionally been on the front bench. The Conservation portfolio has tended to be lower ranking. This generalisation changes from time to time, however, depending on combinations of portfolios, coalition agreements, or the party seniority of the incumbent. Since the early 2000s there have also been associate ministers. More recently a separate environmentally oriented ministerial position has been created responsible for climate change matters. This suggests that there is some potential for environmental influence within Cabinet, simply through numbers of ministers.

Between 1986 and 2012 there have been eight Ministers for the Environment and eleven Ministers of Conservation. The average time for holding either portfolio is two to three years, which corresponds with New Zealand's electoral cycle. Some have held their portfolios longer, however.[259] Whether turnover in ministers is an issue in how actively environmental policies are pursued, compared to any other policies, is not obvious, given that the turnover is mirrored in most other Cabinet portfolios also. Some environment ministers have held other more senior roles either concurrently or later which arguably (and this probably depends on manifesto commitments and the

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[255] George Buhagiar, "Is Small Really Beautiful? The Impact of Scale on Political Institutional Capacity for Integrated Environmental Management in Malta" (Lincoln Unversity, 2003). See also Bührs, "From Diffusion to Defusion: The Roots and Effects of Environmental Innovation in New Zealand."

[256] R.A. Dahl, *On Democracy* (New Haven: Yale University Press, 1998). P.435. Buhagiar, "Is Small Really Beautiful? The Impact of Scale on Political Institutional Capacity for Integrated Environmental Management in Malta". P.19.

[257] For example, the Department of Conservations functions are subject to the directions of the Minister (Conservation Act 1987, S. 6). The Ministry for the Environment is under the control of the Minister for the Environment (Environment Act 1986, S. 28(2)).

[258] The Minister for the Environment and an environment portfolio was created in 1972 supported by a Commission for the Environment and advised by an Environment Council (Both the Commission and the Council were abolished in 1986 when MfE was set up). The Conservation portfolio was created in 1987.

[259] Simon Upton held the environment portfolio for most of the 1990s, and Marion Hobbs for six years in the 2000s. Denis Marshall held the conservation portfolio for six years in the 1990s, and Chris Carter for five years in the 2000s. Geoffrey Palmer was Deputy Prime Minister and Minister for the Environment concurrently between 1987 and 1990 and Helen Clark, Prime Minister from 1999 to 2008, was Minister of Conservation from 1987 to 1989. Ministerial lists are published on Wikipedia http://en.wikipedia.org/wiki/Ministry_for_the_Environment_(New_Zealand) and http://en.wikipedia.org/wiki/Minister_of_Conservation_(New_Zealand) (accessed 1/10/2012).

degree of personal interest in environmental matters) may have benefitted environmental interests. Examples include: Geoffrey Palmer who held positions as Minister for the Environment concurrently as Deputy Prime Minister in the late 1980s which assisted in the creation of the Resource Management Act, New Zealand's primary environmental management legislative instrument; and Helen Clark, a Minister of Conservation in the late 1980s and, when Prime Minister in the 2000s, promoted environmental sustainability as a key government policy priority.[260]

Within the public service three "central agencies" form a core Executive. The Department of the Prime Minister and Cabinet (DPMC), Treasury, and the State Services Commission (SSC). DPMC has responsibility for advising the Prime Minister and Cabinet on all policy proposals which are likely to have implications for the government as a whole or impinge on issues of political priority or sensitivity to the current government or Prime Minister (although the department is not as large or as all-powerful as in some other comparable jurisdictions[261]). Treasury has responsibility for advising the Minister of Finance on all proposals with economic, financial, fiscal (expenditure or revenue), or regulatory implications. Its fiscal ambit is institutionalised. Treasury consultation is mandatory on all policy matters, and in part because of this it is able to exercise considerable influence. Arguably Treasury is the most powerful of the three agencies.[262] SSC has responsibility for advising ministers on general machinery of government issues, on proposals to establish, merge or disestablish state sector agencies (other than State-owned enterprises), and on proposals with an impact on organisational structures, strategic alignment, and capability. The SSC is also responsible for public sector chief executive employment, accountability and departmental performance specifications, and workforce or employment relations in the state sector. [263]

Beyond the three "central agencies", the nature of departmental involvement depends on the issue, and departmental responsibilities. There is usually a lead department with some form of institutionalised authority and a cadre of other departments with greater, lesser, or perceived

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[260] D. Young, *Values as Law: The History and Efficacy of the Resource Management Act* (Wellington: Institute of Policy Studies, 2001). P.19. Speech to the annual Labour Party Conference, Helen Clark, 28 October 2006; http://www.scoop.co.nz/stories/PA0610/S00539.htm (accessed 21/11/2012).

[261] Peters, *The Politics of Bureaucracy*. P.144.

[262] The "Better Public Services Advisory Group Report" has recommended changes to the roles of the three central agencies that will, if implemented, increase the influence of DPMC in setting government priorities, increase the influence of the SSC over how senior public servants work, and confine the role of Treasury to focus more on the Crown's overall balance sheet and operating statement, rather than focusing on individual agencies as has tended to be the default position. See New Zealand Government, "Better Public Services Advisory Group Report," (Wellington: New Zealand Government, 2011). P.8.

[263] Cabinet Office, "Cabguide", http://cabguide.cabinetoffice.govt.nz/procedures/consultation/departmental-consultation (accessed 16/10/2012) succinctly sets out the roles of DPMC, Treasury and SSC.
See also B. Guy Peters, "Concepts and Theories of Horizontal Policy Management," in *Handbook of Public Policy*, ed. B. Guy. & Pierre Peters, J. (London: Sage, 2006). P.19; ———, *The Politics of Bureaucracy*. P.365.

interests in any given function or issue.[264] How all these departments operate depends on the degree of political and policy priorities and/or sensitivity for the government (supported by the Cabinet ranking of the minister for the lead department), fiscal implications, and the perceived or actual capability and /or capacity of the lead department and/or its senior management.[265]

There are four points to make about the policy system that are relevant to assessing what influences environmental policy effectiveness. First, the Prime Minister, Cabinet and ministers dominate formal policy decision-making both in theory and in practice.[266] Second, the three central agencies are able to exercise considerable influence across the board because of their institutionalised authorities.[267] Third, the size of the system, though small, nevertheless still gives rise to formal and informal policy subsystems where lead departments can exercise greater or lesser authority depending on capacity, capability and reputation or perception of the department, of its Chief Executive, or of departmental personnel.[268] And even though New Zealand's policy system is comparatively small, this does not mean that its intra-government processes of developing and promoting policy are not complex nor consume considerable energy.

There is also a significant fifth point about New Zealand's policy system, and the organisation of its environmental policy components. They have been influenced by particular approaches to policy responses, and institutional and organisational form. This is discussed next.

3.3.3 Institutionalised form, and ways of thinking in the public service

The organisation and management of the New Zealand public sector was overhauled in the 1980s and 1990s to create a distinctive model of public management, with long lasting effect. In particular, it influenced many (but not all) organisational and institutional components of New Zealand's environmental administration.

Changes to public sector management occurred in many countries in the 1980s and 1990s, including New Zealand, and in a form often generically described as New Public Management (NPM).[269] The

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[264] See detail of recommended formal processes for developing Cabinet policy papers
http://cabguide.cabinetoffice.govt.nz/procedures/papers (accessed 1/10/2012).
[265] Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. P.97-98
[266] Ibid. P.96. Mintrom, "Participating in Agenda Setting." P.609.
[267] Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. P.97.
[268] J. Whitcombe, "Policy, Service Delivery and Institutional Design: The Case of New Zealand's Social Sector Government Agencies, 1984 - 2007" (Victoria University of Wellington, 2008). P.59. Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. Pp.24-25 & 97.
[269] C. Hood, "A Public Management for All Seasons," *Public Administration* 69 (1991). P.3-19. T. Christensen, Laegreid, P., "A Transformative Perspective on Administrative Reform," in *New Public Management: The Transformation of Ideas and Practise*, ed. T. Christensen & P. Laegreid (Aldershot: Ashgate, 2002). P. 13-42. Some of the early NPM theorists now argue the trend of public administration has moved on, and is being influenced by technological change and public access to digital services. P. Dunleavy, Margetts, H., Bastow, S.,

New Zealand variant of NPM was distinctive. It involved theory based on neo-classical economics and views that arose from that body of theory about efficiency, principal-agent relationships, and accountability. Characteristics of New Zealand NPM included the concept of government as a complex series of contractual relationships, contestability of service, transparency of political intervention, performance specification, reporting and monitoring, widespread use of formal written contracts, and stress on economic incentives and sanctions. There was also a preference for single purpose organisations (to avoid perceived functional conflicts), marketisation of government services, and a shrinking of state functions.[270] The neo-classical economics principles on which the reforms were based also incorporated views about the environment and the nature of any government environmental action. The core of these assumptions is that environmental problems are externalities that can be dealt with by applying principles of exchange and substitution, and that government action (or "intervention", a term used often in such theory) should arise in the event that markets manifestly fail to address the problem.[271]

The pros and cons of the New Zealand NPM model have been widely debated.[272] There is some agreement that it improved the efficiency of the public service.[273] However, it has also been argued that the changes brought an over-emphasis on vertical management at the expense of horizontal coordination, lack of strategic focus, and an unintended effect of promoting outputs at the expense of capability (the idea that Ministerial interest in outputs and results crowded out ownership and capability requirements), probably caused by the model's inherent contractualism.[274] Other critiques

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Tinkler, J., "New Public Management Is Dead - Long Live Digital-Era Governance," *Journal of Public Administration Research and Theory* 16, no. 3 (2006).
Marketisation refers to the state-owned enterprises acting like market-oriented firms.
[270]Boston, *Public Management; the New Zealand Model*. Gorringe, " Economics for Policy: Expanding the Boundaries." G. Scott, *Public Management in New Zealand: Lessons and Challenges* (Wellington: NZ Business Roundtable, 2001). R Norman, *Obedient Servants? : Management Freedoms and Accountabilities in the New Zealand Public Sector* (Wellington: VUP, 2003). J. Halligan, "Reform Design and Performance in Australia and New Zealand," in *Transcending New Public Management: The Transformation of Public Sector Reforms*, ed. T. Christensen & P. Laegreid (Aldershot, UK: Ashgate Publishing Ltd., 2007).
[271] D. Fullerton, Stavins, R., "How Economists See the Environment," *Nature* 395 (1998). Pp.433-434. T.l. Anderson, Leal, D.R., *Free Market Environmentalism* (San Fransisco: Westview Press, 2001). Hanley, "Economics and Sustainable Development: What Have We Learnt, and What Do We Still Need to Learn?." Pp. 77-108. Vatn, *Institutions and the Environment*. Pp. 296-297.
[272] Boston, *Public Management; the New Zealand Model*. A. Schick, "The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change," (Wellington: State Services Commission, 1996). ———, "Reflections on the NZ Model," in *Unpublished lecture given at NZ Treasury* (Wellington: Treasury, 2001), ibid. B. Jesson, *Only Their Purpose Is Mad* (Palmerston North, NZ: Dunmore Press, 1999), Scott, *Public Management in New Zealand: Lessons and Challenges*. R. Gregory, "Government Culture: A Sceptical View of New Public Management," in *New Public Management: The Transformation of Ideas and Practise*, ed. T. Christensen & P. Laegreid (Aldershot: Ashgate, 2001). Norman, *Obedient Servants? : Management Freedoms and Accountabilities in the New Zealand Public Sector*.
[273] Boston, *Public Management; the New Zealand Model*. P.353.Norman, *Obedient Servants? : Management Freedoms and Accountabilities in the New Zealand Public Sector*. Pp.195-197.
[274] See in particular Schick, "The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change." The vertical-horizontal tension is not confined just to the New Zealand NPM model. It is a common issue in public administration where vertically oriented organisations and institutional systems tend to be the norm

also identified issues of equity, due process, democratic responsiveness, transparency and accountability.[275]

The model of public administration introduced in the late 1980s and early 1990s has been modified since, to the extent that the framework of public management in the 2000s has been described as qualitatively different from the 1990s.[276] Nevertheless, some say that core elements (or at least a number) of the 1980s changes remain in the two founding legislative instruments - the State Sector Act, and the Public Finance Act.[277] By the mid-2000s, however, modifications were introduced resulting in a greater integration and alignment of policy and operational functions on both vertical and horizontal dimensions, a reassertion of the role of the central agencies to coordinate machinery of government arrangements and set goals and standards, a renewed focus on the ethical responsibilities of public service, and a pragmatic approach to dealing with structural issues on a case-by-case basis.[278] These changes may be taken further. A review in 2011 recommended more institutional changes, lending weight to the observation about a shift of emphasis to horizontal alignment against specific targets, an altered form of central agency coordination and direction, and pragmatic structural change.[279]

(Peters, "Concepts and Theories of Horizontal Policy Management." P.117). However, the contractual nature of New Zealand's system accentuated the tension leading creating functional silos.

[275] Boston, *Public Management; the New Zealand Model*. Pp.353-361.

[276] J. Boston, C. Eichbaum "State Sector Reform and Renewal in New Zealand: Lessons for Governance," in *Repositioning of public governance - Global experiences and challenges* (Taipei2005). P.33. P. Hughes, Smart, J., ""You Say You Want a Revolution"...The Next Stage of Public Sector Reform in New Zealand," *Policy Quarterly* 8, no. 1 (2012). P.4.

[277] J. Whitcombe, "Contributions and Challenges of 'New Public Management': New Zealand since 1984," *Policy Quarterly* 4, no. 3 (2008). P.12. Whitcombe also says that the Environment Act 1986 was a third important piece of legislation that accompanied the State Sector Act and the Public Finance Act (———, "Policy, Service Delivery and Institutional Design: The Case of New Zealand's Social Sector Government Agencies, 1984 - 2007". Pp.71-72).

[278] ———, "Policy, Service Delivery and Institutional Design: The Case of New Zealand's Social Sector Government Agencies, 1984 - 2007". P.269. ———, "Contributions and Challenges of 'New Public Management': New Zealand since 1984." P.9.

[279] ———, "Contributions and Challenges of 'New Public Management': New Zealand since 1984." P.9. Government, "Better Public Services Advisory Group Report.", in particular pp.6-8.

The review signals changes to the system of accountabilities of the chief executives and the type of reporting that departments undertake. The report says changes would involve reconfiguring the system more explicitly around government-desired results or outcomes. Implications for ministers and their roles, so the Report recommends, are for them to narrow down and specify the few things that matter most to the government of the day. The public service would continue to be a key source of advice on what the Government's priorities for action should be, as well as a proactive mobiliser of people and resources to deliver the priorities set by the government of the day. Implicit in the report is a signal of a lesser role of government as a supplier of service and rather more as a coordinator of service providers, describing the process using public choice theory language of "harnessing the power of choice" and "amplifying the direct influence of citizens and businesses on service delivery". The report also recommended a legislatively backed shift from leadership primarily being about the role of departmental chief executives to leadership that instead is oriented more to the needs of an overall system focused on delivering the outcome priorities set by government. Some of these changes, the Report says, would involve amendments to the State Sector Act and the Public Finance Act

It might be argued that the New Zealand public service has moved on from the era of NPM, and that emphasising it in this research is simply regurgitating old history. However, it would be highly challengeable to say that institutionalisation of the 1980's way of thinking about policy, policy instruments, governance, organisational design, and its rationalities had disappeared from public administration. Political culture and general cultural values affect the operation of an administrative system, and can have long lasting influence on both outputs and internal management of organisations.[280] At the very least the changes of the late 1980s and early 1990s, and its type of thinking, created environmental policy and institutional legacies that continue on in the 2000s. It was partly responsible for elements of the putative design of a policy/regulation/operational split between environmental departments described in later in this chapter. It contributed to the highly devolved system of general environmental management in New Zealand, and the limited direction given to that system.[281] It remains evident in policies and instruments, such as general regulatory impact assessments and in the structure of important environmental legislation such as the Resource Management Act (1991), Biosecurity Act (1993), Fisheries Act (1996), and Hazardous Substances and New Organism Act (1996).[282] Furthermore, the case studies examined in later chapters occurred at least in part during a climate of thinking in parts of a public service conditioned by the ideas underpinning New Zealand's approach to NPM, even though the application of these ideas were evolving and changing.

Further possible legacies from the NPM era, or at least some of its theoretical assumptions, are that ideas about what constitutes "good" policy, and how it is formed, may have been embedded in policy approaches[283]. For example, it can be argued that certain assumptions and values become evident in vocabulary that "good policy" involves "rational enquiry", and that policy involves government "intervention" based around "intervention logic." Its theoretical and disciplinary underpinnings promoted the primacy of rules, rights and process as the heart of policy prescription.[284] However, while some of the theoretical underpinnings of the New Zealand NPM model may still influence

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[280] Peters, *The Politics of Bureaucracy*. Pp.34-79.

[281] Bührs, "From Diffusion to Defusion: The Roots and Effects of Environmental Innovation in New Zealand." P.95. Devolution, however, is also derived from the principle of subsidiarity (action should be taken at the level within the institutional hierarchy at which it can be most effective. Connor, *Institutional Change for Sustainable Development*. P.72.) New Zealand's devolution involved paradoxical sets of arguments between the Treasury and local government, where Treasury, while arguing for devolution on theoretical grounds, also advocated restraining local government's functional, regulatory and fiscal powers, whereas local government argued also for devolution , but with the necessary powers to undertake "local solutions for local problems" and minimal central government direction. See G. Bush, *Local Government and Politics in New Zealand* (Auckland: Auckland University Press, 1995). Pp.301-303.

[282] Bührs, "From Diffusion to Defusion: The Roots and Effects of Environmental Innovation in New Zealand." Pp.94-95. For a comparative table of environmental policy instruments employed amongst OECD countries, see Jacob, "Instruments for EPI in 30 OECD Countries." Pp.40-41.

[283] See previous chapter, Section 2.4.4.1

[284] Boin, "Institutional Theory and the Public Policy Field: A Promising Perspective for Perennial Problems." P.45.

policy approaches within parts of the public service, there is also evidence in some departmental manuals and guidance of a wider range of ideas about crafting policy.[285]

In summary, the New Zealand variant of NPM was distinctive. The changes it brought to public administration created certain presumptions in New Zealand's political/bureaucratic system about organisational form, locus of control, and modes of thinking about human behaviour that in turn had an influence on policy design and implementation. Those changes brought a sharper focus to organisational and institutional purpose. From an environmental point of view it created organisations and legislation which were outwardly more "ecologically rational" than those which came before.[286] However, it also focused on institutions and processes rather than objectives (hence it has been argued creating a bias against government plans and strategies[287]), which in turn linked to a view (a constrained one) on the nature and purpose of government action. If solving environmental problems required challenging those views, then the ideological and negotiating hurdles for proponents of environmental effectiveness became higher.

3.3.4 Summary

Features of the New Zealand system of government, and policy-making system that seem most relevant to how environmental policy is developed, and its nature are:

- The three year electoral cycle constraining windows of opportunity for contentious or long-run policy initiatives.

- Strong central government meaning policies can theoretically be conceived, developed and enacted where there is requisite will and priority (albeit moderated by exigencies of MMP and the constraining effect of the electoral cycle).

- The smaller scale of the system giving rise to the possibility of greater influence of individuals.

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[285] For a more rationalist approach see Baehler, "What Are the Limits to Public Service Advising? The "Public Argument" Test." Pp. 3-8. And, Scott, "Improving the Quality and Value of Policy Advice." For a colourful critique of both rationalist policy advice and the idea about political neutrality in policy advice see Gregory, "Politics, Power and Public Policy Making: A Response to Karen Baehler." Pp.26-32.
A useful source of references about different schools of thought on policy is MfE, "Professionalising Policy: A Guide for Developing the Craft of Policy Analysis," ed. Ministry for the Environment (Wellington: Ministry for the Environment, 2011). Pp. 97-103. This same reference, on p.97, refers to guides to policy advice and analysis (with differing emphases) produced by the Department of Internal Affairs, the Department of Labour, the Ministry of Justice, The Ministry of Economic Development, and the Treasury.
[286] Bührs, *Environmental Policy in New Zealand: The Politics of Clean and Green?* . P.159.
[287] Bührs, "New Zealand's Capacity for Green Planning: A Political-Institutional Assessment and Analysis." Pp.40-41.

- Strong cognitive legacies from the NPM era influencing policy ideas, policy processes, and policy instruments.

- Institutional legacies, again from the NPM era and particularly prevalent in environmental management, influencing how and why environmental policy is developed.

Some of these features, for example the three year electoral cycle, are well described in the literature, as cited above. Others are less researched, for example the influence on environmental policy effectiveness of government will and priority, and of scale. Part of the purpose of this study is to seek to expand this body of research. The primary focus, however, is effectiveness of the administrative apparatus, and in particular departmental arrangements and the capacity of the main environmental departments to influence, and be influenced by, the intra-government system. Departmental arrangments and the workings of MfE and DoC are the subjects of the next two sections.

3.4 Departmental arrangements

There are a number of New Zealand government agencies that deal with environmental policy and issues either directly or indirectly. Three agencies currently have a direct environmental focus.[288] They are:

1. The Ministry for the Environment (MfE). MfE is the government's principal environmental policy department, reporting to the Minister for the Environment. It draws on the Environment Act 1986 as its founding statute, and the Resource Management Act 1991 as cornerstone environmental legislation;

2. The Department of Conservation (DoC). DoC concentrates on national nature conservation and reports to the Minister of Conservation. It manages New Zealand's extensive conservation lands (approaching 30% of the land area) and protected indigenous biodiversity. The Conservation Act 1987 is DoC's cornerstone legislation;

3. The Environmental Protection Authority (EPA). The EPA was set up in mid-2011. While it may be important in the future, it is too early to say yet what policy role it may play. [289] It is a

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[288] Generically MfE and DoC are departments of state and listed in the first schedule of the State Sector Act 1988.The EPA is a state entity listed as a crown agent and listed in the Crown Entities Act 2004.
[289] The Environmental Protection Authority (EPA) is established under the Environmental Protection Authority Act 2011. The Act requires the EPA to contribute to the "efficient, effective, and transparent management of New Zealand's environment and natural and physical resources" (Environmental Protection Authority Act, 2011, S.12, 1(a)). The environmental Acts under which the EPA has regulatory powers, duties and functions are: Hazardous Substances and New Organisms Act 1996; Resource Management Act 1991; Ozone Layer Protection Act 1996; Imports and Exports (Restrictions) Act 1988 and Imports and Exports (Restrictions) Prohibition Order

government-administered agency operating under a quasi-independent Board. It is not classified as a core goverment department, but is part of the wider public sector that carries out government functions at arms length from ministerial decision-making. It performs environmental regulatory roles but it is not, for example, a hands-on pollution control agency. Regional and local councils undertake this activity and a wide range of other environmental functions regionally and locally.

Regional and local government are important components of the overall system of environmental policy in implementation terms, and in this sense regional councils in particular might be seen as an operational arm of MfE. Nevertheless, in formal constitutional terms they are subservient to central government and not responsible for national policy. Their role is geographically determined, and functionally focused on planning, environmental regulation, and a range of other functions such as providing public transport and emergency management.[290]

Two other significant components in New Zealand's national environmental governance framework are the Office of the Parliamentary Commissioner for the Environment (PCE) and the Environment Court. They are independent of the Executive of government. The PCE audits and reviews the likely or actual effect of policy and legislation, with varying effect.[291] The PCE reports to Parliament. The Environment Court adjudicates on disputes under the Resource Management Act and is an arm of the Judiciary. Its judgments interpret legislation and can thus influence the way authorities' view and approach aspects of environmental management.[292]

Other government departments perform environmental functions but these are part of their portfolio of other functions. The Ministry of Primary Industries promotes economic growth through policy, regulation and operations for agriculture, fisheries, food safety, and biosecurity.

(No. 2) 2004; and Climate Change Response Act 2002. The EPA must act in a way that furthers any objectives (or purposes) stated in these Acts.

The EPA "end outcomes" are described as: sustainable allocation & management of New Zealand's natural and physical resources for national benefit: harm from biological and chemical agents are effectively managed or reduced while preserving opportunities for New Zealanders to benefit from their use: and decreased New Zealand net emissions of greenhouse gases below business as usual levels.

One of the EPA's functions is "to advise the Minister (EPAA 2011, S.13 (a). See E.P.A., "Statement of Intent: 2011-2014," (Wellington: Environmental Protection Authority, 2011). www.epa.govt.nz/Publications/EPA%20SOI%202011-14.pdf (accessed 1/10/2012).

[290] See Bush, "Local Government."P.164. Bush, in an earlier work, has said, "central government has overwhelmingly preferred the twin approaches of negotiation and tempered advice to the mailed fist of dictation", but this may not be how local government always sees it. ———, *Local Government and Politics in New Zealand*. P.175.

[291] Descriptions of the role of the PCE and critiques can be found in T. Bührs, "Barking up Which Tree? The Role of New Zealand's Environmental Watchdog," *Political Science* 48, no. 1 (1996). P.1-28. See also D. Young, *Keeper of the Long View: Sustainability and the Pce* (Wellington: Parliamentary Commissioner for the Environment, 2007).

[292] For examples of Environment Court and higher court interpretation of the RMA, see K. Palmer, "An Analysis of Recent Case Law Development " *Resource Management Theory and Practise* (2005). Pp.182-226.

Environmental considerations are part of these activities.[293] The Ministry of Health is a policy and regulatory department supporting health outcomes for citizens which include environmental responsibilities such as drinking water quality and sanitation. Land Information New Zealand (LINZ) is an operational and regulatory agency with responsibility for some land management and pest control. The Ministry of Business, Innovation and Employment is a policy, regulatory and operational department promoting and supporting economic growth and businesses while also encompassing functions including oversight of energy generation, use and markets, efficiency and conservation, science and research, and hydrocarbon and mineral exploitation standards. The Ministry of Transport is responsible for transport policy.[294] An additonal agency that performs environmental functions, as well as economic efficiency functions, is the Energy Efficiency and Conservation Authority (EECA). It encourages, supports, and promotes energy efficiency, energy conservation, and the use of renewable sources of energy in New Zealand.[295] It is not a policy agency.

The overall purpose of these departments is not primarily environmental, unlike MfE, the EPA, or DoC. Literature suggests that in cases of tensions between their primary purpose and their environmental functions there will be trade-offs, and that generally the primary departmental purpose will dominate.[296] Consequently, although these departments have environmental functions, they have an equivocal status in a study of factors that influence environmental effectiveness. While they might promote effectiveness in some circumstances, they could also be a constraining factor.

3.5   Ministry for the Environment and Department of Conservation

This study concentrates on two departments: MfE and DoC. This is because they both have an explicit environmental *raison d'être*, they deal with environmental policy at a national level, and they have been in existence long enough to generate data for research (unlike the EPA).

3.5.1   The background to establishing the Ministry for the Environment and the Department of Conservation

MfE and DoC were set up in 1986 and 1987 respectively in a major reorganisation of environmental administration in New Zealand. Their establishment was a result of a combination of history and

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[293] MPI, "Ministry for Primary Industries Statement of Intent 2012-2015," (Wellington: Ministry for Primary Industries, 2012). Pp.7-8.

[294] Ministry of Health, "Statement of Intent 2012/13 to 2014/15: Ministry of Health," (Wellington: Ministry of Health, 2012). LINZ, "Statement of Intent 2012-2015," (Wellington: Land Information New Zealand, 2012). MOT, "Statement of Intent 2012-2015," (Wellington: Ministry of Transport, 2012). At the time of writing the Ministry of Business, Innovation and Employment had not produced a statement of intent. For details of its functions see http://www.mbie.govt.nz/what-we-do (accessed 21/11/2012).

[295] http://www.eeca.govt.nz/about-eeca

[296] Hukkinen, *Institutions in Environmental Management: Constructing Mental Models in Sustainability*. P.157-159. T. Bührs, "New Zealand," in *Capacity Building in National Environmental Policy: A Comparative Study of 17 Countries*, ed. M. Jänicke, Weidner, T. (Berlin: Springer, 2002). P.336.

experience of environmental management up to the 1980s, political debate and lobbying, and a wider process of government reform.

Up until the 1980s New Zealand had developed a rather complex web of environmental administration. It had evolved over a period of at least fifty years, rarely as a focus in its own right, but usually as an add-on to developmental functions. Within central government, a cadre of knowledge and expertise existed in a number of departments like the New Zealand Forest Service, Lands and Survey Department and Ministry of Works and Development. Those departments were dominated by their development-oriented components. In addition there was a small and comparatively powerless Commission for the Environment (set up in the 1970s), numerous regional, local government, and special purpose bodies with environmental functions, all working with issue-specific statutes, and overseen and partly subsidised by central government.[297] The later part of this period, from the 1960s to the 1980s, witnessed growing concern nationally and internationally about decline in environmental quality, and within New Zealand discontent amongst environmental NGOs and an increasing section of the wider public about the role of the government as a resource developer compared to that of protector of the environment. [298]

Between 1984 and 1991 what began largely as a conservation/environment-oriented change became part of a much wider process of government administration reform.[299] This wider process was based on neo-classical economic theories of administrative efficiency and organisational form described earlier in the chapter. It was driven, and given effect to, by a small group of politicians at the centre of government, and by officials, largely in the Treasury. [300]

MfE came into existence in 1986 combining roles of the Commission for the Environment, and parts of the Ministry of Works. DoC was formed in 1987 combining parts of the Department of Lands and Survey, the New Zealand Forest Service, and the Department of Internal Affairs (Wildlife Service and Historic Places).

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[297] Bührs, *Environmental Policy in New Zealand: The Politics of Clean and Green?* R. Galbreath, *Working for Wildlife: A History of the New Zealand Wildlife Service* (Wellington: Bridgit Williams books & Historical Branch, Department of Internal Affairs, 1993). M. Roche, *Land and Water: Water and Soil Conservation and Central Government in New Zealand 1941 - 1988* (Wellington: Department of Internal Affairs, 1994). ———, "The State as Conservationist, 1920 - 60: 'Wise Use' of Forests, Lands, and Water.," in *Environmental Histories of New Zealand*, ed. Eric Pawson (Melbourne: Oxford University Press, 2002). Bush, *Local Government and Politics in New Zealand*. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*.
[298] ———, *Our Islands, Our Selves: A History of Conservation in New Zealand*. Pp. 168-204.
[299] Boston, *Public Management; the New Zealand Model*. P.84. Whitcombe, "Policy, Service Delivery and Institutional Design: The Case of New Zealand's Social Sector Government Agencies, 1984 - 2007". P.97.
[300] For context and drivers of the public administration changes, see Boston, *Public Management; the New Zealand Model*. Also Whitcombe, "Policy, Service Delivery and Institutional Design: The Case of New Zealand's Social Sector Government Agencies, 1984 - 2007". P.77-91.

The work of the two new departments was based on two pieces of legislation applying to managing general environmental effects - the Resource Management Act (1991); and setting out how public protected resources should be managed - the Conservation Act (1987).

Together, these two departments, MfE and DoC, and their legislation, formed a long-lasting institutional and organisational core to New Zealand's central government environmental administration.

3.5.2 Roles, priorities, and design

MfE

MfE is New Zealand's principal environmental policy agency, with a wide policy ambit. It was established by the Environment Act (1986). The functions of MfE are to advise the government on all aspects of environmental administration.[301] In exercising that function, the Environment Act says that:

> *…in the management of natural and physical resources, full and balanced account is taken of the intrinsic value of ecosystems, of all values that individuals and groups put on the quality of the environment, of the principles of the Treaty of Waitangi, of the sustainability of natural and physical resources, and of the needs of future generations.[302]*

MfE's statutory functions have endured with few changes over a period of twenty-five years. [303]

MfE's internal priorities are set formally through a process of interactions with its minister, at least annually, and published for parliamentary scrutiny, a system standard to the public service. The system might seem top-down, as in fact it is partly designed to be in order to action the environmental priorities of the government and/or the minister. [304] In practice, and in part also through design, it involves a form of bargaining and persuasion between views of the Ministry and the minister.[305]

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[301] Environment Act 1986, S.31.
[302] Environment Act 1986, Preamble.
[303] MfE's 1999 *Brief to Incoming Minister* said MfE was the government's principal adviser on environmental issues. See MfE, "Brief to Incoming Minister," (Wellington: Ministry for the Environment, 1999). http://www.mfe.govt.nz/publications/about/briefing-oct99.pdf (accessed 1/10/2012). Its 2011 Statement of Intent said MfE was the government's primary adviser on New Zealand environmental matters and international matters that affect the environment. See ———, "Statement of Intent 2011-2014." http://www.mfe.govt.nz/publications/about/soi/2011/page2.html (accessed 1/10/2012).
[304] Treasury, "Preparing the Statement of Intent: Guidance and Requirements for Departments," (Wellington: Treasury, 2012). Pp.11-12.
[305] See for example, MfE's annual Statement of Intents May 2003 to May 2012 (http://www.mfe.govt.nz/publications/about/soi/ (accessed 15/10/2012).Shaw, *Public Policy in New Zealand: Institutions, Processes and Outcomes*. P.104.
Evidence of the influence of views promoted by departments can harder to discern, but a useful way to examine these is in the briefs written at the time of changes of ministers or governments. In MfE's case see, for

Government environmental strategies have also existed from time to time. In formal terms, government strategies should have greater impact than internal departmental priorities because they usually apply across government. Two prominent examples were *Environment 2010* in 1995, and *The New Zealand Sustainable Development Strategy* in 2003. Neither, however, survived changes of government in 1999 and 2008.[306]

Design of MfE flows in part from its functions and priorities, and in part from the conceptual basis of New Zealand's 1980's public administration model. The policy/regulation/operation organisational split of much of New Zealand's governmental environmental administration, and devolution of many environmental functions to territorial regional and local government, means that MfE is a relatively small department. Although policy has been the primary focus of the Ministry between 1986 and the present, from time to time its managers have interpreted how it worked differently. For example, in the mid-2000s MfE described itself as "an organisation that works effectively with others to achieve the sustainable development of New Zealand" rather than primarily a provider of policy advice.[307] Since 1987 MfE has organised itself around teams of staff arranged in terms of functions, topics, or perceived client groups, depending on the management fashion of the time.[308] Much of its work takes place in Wellington, appears to be behind the scenes, relies on ensuring it has a cadre of skilled personnel, and consumes considerable energy in persuasion and bargaining to create conditions whereby others act.[309]

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example, http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2008/index.html (accessed 15/10/2012).

[306]MfE, "Environment 2010 Strategy: A Statement on the Government's Strategy on the Environment," (Wellington: Ministry for the Environment, 1995). DPMC, "Sustainable Development Programme of Action," (Wellington: Department of Cabinet and Prime Minister, 2003).
These two examples have been criticised as too fragmented or insufficiently institutionalised for long term environmental effectiveness. Long term environmental strategies are seen in environmental literature as one basis of consistent national environmental performance. Bührs, "New Zealand's Capacity for Green Planning: A Political-Institutional Assessment and Analysis." P.35-36. Connor, *Institutional Change for Sustainable Development*. P.222. K. Bosselmann, "Why New Zealand Needs a National Sustainability Development Strategy," (Auckland: Parliamentary Commissioner for the Environment, 2007). P.19.

[307] http://www.mfe.govt.nz/publications/about/briefing-oct05/briefing-minister-oct05.pdf P.4. (accessed 5/7/2013)

[308] As examples of how MfE has organised itself, see MfE, "Annual Report 1998-1999," (Wellington: Ministry for the Environment, 1999).Pp. 55-59. ———, "Annual Report 2005-2006," (Wellington: Ministry for the Environment, 2006). Pp.72-79.. ———, "Annual Report 2010-2011," (Wellington: Ministry for the Environment, 2011). Appendix B.

[309] See for example ———, "Brief to Incoming Minister." P.6.
http://www.mfe.govt.nz/publications/about/briefing-oct99.pdf (accessed 21/11/2012).

DoC

DoC is principally a nature conservation agency, and is responsible for managing large areas of public land and marine areas designated as protected areas, and historic sites. [310] The functions of DoC are:

To manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department;

- *To preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats;*
- *To advocate the conservation of natural and historic resources generally;*
- *To promote the benefits to present and future generations of; (i) the conservation of natural and historic resources generally and the natural and historic resources of New Zealand in particular; and (ii) the conservation of the natural and historic resources of New Zealand's sub-Antarctic islands and, consistently with all relevant international agreements, of the Ross Dependency and Antarctica generally; and (iii) international co-operation on matters relating to conservation;*
- *To prepare, provide, disseminate, promote, and publicise educational and promotional material relating to conservation;*
- *To the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism;*
- *To advise the Minister on matters relating to any of those functions or to conservation generally.[311]*

Conservation is defined as:

… the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding options for the future.[312]

DoC's functions, like MfE's, have been enduring. The processes for establishing priorities are similar to MfE's, with the exception that DoC, and the Minister of Conservation, can be advised formally on policy and departmental priorities by the New Zealand Conservation Authority (NZCA), a statutory entity designed to represent a range of interests in the management of New Zealand's natural heritage.[313]

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[310] DoC was originally planned to be general heritage protection, management and advocacy agency. In the early 1990s the Historic Places Trust, a statutory entity under its own Act but overseen by the Department of Conservation, reverted to a more independent status, and in 1999 a Ministry of Culture and Heritage was created as a lead department for cultural heritage. DoC's advocacy function flowed from an environmental planning advocacy role undertaken before 1987 by Ministry of Works Water and Soil conservation arm. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P.210-211. "Born with a mission", *A short history of the Department of Conservation: 1987-2007,* http://www.doc.govt.nz/publications/about-doc/a-short-history-of-doc/born-with-a-mission/ accessed 21/5/2013.

[311] Conservation Act 1987, S.6.

[312] Conservation Act 1987, S.2.

[313] See Conservation Act 1987 S. 6(b), 6(c), 6(d), for functions, powers and membership of the NZCA.

DoC's design comes in part from the nature of its functions. However, it was not shaped in the same administrative style as MfE, even though it was created at the same time. [314] It was, and remains, a mixed policy/regulation/operations department with in-house operational, technical and scientific capacity, and a nation-wide presence.

The implications of functions, priorities and design for the effectiveness of MfE and DoC are, first, that their organisational and functional endurance provide opportunity to pursue issues over time. Persistence, so some literature suggests, along with consistency and institutional knowledge, feature in successful environmental policy.[315] A second implication is that their environmental focus lessens the likelihood that they will internally trade off environmental priorities against other priorities. In this sense the two agencies appear more 'ecologically rational' than other mixed functional departments in New Zealand, or examples of comparative environmentally-oriented departments in Australia or Britain.[316] However, while the NPM thinking may have created a more environmentally rational organisational design, the dominance of a political and administrative paradigm of the benefits of a minimal State sector associated with NPM also affected departmental priorities. The argument is that NPM's focus on outputs, combined with the less-State ideational orientation, devalued developing capacities for long term strategy or government planning.[317]

A third implication relates to the different design features of the two departments. MfE is designed on NPM lines as a policy department (although the purity of that design ideal is questionable as the Ministry, through its relationship with its Minister, has some regulatory and intervention abilities[318]). DoC is functionally integrated. Those in favour of policy/regulation/operations splits argue they provide greater clarity of thinking and help avoid capture by interests. A counter argument is that

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[314] The reasons for this are probably the combination of an accident of timing of the creation of DoC early in the administrative reforms of the 1980s/1990s, the level of public support for conservation and organised conservation NGO campaign to create DoC, the form of existing conservation management resources of the parent departments, and the large extent, specific nature, and overwhelming State-centred characteristics of protected lands and endangered species management in New Zealand. See Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P. 206-211.

[315] Connor, *Institutional Change for Sustainable Development*. P.77& 202. Dovers, *Environment and Sustainability Policy: Creation, Implementation, Evaluation*. P.161.

[316] In Britain the Department of Environment, Food, and Rural Affairs (DEFRA) is responsible for policy and regulations on the environment, food, and rural affairs (http://www.defra.gov.uk/ accessed 15/10/2012). In Australia the Department of Sustainability, Environment, Water, Populations, and Communities (DSEWPC) deals with environment protection and conservation of biodiversity, air quality, national fuel quality standards, land contamination, meteorology, administration of the Australian Antarctic Territory, and the Territory of Heard Island and McDonald Islands, natural, built and cultural heritage, environmental research, water policy and resources, ionospheric prediction, co-ordination of sustainable communities policy, population policy, housing affordability, and built environment innovation. See Administrative Arrangements Order, p.36, 14 September, 2010 (http://www.dpmc.gov.au/parliamentary/index.cfm accessed 15/10/2012).

[317] Bührs, "New Zealand's Capacity for Green Planning: A Political-Institutional Assessment and Analysis." P.38 & 41.

[318] For example, the Minister has intervention powers under the Resource Management Act, and not all of these are delegated to the EPA.

such splits detract from double-loop learning (combining learning both from designing polices, and implementing them), create insularity, and detract from integration.[319] Superficially this might suggest that MfE would, because of its more singular role, be better able to develop policy frameworks than DoC. But DoC might, through its experience and technical expertise, develop frameworks that are ultimately more effective.[320] However, drawing such a comparison may be difficult given that MfE's broad policy focus is more extensive and arguably more challenging than DoC's because of the wider range of interests that are affected, whereas DoC's operational role has technical and implementation challenges that MfE does not face. This is not to say, however, that some of the detailed technical aspects of environmental problems either department seeks to address, in nature conservation or waste management for example, may be any more or less complex conceptually.

3.5.3 Funding and staffing

Levels and adequacy of funding and staff have been an issue for both MfE and DoC. Participating in policy processes is time consuming and resource intensive, particularly where engagement with interest groups and the public occurs. Similarly, operational environmental management is resource intensive when it requires action on the ground; for example in New Zealand to combat invasive species..

In 1999, MfE had approximately 115 staff and appropriations of $28.3m. In 2008, it had staff of 330 and appropriations of $120.2 m (without including $749m Kyoto liability estimates). In 1999, DoC had approximately 1400 permanent staff and appropriations of $199.5m. In 2008, it had 1827 permanent staff and appropriations of $444m.[321] It has been argued that for the period between 1987 and at

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[319] The first view draws on public choice theory. See Gorringe, " Economics for Policy: Expanding the Boundaries." Scott, *Public Management in New Zealand: Lessons and Challenges*. For the alternative critique see R. Gregory, "Getting Better but Feeling Worse? Public Sector Reform in New Zealand," *International Public Management Journal* 3 (2000), R Norman, Gregory R, "Paradoxes and Pendulum Swings: Performance Management in New Zealand's Public Sector," *Australian Journal of Public Administration* 62, no. 4 (2003). Peters observes that this division of views comes from process tensions between advisory ('staff') and operational roles ('line'). He says the tension is as old as government, occurs between departments and within departments, and engenders conflict between those who see themselves doing the 'work', and those who 'merely' plan. Such tensions can create policy coordination challenges and give rise to perennial efforts at horizontal policy coordination. Peters, *The Politics of Bureaucracy*. Pp.145-146 & 149. ———, "Concepts and Theories of Horizontal Policy Management."

[320] There could also be elements of a difference between "staff" and "line" roles of the two organisations (see previous footnote). While MfE more closely fits the 'staff' descriptor, and DoC the "line" descriptor, elements of both roles are found in each organisation, particularly in DoC.

[321] Historic vote information, http://www.treasury.govt.nz/budget/votehistory. DoC, "Annual Report 1999-2000," (Wellington: Department of Conservation, 2000). MfE, "Annual Report 1999-2000," (Wellington: Ministry for the Environment, 2000). DoC, "Annual Report 2008-2009," (Wellington: Department of Conservation, 2009). MfE, "Annual Report 2008-2009," (Wellington: Ministry for the Environment, 2009).

least the late 1990s the financial resource available to both departments was inadequate for what they being asked, or expected, to do.[322]

There are a number of perspectives on adequacy of resources. Lack of resources can set organisations up to fail. Alternatively, some argue that departments need do only what they are funded to do.[323] Furthermore, departmental claims of under-resourcing could be evidence of budget maximising tendencies.[324] Despite theoretical arguments, a number of high profile resource-related controversies in the late 1990s resulted in increased operational funding for DoC.[325] Also from the late 1990s, MfE became involved with larger policy and semi-operational programmes that similarly attracted more resources eventually.[326] Coupled with this was a period of buoyant economic conditions in New Zealand from the late 1990s to 2008. During this period, staff numbers increased and budgets for both departments more than trebled.[327] Although tasks increased, it is a fact that resources were nowhere near as constrained in the mid-2000s as in the 1990s.

3.5.4 Leadership and culture

Literature argues that leadership and culture are important influences on performance and effectiveness, but that this is hard to show empirically.[328]

The following section highlights some characteristics, and published information (admittedly very limited) that may be significant for leadership and culture in MfE and DoC.

First, New Zealand public service Chief Executive appointments are not made by politicians or ministers but by a statutorily independent State Services Commissioner (although Cabinet has a right of veto). And the Chief Executive is then the employer of all staff in their departments. Consequently,

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[322] P. Ali Memon and Harvey C. Perkins, "Environmental Planning and Management: The Broad Context," in *Environmental Planning and Management in New Zealand*, ed. P. Ali Memon and Harvey C. Perkins (palmerston North: Dunmore Press, 2000).P.18**.** Ericksen, ed. *Planning for Sustainability: New Zealand under the RMA*. P.235. Bührs, "New Zealand's Capacity for Green Planning: A Political-Institutional Assessment and Analysis." P.38. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P.211.

[323] P. Hartley, *Conservation Strategies for New Zealand* (Wellington: NZ Business Round Table, 1997). P.398. Scott, *Public Management in New Zealand: Lessons and Challenges*. Pp.39-42 & 140. Scott says the reason for this is one of efficiency, whereas others see it also one of control. Heywood, *Politics*. P.385. Peters, *The Politics of Bureaucracy*. P.13.

[324] This line of argument is advanced for "contractual" government and public choice theory. M. Olsen, *The Logic of Collective Action: Public Goods and the Theory of Interest Groups* (Cambridge, Massc.: Harvard University Press, 1968), Niskanen, *Bureaucracy and Representative Government*.

[325] These included native forest die-back probably from introduced possum browsing, and the collapse of a viewing platform in Punakaiki National Park killing fourteen people. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P. 215-216

[326] See MfE, "Annual Report 1998-1999." P.2. and ———, "Annual Report 2005-2006." P.2.

[327] DoC, "Annual Report 1999-2000." MfE, "Annual Report 1999-2000." DoC, "Annual Report 2008-2009." MfE, "Annual Report 2008-2009."

[328] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* McMahon, *The Environmental Protection Agency: Structuring Motivation in a Green Bureaucracy: The Conflict between Regulatory Style and Cultural Identity*. Peters, *The Politics of Bureaucracy*. P.79.

unlike some other jurisdictions such as the USA, there is a higher degree of formal separation of departmental staff from the immediacy of political imperatives. Second, in twenty-five years of existence MfE and DoC have had five Chief Executives each, suggesting some lengthy periods of management stability. A degree of separation from immediate political concerns and management stability might create conditions to pursue longer term environmental objectives, or the time to create the frameworks that support positive environmental outcomes. Alternatively, this might create barriers to new thinking about different ways of addressing environmental problems. Third, DoC and,to a lesser degree, MFE are large departments and consequently leadership and decisions are exercised at many levels, not simply by the Chief Executive.[329] A fourth point is leadership within MfE seems to focus on the fostering of excellence in ideas and the powers of persuasion and bargaining, whereas in DoC it tends to focus on operational excellence and management of affected interests.[330] This is something of a generalisation and similar qualities may well be found in both organisations. Nevertheless it is also a reflection of the nature of each department's work, and what is culturally valued.

Leadership can create or harness culture, but culture itself is not necessarily a product of leadership. Culture can arise and persist independent of leadership.[331] Culture in MfE and DoC has been commented on anecdotally[332] but the closest that approaches to an academic analysis is Johnston's characterisation of alternative management discourses and the ways these discourses are embedded differentially in New Zealand's environmental legislation, referred to in Chapter 2. Johnston's argument is that the MfE has tended to be imbued with a communitarian, pluralist culture drawn, he argues, from the Resource Management Act and local government legislation (although it might be argued there is also a market-oriented rationality given the RMA's role in regulating property rights), whereas DoC's culture is influenced by its operational role and the preservationist ethos of the Conservation, National Park, and Wildlife Acts. Johnston would argue that this gives rise to an administrative efficiency rationality based in a technical expert's view of system dynamics, with elements of a pluralist and communitarian discourse where this complements the internal technical

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[329] Based on my own experience and discussion with present and past DoC and MFE Chief Executives, CEO leadership can be an important variable factor in the nature of each department's policy approach but it is uncommon for the CEO to always impose their own views. In my opinion, some external observers attribute more influence to direct roles played by department CEOs than is in fact the case.

[330] This observation is based on comparison of DoC and MfE internal management guidance documents. See MfE, "Professionalising Policy: A Guide for the Craft of Policy Analysis," (Wellington: Ministry for the Environment, 2011), ———, "Professionalising Policy: Cost Opportunity Risk Benefit Analysis; the Cobra Policy Guide," (Wellington: Ministry for the Envrionment, 2011), DoC, "General Managers Handbook," ed. Department of Conservation (Wellington: Department of Conservation, 2001), ———, "Managers Handbook," ed. Department of Conservation (Wellington: Department of Conservation, 2009).

[331] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.* P.101.

[332] For example, R. Kerr, "Market Mechanisms and Conservation," in *Environmental justice and market mechanisms* (Auckland: New Zealand Business Roundtable, 1998). P.2. "DoC loo culture of extravagance," 14/1/2006, *Infonews*, http://www.infonews.co.nz/news.cfm?id=12586 (accessed 14/10/2012).

worldview.[333] Johnston's view supports the literature cited in Section 2.4.4.1 about departments having shared decision premises that influence how they see issues and how they respond.

3.5.5 Summary

MfE and DoC were set up as explicit environmental departments with explicit statutory environmental roles and functions as their primary purpose. They were products of their time, influenced in design by a view of the role of government and how government should be organised that was dominant in the late 1980s. They were poorly resourced in the 1990s in terms of what they were expected to do, but this changed in the 2000s. There is some evidence from the literature, admittedly limited, that suggests their institutional settings have an effect on internal culture. What will be tested in the following case studies is the extent to which these features influence their abilities to produce environmentally effective policy frameworks.

3.6 Conclusions

The examination of New Zealand's government system and its links with society presented in this chapter suggests there are elements potentially favourable to advancing environmental values, that there are potentially constraining components, ones that are neutral, and that all three are interlinked.

What are possible favourable factors?

1. Taking the view of Jänicke and others that openness in decision-making helps a nation's environmental capacity, New Zealand's relatively transparent, non-corrupt and responsive government system should support its ability to make environmental policy. This is however, a general feature that applies to all policy-making, not just environmental policy.

2. Environmental interests are represented in Cabinet decision-making, which the literature says should be advantageous environmentally. While some may argue the seniority of such representation is not as commensurate with the importance of environmental concerns as it should be, there is representation by at least two ministers nonetheless.

3. As a result of the the NPM changes of the 1980s, New Zealand has two (and possibly three if the EPA is counted) central government departments formally accountable for advancing environmental interests, without other conflicting responsibilities.This is probably an institutional advantage environmentally.

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[333] Johnston, "Complexity of Thinking". P.24.

4. New Zealand's environmental legislation was integrated and not fragmented during the period of this study. Many (e.g. Bartlett, Bührs, Memon and others) argue this is a potentially positive environmental feature.

5. New Zealanders, according to public attitude surveys, support environmental values, but not unreservedly. Support for environmental values also appears in most political party manifestos (although to different levels and with diferent emphases). Mixed member proportional representation has increased representation of those who promote environmental values. These features should influence government ideological orientations. However, there are also conflicting social values which may override environmental ones, hence the degree of attachment to environmental values may be ambiguous in terms of their effect on government action.

What are possible constraining factors?

1. The New Zealand government policy system is small and hence may lack capacity to deal with complex environmental issues.

2. The New Zealand economy is dependent on the use of natural resources, and hence gives rise to powerful interests that may constrain policies to address environmental effects of that use.

3. New Zealand has a three year electoral cycle which, although possibly positive from a democratic responsiveness point of view, constrains long term policy development either because of processes involved in reassessment, or lack of cross-party support. This is, however, also a possible neutral factor in that it is a recurrent structural feature that applies to all policy development. It cannot of itself explain variability in performance between governments or departments.

4. Environmental government departments are not as powerful as the three central agencies or the economic departments. This is an institutional constraint.

5. A policy approach developed in the era of NPM continues to influence how government departments approach government action generally, and action on the environment specifically. It is argued that this policy approach tends to be cautious about government interventions and predisposed to voluntary action or market mechanisms as policy prescriptions. It is more likely a constraining factor in that it made developing some policy options more difficult. In circumstances where voluntary or market based prescriptions could be environmentally effective, then they had an easier ride through the policy development

process. Where other prescriptions were needed, and ran counter to the prevailing policy approach, then there were higher institutional and ideational hurdles to jump.

What are possible neutral factors?

1. The concentration of power in central government in New Zealand compared with other similar developed countries is significant but probably a neutral factor in the sense it can work positively or negatively in terms environmentally effective policies. Whether this factor works positively, negatively or neutrally depends, however, on government priorities, and on government will and skill (particularly timing in relation to the electoral cycle).

What do the sum of these features say about the New Zealand context? This chapter suggests it is ambiguous in terms of how environmental policy comes to be developed. On the one hand, there is a moderately favourable public climate of support for environmental measures, possibly a strong one when it comes to nature conservation. The intra-government administrative capacity to develop environmental policy is sizeable relative to the overall machinery of government in that there are two environmentally oriented ministers at the Cabinet table and two departments dedicated to advising on and promoting environmental policy. Added to these features, the locus of policy decision-making rests primarily with the Prime Minister, Cabinet, ministers and the public service (compared with other jursidictions where other branches of government or extra-government interests have a stronger formal role). With requisite priority, will, and skill, the result presumably could be rapid and effective policy. Together these features suggest there is potential for environmental policy effectiveness.

On the other hand, constraining and neutral factors mentioned above also have to be considered. Within government, economic and resource-use interests (particularly those of primary industries), are generally in a powerful position. A structural feature, the three year electoral cycle, is a potential constraining factor in long term environmental policy development (although serving other purposes in the absence of a written constitution). The small size of the New Zealand policy system means individual people can in theory have a greater effect than in larger systems, depending on their skills. The nature of that effect depends on the orientation of their ideas. At the same time, small size may also mean less resources, and hence less diversity of ideas.

These are preliminary explanations for why there might be variability in New Zealand's environmental policy. There is, however, nowhere near the depth of research on the subject compared, for example, with studies in Europe cited in Chapter 2.This is something this study will seek to remedy. How the study will do this is explained in the next chapter.

Chapter 4

Analytical Framework, Methodology, and Rationale for Case Study

4.1 Introduction

The purpose of this research is to provide explanations for the variable nature of environmental policy in New Zealand over the past twenty five years, and the contribution to variability from government, its processes, and government environmental departments. Variability in environmental policy is not confined to New Zealand. It occurs in other countries, even where there is strong pro-environment political commitment.[334] Many sources of policy variability have been identified in literature about government policy in general and environmental policy specifically, as discussed in Chapter 2. What is less well-known is how these sources work together, and what difference jurisdictional characteristics make.[335] This research aims to contribute to a better understanding of how these features operate, and their effect.

This chapter sets out the framework that will be used to undertake the research. The first part of the chapter describes features that have been selected to demonstrate environmental policy variability and factors that seem to account for that variability, and why they have been selected. These features are then turned into a series of research questions to be used to interrogate information in case studies. Next, the chapter describes research methodology. Finally, it sets out what subjects have been chosen as case studies to help address the research questions, and why.

4.2 The analytical approach

Underlying this research is a political science perspective that decision-making processes and outcomes are shaped by political factors related to state capacity and subsystem complexity.[336]

This study investigates the effect of drivers of environmental policy within government arising, according to the literature, from institutional features (emphasising administrative and organisational features that enhance or inhibit environmental effectiveness), the role of individuals (agency), and cognitive perspectives. The intention of this research is to investigate the relative importance of links between these intra-government factors, with a preliminary proposition that some combinations are likely to be more significant than others.

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[334] Jordan, "Environmental Policy Integration: A State of the Art Review." P.155.
[335] Ibid. P.156.
[336] Howlett, *Studying Public Policy: Policy Cycles and Policy Subsystems*. P.164.

4: Analytical framework, methods, and case study rationale

Chapter 2 reviewed literature about what constitutes policy effectiveness and environmental effectiveness, and sources of variability. It discussed how one might establish a standard to measure policy variability based on ideas about policy effectiveness and environmental effectiveness. The chapter then went on to show that elements that cause variability are well traversed in literature, but what combinations apply in particular circumstances, and what the effect is, will still benefit from more study.

Chapter 3 reviewed the New Zealand context for environmental policy development. The preliminary conclusion is that the system for government policy development appears to have capacity to develop, change and adopt policy quickly despite certain specific constraints, such as the three year electoral cycle. Furthermore, on the face of it, New Zealand seems to have at least adequate intra-government administrative capacity to develop environmental policy, relative to its overall machinery of government, but that it is generally small scale (with the advantages and draw backs of small scale) compared to other developed countries.

This section set outs how the ideas about environmental policy effectiveness and variability will be used to examine a set of case studies about environmental policy development in New Zealand.

4.2.1 How to measure variability: the dependent variable

 At its core, this study is about sources of variability in environmental policy arising from the policy-making process. It is not a direct evaluation of environmental policies *per se*. But, in looking at causes of policy variability we need to assess variability against a measure of policy effectiveness. Policy theory, particularly policy evaluation, offers ideas about policy effectiveness. Environmental theory offers ideas about environmental effectiveness. This study uses intersecting components, drawn from the ideas of policy design and evaluation, and from environmental ideas about what is likely to increase the environmental success of policy.

Policy literature suggests that policy effectiveness depends on the characteristics of the policy, assumptions about the policy goals, rules and tools, resources for implementation, and degree of support.[337]

Environmental literature tends to come at the subject of effectiveness from a cognitive perspective, stemming from normative views that human welfare depends on environmental quality, or empirical views that environmental quality improves efficiency and coherence in policy-making. There is a large measure of agreement that environmental effectiveness in government policy arises from the priority given to environmental values and whether environmental values feature in belief systems,

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[337] Schneider, "Policy Design: Elements, Premises, and Strategies." P.78.

assumptions, knowledge and information. How people involved with decision-making perceive that priority determines whether, and to what degree, those values are integrated into and across policies and institutions.[338]

An analysis of environmental priority combined with characteristics of policy-effectiveness should predict the likely effectiveness of policy in environmental terms.[339] However, carrying out analysis on this basis would require an extensive detailed evaluation of policies, something that a number of commentators say is a demanding and difficult exercise.[340] As noted above, this is not the primary focus of this study. Its focus is on intervening causal factors within a government system that influence environmental agencies and environmental policy efforts. Schneider and Ingram suggest it is sufficient to identify those features that seem most critical to understanding the effect of causal factors.[341] Because this is an environmental study as well as a policy-making one, dependent variables should include a predictor of likely *environmental* effectiveness. Because it involves policy forming, it should include a predictor of potential *policy* effectiveness arising from the policy formation.

1. To assess <u>environmental effectiveness</u>, the case studies will qualitatively assess what priority and weight was given to environmental values in the development of policy, and the extent to which those values were either:

    a. Integrated <u>internally</u> in the environmental policy domain. This is based on the idea that, because of likely multiple causes, environmental policies should endeavour to complement each other and create synergies. [342] Assessment would involve looking at the extent to which an environmental policy is aligned with other environmental policy efforts. There may be circumstances where an environmental policy can be effective independent of other policy efforts, but only where causes can be effectively addressed

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[338] Beginning with Caldwell, "Environment: A New Focus for Public Policy." through, Bartlett, "Rationality and the Logic of the National Environmental Policy Act." Dryzek, *Rational Ecology: Environment and Political Economy*. Jordan, "Integrating the Environment for Sustainable Development.", Bührs, *Environmental Integration: Our Common Challenge*, Jordan, "Environmental Policy Integration: A State of the Art Review.". Nilsson says priority of environmental values has been advocated from normative perspectives that human welfare depends on environmental goals and from a perspective that environmental values contribute to greater efficiency and coherence of policy-making. M. Nilsson, "Learning, Frames, and Environmental Policy Integration: The Case of Swedish Energy Policy," *Environment and Planning C: Government and Policy* 23 (2005). Pp.208-209.

[339] The idea of <u>potential policy effectiveness</u> is distinct from <u>policy outcomes</u> because the latter are also contingent on policy implementation, which has its own challenges.

[340] Schneider, "Policy Design: Elements, Premises, and Strategies." Pp.88-89. Jordan, "Environmental Policy Integration: A State of the Art Review."P.154. M.E. Kraft, Vig, N.J., "Environmental Policy over Four Decades," in *Environmental Policy*, ed. N.J. Vig, Kraft, M.E. (Los Angeles: Sage, 2013). Pp. 19-20.

[341] Schneider, "Policy Design: Elements, Premises, and Strategies." P.78 & 84.

[342] Bührs, *Environmental Integration: Our Common Challenge*. P.121.

by an isolated course of action without a need to invoke changes in other areas.[343] Assessment in this case would look at the clarity of objectives in the policy, and whether the causes can indeed be isolated. Or,

b. Integrated externally across other government policies. This is based on the idea that environmental policy should be a component of traditionally non-environmental policy dimensions in order to achieve comprehensive effectiveness.

2. Assessing policy effectiveness needs indicators of what seems most critical to understanding causal factors (Schneider and Ingram's criterion). Because this study isn't a *post hoc* assessment of outcomes, it takes us back to basing assessment on structural logic and political architecture, as discussed in Chapter 2.

In terms of structural logic, Grant provides eight possible criteria for evidence of effective environmental policy: clear authority; rules and laws; sufficient resources and incentive structures; behaviour changes; intellectually robust remedies; remedies that advance objectives without disadvantaging excessively those relevant to the policy; alternatives being worse; or else serving symbolic goals.[344] Of these, behaviour changes and the effect of remedies require *post hoc* assessment, but the others seem applicable as indicators of potential policy effectiveness. Schneider and Ingram argue that the most important elements of policy effectiveness are the policy tools and the behavioural assumptions on which they rely, and what they describe as the implementation patterns (meaning whether the policy should have strong directive institutions and clear accountabilities, or rely on maximum leeway to generate locally applicable solutions and/or support and further knowledge).[345] The structural logic of the policy (especially rules and tools and implementation patterns) seems on the face of it to provide an indicator of potential policy effectiveness. But care is required because there is a vigorous debate about what constitutes effective policy rules and tools, and effective means of implementation.[346] This risks diverting attention away from reasons for policy variability into evaluating the policies themselves, which is not the focus of this research\.

A policy can be logically coherent, however, but still be ineffective because of political architecture in terms of strong or weak opposition or support. In the face of prevailing strong

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[343] Weale, "Governance, Government and the Pursuit of Sustainability." P.71-72.
[344] Grant, *The Effectiveness of European Environmental Policy*. P.4.
[345] Schneider, "Policy Design: Elements, Premises, and Strategies." Pp. 96-97 & 99.
[346] See S.H. Linders, Peters, B.G., "The Design of Instruments for Public Policy," in *Policy Theory and Policy Evaluation: Concepts, Knowledge, Causes, and Norms*, ed. S. Nagel (New York: Greenwodd press, 1990), J.L. Pressman, A.B. Wildavsky, *Implementation: How Great Expectations in Washington Are Dashed in Oakland; or Why Bits Amazing That Federal Programs Work at All* (Berkley: Iniversity of California Press, 1973).

opposition or without support (or the prospect of support), a policy is unlikely to be enduring and thus less effective. A caveat is that policy almost inevitably affects peoples' preferences and values.[347] Hence policy, even if it is only symbolic, frequently gives rise to opposition. From an assessment perspective, it is sufficient, however, to make at least a qualitative assessment of the support basis of a policy when it was adopted.

Thus, indicators of causal variables of policy effectiveness, for this study, will focus on structural logic and political architecture of the policy, in terms of assumptions, rules, and tools, and support.

Formulated as questions, analysis of dependent variables for this research involves asking:

Question 1.

What priority and weight was given to environmental values in the outcome of the development of policy, and how integrated were those values, either internally or externally?

Question 2.

Did the policy process result in tools and rules to back up the policy? What was the nature of those tools and rules?

Question 3.

What basis of support was there for the policy?

4.2.2 The role of time as an indicator

The Introduction noted that development of specific environmental policies in New Zealand tend to take a long time between when they became priorities and when any significant product emerged. Is this important? One line of literature suggests that policy change usually (but not always) involves incremental policy learning and this takes time.[348] Policy development can take time also depending on the complexity of the issues and the capacity of a policy system. So, time may be an indicator of a policy system's ability to produce effective policy and the influence of sources of variability. However, time, while not an agent of variability in itself, can mean that the longer the policy response takes, the stronger the likelihood that the problem will persist and possibly get worse.[349] The longer the time taken, the more opportunity there is for the issue to become more complex and

[347] Dovers, *Environment and Sustainability Policy: Creation, Implementation, Evaluation*. P.30
[348] Lindblom, "The Science of Muddling Through." The alternative, and rarer form of policy change occurs suddenly when alignment of change inducing features creates windows of opportunity for change (Baumgartner, *Agendas and Instability in American Politics*.)
[349] Roe, *Taking Complexity Seriously: Policy Analysis, Triangulation and Sustainable Development*. P.124.

for interests to harden.[350] Time is also significant if windows of opportunity emerge. Policy change may be missed if opportunities aren't taken. When they are, it is likely the time taken to develop or adopt policies will be shorter.[351] Thus time seems important in the effectiveness of a policy system, and an indicator that sources of variability are at work. If a policy system consistently takes a long time to develop policy in the face of known problems it suggests that there are underlying causes that are leading to ineffectiveness in the system.

Therefore, a question that will be asked in the case studies is,

Question 4.

What length of time elapsed between when the policy became a priority and when a meaningful policy response emerged? Was this significant in policy variability?

4.2.3 Sources of variability: independent variables

The study is looking for explanations of variability in New Zealand's environmental policy development and what role the main environmental departments had in this. The focus of the study involves some explicit choices about independent variables based on ideas about what drives development of government environmental policy.

As noted in Chapter 2, Scharpf says there are three sets of variables that will affect the capacity of a policy system to come up with effective policy responses:

  - The nature of the policy problem,

  - The orientation of the policy actors,

  - The characteristics of the institutional settings.[352]

Again in Chapter 2, three fields of scholarship that elaborate Scharpf's proposition were discussed: ideas about public policy dynamics involving the influence of ideas, interests, institutions, power, decision-making and policy style; ideas about organisational performance, particularly performance of government departments; and linked ideas about environmental problem complexity and wider drivers of environmental performance at a state level.

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[350] Weale, "Governance, Government and the Pursuit of Sustainability." P.65.
[351] Baumgartner, *Agendas and Instability in American Politics*. Pp.250-251.
[352] Scharpf, "Institutions in Comparative Policy Research." P.772.

4: Analytical framework, methods, and case study rationale

From this one can identify five sets of significant factors helping to explain environmental policy variability:

1. Institutional features (I Factors): decision-making rules, policy approaches, policy domains and networks, and power relationships among departments and with ministers (rules of engagement), and departmental capacities.

2. Agency features (A Factors): policy entrepreneurship, leadership, skills in policy-making, and degree of synergy between officials and ministers.

3. Cognitive features (C Factors): dominant cognitive frameworks within government and how these are interpreted.

4. Complexity features (W Factors): the characteristics or "wickedness" of a given policy problem /policy area.

5. Contextual features (D Factors): developments or events arising from wider contextual circumstances.

Chapter 3 described the New Zealand situation. It concluded that the national context creates particularities that influence what issues feature on the environmental policy agenda and how they are perceived and addressed (i.e. D conditions W). In addition, the political system increases the significance of the cognitive factors within government because of the comparatively greater concentration of power in the New Zealand system than in other similar countries. There may be greater scope for the exercise of agency because of the smaller political system (noting the point made in Chapter 3 about the tentativeness of this assertion). Finally, the institutional structure of the New Zealand political system increases potential organisational influence (compared with federal or corporatist institutional arrangements, for example).

Therefore, the independent variables applied in the study are intended to ensure that institutional, agency and cognitive factors identified in the wider literature are considered. The detail of each variable, though, is designed to incorporate features that arise from the New Zealand context. Consequently, the independent variables that will be used as part of the framework for analysis are:

1. Institutional drivers (Factor I) comprising the environment departments' capacities (built on their roles, internal strategies, resources, design, and cultures), and policy-making rules of engagement (incorporating decision-making rules, approaches, and inter-agency dynamics);

2. Agency drivers through the influence of individuals (Factor A) in terms of will and skill;

3. The views in government (Factor C) about the relative priority of environmental policy and the role of government, and how these are interpreted in developing policy.

These factors describe what the study calls "internal factors of government", operating in combination to influence:

- the degree of priority for environmental values in policy and how integrated those values are, either internally or externally.

- The structural logic and political architecture of the policy, in terms of assumptions, rules, and tools, and support.

- How long it takes to develop policy.

These "internal factors of government" do not work just in isolation, though. They are linked to each other, and to other wider intervening factors arising from their general complexity (Factor W) and national context (Factor D). How these intervening variables are addressed in the analysis is discussed below.

The suite of intervening, independent and dependent variables, and their relationships are represented in Figure 4.1. When this framework is used in the case studies, the intervening variables will be weighted according to their degree of influence depending on whether they were small, moderate or large; the independent variables according to whether they <u>enhanced</u> environmental policy effectivness in a small, moderate or large way; and the dependent variables according to whether the result was small, moderate or large.

Figure 4.1 Framework for analysing intra-government factors influencing potential environmental policy effectiveness
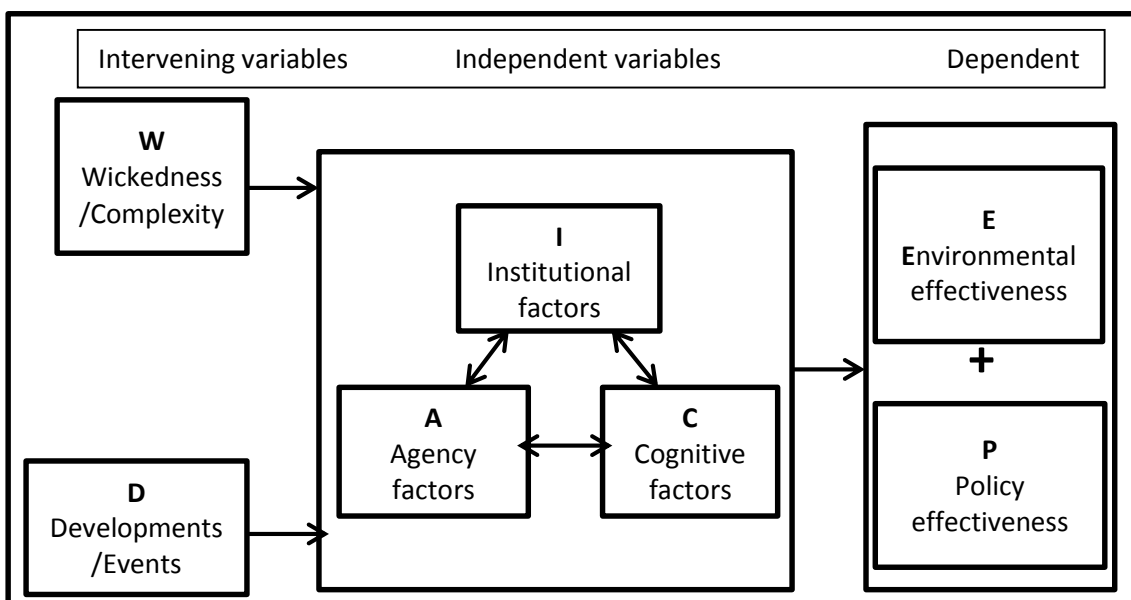
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The framework presented here has parallels with one developed by Nilsson and Persson.[353] They described drivers that shaped environmental policy at a national level in Sweden and applied it to a case study of energy policy. A model they developed emphasises the importance of institutional effects of policy-making rules and assessment processes, and belief systems, as independent variables. It includes background factors such as problem characteristics, the international policy context, and political will as intervening variables (they called these background variables).[354] The Nilsson and Persson model recognises similar influencing features (institutions, agency, and cognitive effects) used in this model, but the difference is that the one developed for this research places more emphasis on the role of intra-government features, and particularly intra-departmental institutional effects. The reason the models are different reflects contrasting approaches to policy development in Sweden and New Zealand.[355] New Zealand's approach is dominated more by the central government Executive (Cabinet and the central bureaucracy) compared with Scandinavian collaborative governance. There, government departments focus on policy development process as much as developing policy substance.[356] In New Zealand, policy ideas and policy development are seen more as the prerogative of central government.[357]

In order to give shape to the internal forces of government, as I have described them, a series of questions will be asked under each category of independent variable. The questions focus on those features that appear to be the most significant sources of variability, according to general literature and the review of the New Zealand context. The questions about institutional features are designed to illustrate what effect departmental capacity and the machinery of government have on environmental policy. The questions about agency are designed to distinguish the influence of individuals. The questions about cognitive features are designed to bring to light the effect of ideas within government on environmental policy.

The questions and sub questions are:

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[353] Nilsson, "Framework for Analysing Environmental Policy Integration." Pp. 333-359.

[354] Ibid. P.354.

[355] G. Salmon, "Governance of the Rural Environment - Are Existing Approaches Working?," in *Conflicy in paradise: the transformation of rural New Zealand* (Auckland: Environmnetal Defence Society, 2008), G. Salmon, Zilliacus, K., Scherzer, J., Barlund, H-B., "Collaborative Governance on Environmental Policies Affecting Rural Landowners: Comparing Nordic and New Zealand Practises.," in *UNITAR Conference on Environmental Governance* (Yale: Ecologic, 2008).

[356] Nilsson, "Framework for Analysing Environmental Policy Integration." P. 348-349. Salmon, "Collaborative Governance on Environmental Policies Affecting Rural Landowners: Comparing Nordic and New Zealand Practises.."

[357] New Zealand experiments with collaborative approaches to policy development, but this is not the norm. ———, "Collaborative Governance on Environmental Policies Affecting Rural Landowners: Comparing Nordic and New Zealand Practises.."
 For a flavour of New Zealand's approach to policy advice and policy development, and the resources devoted to it, see Scott, "Improving the Quality and Value of Policy Advice."

4: Analytical framework, methods, and case study rationale

Institutional features

Based on the ideas that government departments and formal and informal processes within government affect policy, how did institutional factors influence departmental capacity and performance?

Question 5.

a) Were there intra-departmental institutional effects?

    i.   Were policy priorities influenced by role or mandate and if so how?

    ii.   What effect did the organisation's functions have on policy assumptions, design and objectives?

    iii.   Did organisational structure help or hinder?

    iv.   Did the departments have enough resources to develop policy?

    v.   How did organisational culture affect policy assumptions and objectives?

b) How did the rules about policy development, and interagency power relationships, influence policy priorities and policy prescriptions?

Agency features

Based on the idea that individuals influence policy through the choices they make, how did policy initiative, skill in operating in the system, and synergy between officials and ministers affect what happened?

Question 6.

a) Did individuals create or capitalise on opportunities to develop policy that was advantageous environmentally?

b) Is there evidence of leadership by MfE and DoC staff that had an effect on effective policy development?

Cognitive features

Based on the idea that values and beliefs drive government priorities and how these are interpreted into policy, what influence did government priorities have and did types of reasoning applied to those priorities have any effect?

<u>Question 7.</u>

a) What priority did governments give to environmental matters in the period under study?

b) Was there a prevailing view about how the government should respond to environmental issues?

c) What type of reasoning was applied to addressing environmental issues before and after they became part of the policy agenda?

4.2.4 Intervening variables

There is a risk of myopia in simply looking at the internal forces of government without acknowledging other influences. As discussed in Chapters 2 and 3, environmental policy is not developed in a vacuum. It is subject to drivers besides those within government. Therefore analysis should consider the influence of wider national or international contexts, and the fact that some issues are more complex than others. Context and complexity create different combinations of technical, social, economic, or cultural barriers to resolution. This is the reason the framework includes background or <u>intervening</u> variables, in particular complexity of the policy problem, and developments and events that arise in the wider New Zealand socio-cultural-economic context. A way of measuring the influence of complexity in a policy problem is to assess,

1. the conflict potential and,

2. understandings and visibility of the problem.[358]

Each case study will contain a section that discusses context and complexity, and an assessment in terms of conflict potential and understandings. In this way we can create a picture comparing the complexities of each case study. The literature says that the more complex the issue, the stronger the likelihood for lower levels of policy success. There is also another, empirical, factor. Events occur that impede or advance policy opportunities, as described in Chapter 2 and 3. The influence of events on each case study will also be discussed as part of the analysis.

Question 8.

What level of challenge did context and complexity present and how important was this in influencing the internal forces of government?

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[358] This method is used by Nilsson and Persson, based on a model used commonly in risk management, and also in behavioural political science literature. Nilsson, "Framework for Analysing Environmental Policy Integration." P.346. And M. Douglas, Wildavsky, A., *Risk and Culture* (Berkley: University of California Press, 1982). Verweij, "Clumsy Solutions for a Complex World: The Case of Climate Change."

4.2.5 Summary

This section has set out how I intend to go about investigating the influence of internal forces of government on environmental policy in New Zealand. I have developed a framework that combine existing ideas about what constitutes potential effective environmental policy and about sources of variability arising from and during policy development. The framework provides the basis for questions used in the research. The next sections of this chapter describes the methodological approach.

4.3   Methodology, methods and research perspectives

Seeking answers to the questions set out in the previous section involves investigating the detail of intra-executive workings on environmental public policy. The objective is to explain why some things happened the way they did, then analysing the implications, and what they mean for the pursuit of environmental effectiveness. Both the drivers and dynamics of public policy making are complex. Attributing policy changes to actions in the public service rather than elsewhere is made more challenging by the multi-dimensional causes of policy development.[359] Endeavouring to understand the extent and nature of intra-executive influences on environmental policy involves, for this study at least, qualitative and interpetive analysis. Thus the research has a constructivist orientation (involving interpretation and judgement), rather than a purely positivist one (presenting revealed "facts").

Interpetative analysis offers an array of methodological options and critical theory.[360]

> *Labels such as frame analysis, ethnomethodology, discourse analysis (with subdivisions named after its various proponents: Foucault, Laclau, and Mouffe, Potter, Fairclough, Gee), narrative analysis, genealogical analysis, hermeneutics, (with or without the the adjective "philosophical"), phenomenology, structuralism and post structuralism, and practise theory indicate an enormous variety of approaches to interpetation in social research.*[361]

Wagenaar, who is the source of the previous quote, advises researchers embarking on qualitative research to be conscious of this methodological landscape, exercise caution about adopting any one

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[359] J. Boston, "The Challenge of Assessing Systemic Change: The Case of Public Sector Management Reform," in *Learning from International Public Management Reform*, ed. L. Jones, Guthrie, J., Steane, P. (Oxford: JAI/Elsevier Science, 2001).

[360] See Fischer, *Evaluating Public Policy*. N.K. Denzin, Lincoln, Y.S., "Introduction," in *The Sage Handbook of Qualitative Research*, ed. N.K. Denzin, Lincoln, Y.S. (Thousand Oaks, CA: Sage, 2005). H. Wagenaar, *Meaning in Action: Interpretation and Dialogue in Policy Analysis* (New York: M.E. Sharpe, 2011).

[361] ———, *Meaning in Action: Interpretation and Dialogue in Policy Analysis*. P.7.

perspective unthinkingly, and to be clear about what perspective, or perspectives are being taken and why.[362]

It will be evident from cited literature and discussion in preceding chapters that this research has a structuralist orientation. The analytical framework set out in this chapter has at its core, in the independent variables, two basic elements of agency and structure and how those two elements interact.[363] The institutionalised nature of government is a further reason for a structural basis to this study. I am conscious, however, that that in any interpretative research an overly structural view risks downplaying the human agency effects and the meaning people apply in policy development that other interpretative approaches can reveal.[364] Consequently, in setting out to make "sense" of the evidential basis of this study, I recognise the role of language, discourse and how my own perspectives and the methods I use can influence this study.

There are evidential challenges in undertaking this research. Much of what happens is hidden from public view. In addition, there are internal incentives for both the public service and politicians to <u>not</u> identify the role played by the public service. After all, a popular perception is that politicians are elected to govern and public servants serve. To highlight any alternative realities may merely increase accusations of government by bureaucracy, with potentially negative consequences for both politicians and the bureaucracy, at least in democratically elected systems of government.[365]

The research methods I employed are quite standard as a way of addressing the evidential challenge: first, the analytical framework provides consistency and structure to the questions I have posed about causes of policy variability and environmental policy effectiveness. It also gives a conceptual and theoretical basis for enquiry, but in addition the framework is a form of method in that it creates boundaries for data collection and analysis. The second method involved case studies (Their rationale and selection are discussed in Section 4.4). The case studies were based on written sources and, to a much more limited extent, recollections of some key participants in the cases.

Giving an evidential base to the case studies involved gathering information from a range of primary sources: in particular from departmental files in MfE and DoC; from publicly available Cabinet documents; from published departmental reports; and from the government website archiving ministerial press releases and some ministerial speeches. This form of research involves requesting file lists; using judgements based on file headings to select files that deal, or will likely deal, with the

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[362] Ibid. P.8. Wagenaar himself is attracted to grounded theory as a research technique in the sense that grounded theory is rooted in empirical enquiry and builds a theoretical perspective through iterative interaction between data and ideas. P.260.

[363] Giddens, *The Constitution of Society: Outline of the Theory of Structuration*.

[364] J. Mason, *Qualitative Researching* (London: Sage publications, 1996).P.4. Denzin, "Introduction." P.3.

[365] Peters, *The Politics of Bureaucracy*. P.196.

subjects of the case studies; requesting access to those files; and when this has been obtained systematically going through each file deriving information, usually in a chronological order, about who said what (and some detail about what they said); and collating this, in my case in notes and on a card reference system. Secondary sources of published papers, books, and reports with data, observations, and analysis are also used. Finally, individuals were approached for comment or recollections about specific actions or events. As a source of information, this last method was informal and certainly not comprehensive. But it proved helpful in filling in some gaps. More importantly it provided a degree of confirmation from officials involved in the case studies about whether the draft narratives were consistent with their recollections.

The particular data collection methods I employed were influenced by my training as an historian and mirror those I used in postgraduate research in my Master thesis on the origins of New Zealand's territorial involvement in Antarctica from 1920 to 1960.[366] Government documents, and particularly the use of departmental files and Cabinet papers provide a valuable window into the actions and thinking that takes place within departments, and also provide further perspectives on ministerial and Cabinet dynamics. However, they come with a caveat. The analytical framework and questions provided a systematic structure for the enquiry. Use of written documentary sources, and referencing government files means that the research, or this type of research, is repeatable in that others can search the same material. Nevertheless, a researcher has to be conscious that, first, they are looking at material that reflects a departmental perspective and that there are other alternative perspectives. Second, this sort of research involves interpretation. And it is here that the more overtly qualitative element of the research comes into play. What approach I took , and the perspectives involved in this, require explanation.

I have already said this research has a strong structuralist orientation, largely because structures (especially institutions) are a particular feature of government. However, it also involves a degree of language analysis in that it looks a what people said (especially through the documentary record), why they said it, and the effect of language and power. Consequently, the study touches on what might be loosely described as analysis of language and discourse, but it does not employ formal discourse analysis in a methodological sense.

It is at this point that I need to reflect on my own perspectives. Literature about intepretivist approaches counsels that researchers should be self-critical of their perspectives.[367] I am aware of my own potential bias as a participant in, or a direct observer of, the events that were taking place in the case studies. The role of the participant observer can be valid, as long as the observer applies self

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[366] H.F.M. Logan, "Cold Commitment: The Development of New Zealand's Territorial Role in Antarctica 1920-1960" (University of Canterbury, 1979).
[367] Mason, *Qualitative Researching*. Pp.146-147.

reflection and is conscious of the possibility of bias.[368] Nevertheless, being an ex-insider also provides some advantages and can provide invaluable insights.[369] As a public servant, I knew how file systems worked and had experience in the art of reading files. This involves, for example, recognising source policy drafts, points at which those drafts began to evolve and recognising, either through language or interdepartmental or ministerial correspondence, the drivers of change. There can often be an enormous amount of superfluous material that can bog down the inexperienced. Nevertheless, experience is not everything. An undergraduate or recent graduate researcher can develop these skills by immersing themselves in departmental file systems, as I myself did for my Masters research. What it requires is perserverence, forensic skills in requesting either the most relevent files, or if there are access issues, tangental files that throw light on the subject. [370] Analysis of Cabinet papers, for example, is enhanced by knowing that these documents usually represent the end product of an exhaustive and exhausting process of debate and compromise at many levels and that drafting, initially at least, often occurs deep within the bureaucracy at often quite junior levels. However, this is not always the case, and it is useful to have some understanding of different degrees of intervention at different levels, an understanding of who were active ministers and who were not, and seeing hints of the sources and hence degree of activism of ministers, advisers and departmental officials in the type of language or phrases used in reports. Similarly, using press releases and ministerial speeches as sources is valid but must been seen in the light of the purpose of the release or speech. From a ministerial and departmental perspective they can be designed to convey "good" news, disguise or head off "bad" news, update the public or interest groups on what has been going on or is about to occur, or in the case of some speeches, represent either the genuinely held view of the speaker or the speech writer (these are often not the same people). For example, it useful to have some knowledge of whether a particular minister either drafted or had a strong hand in drafting the speeches they presented, the views of departments, or the general line of the government or its non-departmental advisers.

Finally, my selection of those I sought personal comment from was conditioned by my own experience about who were likely to have a general overview of the types of policy development covered by my case studies. However, even this is not unusual. Any researcher is likely to ask "who will have detailed information about a particular issue they are studying?" Hence requests for information, or interviews about a policy development case study, can likely be influenced by the researcher's own view about who were significant players. While this may carry risk of bias, or non-

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[368] M.P. Patton, *Qualitative Research and Evaluation Methods*, 3rd Edition ed. (Thousand Oaks CA: Sage 2002). P.4.

[369] R.K. Yin, *Case Study Research: Design and Method*, 5th ed. (Thousand Oaks: Sage publications, 2014). P.116.

[370] In the case of my Masters research some important files dealing with British Imperial Conferences in the 1920s and 1930s were closed to access, but key documents from these conferences dealing with Antarctica had been copied to the New Zealand Marine Department files, and these were open to access.

replicability, provided the information from interviews is used simply as another source of triangulation that complements other information, then it doesn't necessarily invalidate the interviews as a source of research information. Another point is that this research is not interview-based. It is primarily document-based.

In summary this research is structuralist in orientation, it is qualitative in method, it is influenced by a participant observer perspective, and it draws heavily on a documentary evidential base. Deciding on the analytical value of such an evidential base is almost always a matter of interpretation, but that is the nature of qualitative research.

4.4   Case studies and their rationale.

Case studies provide data to test propositions, and address research questions. The case study method is an established way of undertaking research where an indepth examination of events is used, instead of large samples or quantitative measurement of a small set of variables. [371] Using more than one study provides opportunities for comparison and assists in generalising research findings. There is, however, risk of selection bias. Therefore, what are the criteria used for selection of case studies?

1. They focus primarily on environmental problems, so we can look at questions about environmental policy effectiveness.

2. They are the subject of public policy development at a central government level and debate both within government and outside, and have different results in terms of policy product. This provides an opportunity to test ideas about policy development, variability and causal factors.

3. The case studies span governments of different political persuasions and provide an opportunity to examine what difference government priorities made.

4.   MfE and/or DoC play significant roles, providing information about organisational attributes and influences.

5. They involve a multitude of competing interests and are subject to the vicissitudes of intervening events, allowing us to weigh the influence of complexity and the wider New Zealand socio-economic context.

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[371] Yin, *Case Study Research: Design and Method*. P. 5-9.

4: Analytical framework, methods, and case study rationale

These general criteria can be applied to a number of environmental initiatives by central government. What were these initiatives and why have some been selected for study ahead of others?

Answering this question involved using Briefs to the Incoming Minister (BIM) for the Environment following general elections between 1999 and 2011 and looking at what these documents said about policy priorities. There is risk in this approach in that it could simply reveal the biases of agenda setting. Nevertheless BIMs are supposed to be departments' best endeavours to identify dispassionately what they see as the major policy issues.[372] They can, of course, involve agenda setting, self interest, or interest group influence. Nevertheless, looking at a number of BIMs over time helps winnow out outliers and identify common themes, either for ongoing issues, or where officials may believe (correctly or incorrectly) that some issues no longer deserve priority.

In 1999, MfE's BIM identified nine issues: loss of indigenous biodiversity; land use and water quality; response to climate change; waste management; urban sustainability; cost effective environmental regulation (RMA and HASNO); biotechnology and genetically modified organisms (GMOs); the marine environment; and Treaty of Waitangi implications for environmental management.[373]

In 2002, the BIM identified waste management: energy and transport impacts; oceans management; agriculture, horticulture and forestry impacts on land use and water quality; urban development; tourism impacts; the environmental regulatory regime; monitoring and reporting; indigenous bioversity decline; and biosecurity risks.[374]

The 2005 BIM described what MfE was doing more than identifying specific environmental issues, unlike preceding BIMs or ones that followed. However, it is possible to discern from the document a focus on urban design, air quality, waste, rural land use effects on soils, water and biodiversity, oceans management, climate change, and hazardous substances and pollution.[375]

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[372] SSC, "State Servants, Political Parties and Elections: Guidance for the 2008 Election Period," ed. State Services Commission (Wellington: State Services Commission, 2008). P.29.
[373] MfE,"Briefing to the Incoming Minister", http://www.mfe.govt.nz/publications/about/briefing-oct99.pdf (accessed 14/4/2013) P.3.
[374] MfE, "Briefing to the Incoming Minister 2002", http://www.mfe.govt.nz/publications/about/briefing-jul02.pdf (accessed 14/4/2013) Pp.8-18.
[375] MfE, "Briefing to the Incoming Minister 2005", http://www.mfe.govt.nz/publications/about/briefing-oct05/briefing-minister-oct05.pdf (accessed 21/4/2013)

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Three years later, the 2008 BIM identified climate change; freshwater quality: RMA implementation issues; issues arising from Treaty of Waitangi concerns; decline in indigenous biodiversity; and pressures on the marine environment.[376]

In 2011, the BIM identified freshwater management issues; climate change; marine issues; indigenous biodiversity loss; RMA implementation issues; and Treaty of Waitangi concerns.[377]

A similar group of issues is evident in the various subjects reported on by the PCE between 1998 and 2008.[378]

Common threads running through these lists are;

- The environmental regulatory regime (especially the operation of the RMA).

- Implications for environmental management arising from giving effect to the Treaty of Waitangi and resolving Treaty claims.

- Response to climate change.

- Decline in indigenous biodiversity.

- The impact of land use on water quality.

- Waste management issues (although these did not feature in the later list of priorities.

- Environmental effects in the marine environment

At various times other issues were present but did not appear consistently in the briefings, which is not to say that the actual issue was not significant or did not endure, but that from a departmental perspective they did not make it onto the briefing priorities.

For the purpose of this study three of the enduring issues were selected as case studies. These are the loss of indigenous biodiversity, decline in freshwater quality, and environmental effects in the marine environment. These issues meet the five criteria described above. However, why these three and not the others? First, for simple reasons of manageability, three studies were seen as sufficient for triangulation purposes. Of the other topics, waste management involved only MfE and not DoC. The regulatory regime topics were of a different nature. The Treaty of Waitangi issue is more about

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[376] MfE, "Briefing to the Incoming Minister 2008", http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2008/briefing-environmental-sustainability/index.html (accessed 14/4/2013) Paragraph 16.
[377] MfE, "Briefing to the Incoming Minister 2011", http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011/nrs-bim-2011.pdf (accessed 14/4/2013) Pp.6-16.
[378] See PCE, "All publications", http://www.pce.parliament.nz/publications/all-publications/

human rights than a specific environmental issue in itself although it has environmental management implications. The RMA and environmental effectivness is a very large subject.[379] It may well prove suitable as a case study to address the questions raised in this research but for reasons of size and longevity it would require study in its own right to do it justice. Finally there is the case of climate change. This has proved problematic. Initially, it was intended to include it as an additional case study. Some data was collected along with some preliminary analysis as part of this research. It certainly meets the selection criteria, especially in complexity. Compared to the selected case studies more has been written about climate change policy analysing both development (perhaps rather cursorily) and policy implications (in considerable depth).[380] The problem with climate change is that it is a huge subject, like the RMA. The CEO of MfE commented that to do justice to a study of how it developed would require looking at the files of more than ten different departments over a period of twenty years, a daunting task.[381]

Consequently, reasons for choosing the case studies of freshwater, oceans management and biodiversity are that each met all five choice criteria, they are manageable in terms of scope and data collection, and they were the subject of government policy attention throughout the period of study between the 1990s and 2000s.

So far, the study has set out the focus for research on environmental policy variability, reviewed relevent literature, looked at the New Zealand context, and, in this chapter, established an analytical framwork, research questions, and methodology. The next three chapters cover the case studies.

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[379] See for example Connor, *Institutional Change for Sustainable Development*. Pp.87-131.

[380] See R. Chapman, Boston, J., Schwass, M., ed. *Confronting Climate Change* (Wellington: Victoria University Press,2006), M.R. Harbrow, "Trends in New Zealand Climate Change Policy" (Massey University, 2007), T. Bührs, "Climate Change Policy and New Zealand's 'National Interest': The Need for Embedding Climate Change Policy into a Sustainable Development Agenda. ," *Political Science* 60, no. 1 (2008), Boston, "The Complicated Politics of Climate Change.", Bertram, *The Carbon Challenge: New Zealand's Emission Trading Scheme*, G. Kelly, "Climate Change Policy: Actions and Barriers in New Zealand," *International Journal of Climate Change Impacts and Responses* 2, no. 1 (2010). And numerous articles on climate change in *Policy Quarterly*, particularly Volume 4, number 4.

[381] Paul Reynolds pers com

Chapter 5

Case Study: The Development of an Oceans Policy

5.1 Introduction

Between the late 1990s and 2012 New Zealand sought to establish an integrated regime to manage environmental effects of activities in the oceans surrounding New Zealand. In late 2012 an Exclusive Economic Zone (Environmental Effects) Act was passed aiming to protect New Zealand's Exclusive Economic Zone (EEZ) from the potential environmental risks of activities like petroleum exploration, seabed mining, and marine energy generation and carbon capture developments. This work began around 1998, with an original timetable for completion in 2000. This chapter details the progress of efforts to achieve some form of integrated environmental management of New Zealand's EEZ over the past decade and a half. In particular it focuses on the period between 1999 and 2003 when it seemed possible a more comprehensive regime might eventuate compared to the 2012 legislation. The purpose of this chapter, like the other case studies, is to shed light on government dynamics that were at work as policy developed and to assess what happened using the analytical framework and questions set out in Chapter 4.

5.2 Oceans management around New Zealand: context and complexity

In the 1990s New Zealand's various regimes for managing marine resources and marine activity were fragmented and not integrated. They had either inconsistent or non-existent environmental principles. At the same time there was evidence of environmental impact, largely as a result of fishing and fishing methods, and a potential risk of further impact as these and other forms of natural resource use and marine transportation activities increased. In addition, there was an international dimension arising from the United Nations Convention on the Law of the Sea (UNCLOS). New Zealand ratified UNCLOS in 1996. UNCLOS requires states to establish effective marine governance, including obligations to preserve and protect the environment, in order to lay claim to their surrounding EEZ and continental shelf.[382]

New Zealand is an island nation. It has a distinctive marine biophysical setting. The nearest large landmass, Australia, is 1800 kilometres away. Warm and cold temperate waters of the Pacific Ocean and Tasman Sea around New Zealand contain rich and varied biophysical features. New Zealand is

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[382] United Nations Convention of the Law of the Sea (UNCLOS) Article 192.

surrounded by a very large continental shelf, fifteen times the size of its landmass. The EEZ is the fifth largest in the world.[383]

The seas around New Zealand are a source of livelihood, transport, commerce, and recreation. Fishing is the dominant economic activity in New Zealand's maritime area, with fish exports worth $1.2 billion.[384] It expanded from the 1970s from a local fishery to a major exporting activity involving deep-water fishing. In the 1980s and 1990s, under the Fisheries Act 1996, a fishing regime was put in place based on fish stock management. Quota were set for species harvest (Quota Management System QMS), and individual quota (Individual Transferable Quota ITQ) were allocated and then transferred or traded within an overall limit for each fish stock , governed by provisions in the Fisheries Act to limit environmental impact.[385] Fisheries management was the responsibility of the Ministry of Fisheries (Minfish) in the period covered by this study. It is now part of the Ministry for Primary Industries (MPI).

Aquaculture was traditionally a small activity, but has grown at 11.7% per year after 1985.[386] Aquaculture was managed spatially under the Resource Management Act (RMA), but approved operationally under the Fisheries Act. The RMA only applied to 12 nautical miles from the coast. Aquaculture management was overseen by the Ministry for the Environment (MfE), the Department of Conservation (DoC), Minfish, and regional councils.

Offshore oil and gas exploration and production has been underway in New Zealand from the early 1970s, with oil becoming an increasingly important export commodity. New Zealand historically has had limited seabed mining, for iron sands and building materials, although the possibility of new ventures has been in prospect since the 1970s.[387] There were no formal legal requirement for environmental assessment for offshore exploration beyond the twelve mile limit. Management in the offshore areas was overseen under the Crown Minerals Act by the Ministry of Commerce,[388] and

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[383] McGinnis, "Oceans Governance: The New Zealand Dimension - Summary Report." Pp.13-15.

[384] Ministry of Primary Industries, "New Zealand Fisheries at a glance http://www.fish.govt.nz/en-nz/Fisheries+at+a+glance/default.htm (accessed 1/11/2012),

[385] The introduction of New Zealand's quota management system, its theoretical underpinnings, and its political, social, environmental and economic consequences has been the subject of a large literature. A useful historical perspective on the fishing industry is D. Johnson, Haworth, J., *Hooked: The Story of the New Zealand Fishing Industry* (Christchurch: Hazard press, 2004). On the quota management history, see M. T. Gibbs, "The Historical Development of Fisheries in New Zealand with Respect to Sustainable Development Principles," *Journal of Sustainable Development* 1, no. 2 (2008). The environmental provisions of the Fisheries Act 1996 are S.9 (environmental principles), & S.10 (Information principles).

[386] MPI, "Aquaculture", http://www.aquaculture.govt.nz/files/pdfs/AQUACULTURE_FACTSHEETS_WEB.pdf (accessed 22/10/2012).

[387] National Institute of Water and Atmosphere, "Oceans Treasure", http://www.niwa.co.nz/publications/wa/water-atmosphere-2-february-2011/oceans-treasure (accessed 22/10/2012).

[388] The Ministry of Commerce evolved into the Ministry of Economic Development (MED) in 2000, and then the Ministry of Business Innovation and Employment (MOBIE) in 2012.

under the Transport Act 1996 by the Ministry of Transport. In the inshore area, oil, gas and mineral exploration was covered by the RMA, and subject to environmental assessment.

New Zealand's economy relies on overseas trade, and the majority of imports and exports are carried by sea. Environmental protection and liability for impacts from the effects of marine transportation and infrastructure drew on international conventions, the Maritime Transport Act 1996, and the Biosecurity Act 1993. The environmental provisions of this legislation were largely untested in the 1990s.[389]

The onshore sources of pollution of the marine environment and its effects were managed under the Transport Act 1994 by the Ministry of Transport and Maritime New Zealand, and the RMA and specific RMA regulations by regional councils.

Formal spatial protection for conservation purposes could be sought under the Marine Reserves Act 1978, and provisions under the Fisheries Act 1996. The tests required to establish marine reserves were onerous. Apart from one large reserve around the Kermadec Islands north of New Zealand, the number and extent of marine reserves in the 1990s was very small. Prior to the 2000s there were few areas protected under the Fisheries Act. Legislation prevented deliberate harming of protected species (almost exclusively marine mammals and seabirds) but protection from accidental killing, for example through fishing activities, was not so explicit. Protected species management was the responsibility of DoC, but control of accidental killing from fishing was regulated under the Fisheries Act and overseen by Minfish.[390]

Environmental and some recreational NGOs were critical of New Zealand's management of its seas, especially environmental impacts of fishing, aspects of aquaculture, and more recently offshore mineral and oil and gas exploration. They had a combative relationship with the fishing industry and Minfish.[391]

Maori claimed customary rights and interests in the coastal and marine area, and asserted ownership rights, based on fishing tradition, other resource use, and cultural associations.[392] The Maori argument was based on both customary and indigenous peoples' rights, and Article 2 of the Treaty of Waitangi signed in 1840 giving Maori exclusive possession and rangatiratanga over their lands, forests, fisheries and taoanga. Some literature asserts also that New Zealand communities, not just

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[389] New Zealand was a signatory to MARPOL (the International Convention for the Prevention of Pollution from Ships) and the 1996 protocol on dumping of waste and other matter (The London Convention).

[390] Fisheries Act 1996, S.8 and S.15.

[391] Johnson, *Hooked: The Story of the New Zealand Fishing Industry*. PCE, "Setting a Course for a Sustainable Future: The Management of New Zealand's Marine Environment," (Wellington: Office of the Parliamentary Commissioner for the Environment, 1999). P.21 & 96.

[392] M. Bargh, "Freshwater: Issues for Maori," (Christchurch: Unversity of Canterbury, 2006). J. Vince, Haward, M., "New Zealand's Oceans Governance: Calming Turbulent Waters," *Marine Policy* 33, no. 2 (2009). P.416.

Maori, generally display cultural and historical attachments that may influence attitudes to marine management, because of their proximity to the coast.[393]

From a policy-maker's perspective it might appear that the policy issue was simply one of adjusting New Zealand's institutional arrangements to meet the requirements of UNCLOS, including its environmental requirements. The conflict potential did not appear especially high. Although conflict might be expected in the fisheries arena, Maori interests in the 1990s were nascent (but didn't remain this way as the following narrative will show), there were potential economic and environmental gains to be made from actioning UNCLOS, and value in providing certainty with environmental standards (presumably provided those standards were not seen as overly onerous from an industry perspective). In contrast, however, there were significant knowledge gaps regarding marine ecosystems. In addition, understanding about the lack of integration of environmental standards and conflicting requirements of various pieces of legislation was low - other than among a small groups of officials, NGOs, and some industry interests. Nevertheless, in the late 1990s, it might have been predicted that, provided the conflict potential could be kept within bounds, the low visibility of the issue might not have increased complexity but actually supported prompt policy development. This did not happen however. The next section traces the development of an oceans policy between 1998 and 2012.

5.3   Developing oceans policy: government responses and initiatives

5.3.1   Background

Demand for change in policy about New Zealand's ocean management came in the late 1990s. It originated from two directions, and involved a number of main actors. Different government departments were considering concurrently two different issues: policy requirements following on from ratification of UNCLOS in 1996, and how to deal with overlaps between the RMA and the Fisheries Act. The former involved the Ministry of Foreign Affairs and Trade (MFAT), economic ministries, and Land Information New Zealand (LINZ , responsible for surveys and boundary delimitation). The latter was driven by the Minister for the Environment, Simon Upton. He had taken over chairing the UN Committee on Sustainable Development at the very same time as the UN had declared 1998 as the International Year of the Oceans. He was aware of how other countries were developing new approaches to oceans management. He was also aware of the issues involving RMA and Fisheries Act overlaps. Upton tasked officials from MfE, DoC and Minfish to review ocean management arrangements and recommend how governance provisions might be improved, with an environmental perspective in mind.

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[393] ———, "New Zealand's Oceans Governance: Calming Turbulent Waters." P.412.

Meanwhile, two countries with circumstances similar to New Zealand had already provided examples of post-UNCLOS regimes. Canada passed an Oceans Act in 1997. Australia developed an oceans regime by late 1998. Australia's regime was especially important. New Zealand's and Australia's EEZs intersect at three points. Australia had developed a coherent strategic planning and management framework quickly.[394] It comprised a formal oceans policy, processes for implementation through regional marine plans, and an organisational structure of a Ministerial Oceans Board (disestablished in 2005), a statutory National Oceans Office (integrated into the federal Department of Environment and Heritage in 2005 as its "marine division"), regional marine plan steering committees, and a National Oceans Advisory Group. [395]

5.3.2 Initiation

In chronological sequence, a group of officials from MfE, DoC and Minfish undertook a review for Upton (the review, though independent, informed work being undertaken in drafting a New Zealand Biodiversity Strategy).[396] Environmental NGOs ran a conference, and promoted better environmental protection of the EEZ.[397] The Parliamentary Commissioner for the Environment (PCE) began an investigation of New Zealand's marine management arrangements.[398] Officials from the Ministry of Foreign Affairs, Commerce, Treasury and LINZ promoted a survey of the continental shelf as a condition of ratifying UNCLOS. [399] A government funded conference, aligned with the continental shelf delineation, promoted offshore mineral resource exploration and exploitation.[400]

Work on policy, which had started with an environmental initiative, began to emphasise the economic opportunities. John Luxton, Minister of Food, Fibre and Biosecurity, speaking on behalf of Upton, said,

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[394] J. Vince, "Policy Transfer in Oceans Governance: Australia, Canada and New Zealand," in *Australasian Political Studies Association Conference* (Dunedin2005). Pp.10-11. The Australian situation involved state jurisdiction to three nautical miles and Federal jurisdiction beyond that.

[395]Ibid. A. Foster, "New Zealand's Oceans Policy," *Victoria University Law Review* 34 (2003). Pp.471-472 and Vince (Vince, "Policy Transfer in Oceans Governance: Australia, Canada and New Zealand." P.414) argues that oceans policy effectively began after 1999, and the PCE report was the most influential driving force.
For a comprehensive summary of the issues surrounding oceans governance in the New Zealand context, see McGinnis, "Oceans Governance: The New Zealand Dimension - Summary Report."

[396] DoC file BDY0003 Volume 42. C.M. Risk, "An Oceans Policy for New Zealand: Why, What, How?" (paper presented at the NZ Petroleum Conference Proceedings, 24-27 February 2002). P.299.

[397] *SeaViews, marine ecosystem management: obligations and opportunities.*
Wellington, 11-14 February 1998. Environment and Conservation Organisations of New Zealand. 1998. Wellington.

[398] PCE, "Setting a Course for a Sustainable Future: The Management of New Zealand's Marine Environment."

[399] Final frontier important for future generations: Speech by John Luxton, Minister for Food, Fibre and Biosecurity, 21 April 1999, http://www.beehive.govt.nz/release/final-frontier-important-future-generations (accessed 20/11/2012)

[400] CAE, "Our Oceans: A Journey of Understanding," (Christchurch: Centre for Advanced Engineering, 2001).

The marine environment is a precious and finite resource. When we use it, we should be looking to be as efficient as possible so we can generate maximum returns for our economy with the minimum of impact on the environment.[401]

On the same day, the Prime Minister, Jenny Shipley, announced she would personally lead the process of developing an "Oceans Strategy." DoC would later that year describe it as "the Department of Prime Minister and Cabinet's (DPMC) marine management and oceans policy project."[402] The Prime Minister said she expected the strategy to be completed in 2000.[403]

Thus work on an oceans policy was progressing with speed. Prime Ministerial leadership gave the policy development work increased priority, especially as it was run from DPMC, a department that carried the authority of reporting to the Prime Minister. It had a twin economic and environmental objective (with the former emphasised more than the latter in formal government announcements). It might have been expected that in these circumstances a policy would be produced in short order. But at this point things reached a turning point, because in November 1999 a general election occurred and the government changed.

5.3.3 Change of government and policy reassessment

The Labour Alliance coalition that formed the government after November 1999 did not come with a defined position on oceans policy. It did not appear in Labour's manifesto, for example. [404] However, both MfE and DoC briefings to their new ministers emphasised that addressing the fragmentary oceans management regime was a priority. [405] There appears to have been no immediate formal review of policy direction, however. Rather, it was a case of policy inertia but with a significant difference in that an environmental initiative became the vehicle supporting further work. The New Zealand Biodiversity Strategy was approved by a new Cabinet in January 2000 (although drafted under the previous government, with its main goals and objectives largely unchanged). One of the many actions in the strategy called for more comprehensive policy objectives and defined departmental responsibilities to better manage environmental effects in the oceans. The strategy

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[401] Sustainable Development of Ocean Resources: Speech by John Luxton on behalf of Simon Upton, Minister for the Environment, http://www.beehive.govt.nz/speech/sustainable-development-ocean-resources (accessed 2/12/2012).

[402] See DoC, "Briefing to the New Minister of Conservation," (Wellington: Department of Conservation, 1999). http://www.doc.govt.nz/documents/about-doc/role/policies-and-plans/a-briefing-for-the-new-minister-of-conservation-(dec.-1999).pdf (accessed 5/7/2013)

[403] "As Prime Minister I am leading this work myself". Our Oceans: The Next Great Economic Frontier conference, Speech by Jenny Shipley, Prime Minister http://www.beehive.govt.nz/speech/our-oceans-next-great-economic-frontier-conference .

[404] New Zealand Labour Party, "Key Policies 1999: The Future Is with Labour," (Wellington: New Zealand Labour Party, 1999).

[405] DoC, "New Zealand Biodiversity Strategy," (Wellington: Department of Conservation, 2000). P.65. "An important first step in improving marine management would be an oceans strategy to address all the government's functions in the marine environment and articulate clear goals, objectives, and management principles." MfE, "Brief to Incoming Minister." P.21. DoC, "Briefing to the New Minister of Conservation." P.25.

retained earlier administrative arrangements, at least in the interim. DPMC continued to be the leaddepartment. [406]

Meanwhile, in December 1999, the PCE released a report on the management of New Zealand's marine environment. The report said current marine management structures were arbitrary, fragmented, and lacked a coherent overarching strategic focus that would integrate diverse interests and values. It recommended reviewing the adequacies of the current legislative and policy framework to ensure integrated management of coastal and marine areas, giving high priority to identifying and protecting a selection of seamounts for information and ecological research purposes, and establishing a Coastal and Oceans Task Force to develop an overarching strategy for the sustainable management of New Zealand's marine environment.[407]

Thus the new Labour-led government was in part steered into agreeing to continue with oceans work, though with no evidence that it was disinclined to do this.

Some literature on New Zealand's oceans policy development says that policy work effectively got underway only after 1999 and that the PCE report was the most influential factor. In fact, the evidence is that work had already started within departments in late 1998, the previous government had given a commitment to produce an oceans policy, and departmental views also had some influence in addition to the PCE report.[408]

Accompanying the Biodiversity Strategy, in May 2000, was a large budget allocation. There were two decisions in that budget that affected oceans policy: the first was $2.5 million to fund the development of ocean policy over three years; the second made Minfish responsible for the funding, thus transferring financial responsibility for the process from DPMC.[409] These decisions also had another effect. The Minister of Fisheries was Pete Hodgson. He had been the opposition spokesperson on environmental matters. Although not Minister for the Environment, he played a prominent role in environmental policy development in the years after the 1999 change of government.[410] Cabinet decisions in March 2000 about the Biodiversity Strategy had identified the Minister for the Environment as responsible for marine action. In July 2000, however, Hodgson

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[406] ———, "New Zealand Biodiversity Strategy." P.65. The recommendation noted biodiversity was only one element of these actions. Also CAB (00) M2/7 dated 31 January 2000.
[407] PCE, "Setting a Course for a Sustainable Future: The Management of New Zealand's Marine Environment."
[408] Foster, "New Zealand's Oceans Policy." Pp,471-472.Vince, "New Zealand's Oceans Governance: Calming Turbulent Waters." P.414.
[409] Funding involved $.844 in 2000/01, $1.125 in 2001/02, and $.563 in 2002/03. Cabinet paper CAB (00) M16/6 (4) in DoC file NHB 02 Volume 1.
[410] C. James, "The Minister for Tough Tasks," *NZ Herald*, 19 December 2001.

became lead minister of an *ad hoc* group of six ministers with delegated responsibility for developing an oceans policy.[411]

Therefore, while there is evidence for continuity between 1999 and 2000, there was a definite altered emphasis to policy work. In July 2000, Cabinet, besides agreeing to a ministerial group, also agreed that an oceans policy should identify clear goals and principles within a framework that managed human impacts on the marine environment, as foreshadowed in the Biodiversity Strategy.[412] In other words, the policy should have an overriding environmental imperative, rather than the more development oriented imperative evident in previous policy direction. Furthermore, environmental officials had a senior lead minister with environmental leanings, there were resources to pursue a policy, and there was a Cabinet mandate, all of which suggest ocean policy would emerge in the near future.

5.3.4 An oceans strategy: "good process" and the possibly comprehensive framework: 2000-2003

Between 2000 and 2003 a framework for oceans management did emerge, roughly in accord with the timetable planned in the 2000 budget. It was not plain sailing, however.

Hodgson was a hands-on minister. He played an influential role in the progress of the oceans policy in the early 2000s, promoting what he called "good policy process." [413] He was wary of departmental agendas. Hodgson created an extra-departmental secretariat (comprised of departmental and local government secondments) reporting directly to him, rather than departments, and led by a Minfish secondee.[414] The secretariat leadership adopted a process-driven and staged approach to the policy development.[415] A public consultation process was agreed in July 2000, based on a ministerial advisory committee, but it took until March 2001 to appoint the committee.[416] The committee reported on 30 September 2001, having completed an extensive and expensive (approximately $1.5 million) nationwide consultation programme. Its report, entitled *Healthy seas: Healthy society*, contained aspirational statements about the desire for clean, productive and accessible oceans and

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[411] Risk, "An Oceans Policy for New Zealand: Why, What, How?". P.299.

[412] Cabinet paper CAB (00) M23/2c. See also Foster, "New Zealand's Oceans Policy." P.475

[413] "Good process will be essential to getting this together". See speech to New Zealand Marine Sciences Society, Waikato University, 30 August 2000, http://www.beehive.govt.nz/speech/managing-our-oceans (accessed 20/11/2012).

[414] Lindsay Gow pers com, "He (Hodgson) was concerned about sectoral and departmental capture and related agendas biasing policy analysis of important cross sectoral issues such as oceans policy."

[415] See C.M. Risk, "Oceans Policy" (paper presented at the Wellington District Law Society, Wellington, 8 May 2002)..———, "An Oceans Policy for New Zealand: Why, What, How?".

[416] The Committee was chaired by ex-Governor General Dame Cath Tizard and comprised David McDowell, David Anderson, Mac Beggs, Mark Bellingham, Rikki Gage, Abigail Smith and Wally Stone.

noted the need for an inclusive, integrated and comprehensive management regime.[417] It was criticised as being too general.[418] The oceans secretariat concurrently produced five working papers between July 2000 and June 2002, dealing with process in fine detail.[419]

At the same time tensions had been building within the bureaucracy. These were acknowledged in the first suite of secretariat papers (released in March 2002) which referred to,

> …*lack of integration between legislation, policy, decision-making, and activities in the marine environment* and, *...1.Differing, and sometimes conflicting, philosophical drivers and objectives across key statutes governing oceans management. 2. Some statutory gaps, particularly outside the 12 nautical mile limit. 3. Implementation difficulties, or a failure to implement current laws in an integrated and collaborative way by different agencies. 4. The need for better information.[420]*

The internal image of the oceans work wasn't helped by pressure to deliver more resources to a secretariat that for all intents and purposes operated as an independent unit under the direction of Hodgson. There was also a somewhat combative relationship between the secretariat leadership and departmental officials.[421] While the secretariat reports helped support later work, nevertheless, there was scepticism amongst departmental officials about the increasing scope of the policy work, and some frustration ministerially about slow progress.[422]

Hodgson had begun to realise that he needed to revert to senior public service oversight if he was to deliver something on oceans policy. Furthermore, senior public service managers were never entirely comfortable with being responsible for a specific area of policy development which they felt should lie with sector-specific agencies. From a departmental perspective things were getting rather messy, with confused accountability between the oceans secretariat, Minfish, DPMC, and MfE. Hodgson agreed with representations made by the head of DPMC and a deputy State Services Commissioner that funding and leadership of the oceans work should be allocated to MfE.[423] In June 2002 Hodgson contacted the Deputy Secretary for the Ministry for the Environment, Lindsay Gow (then Acting CEO

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[417] MInisterial Advisory Committee On Oceans Policy, "Healthy Sea:Healthy Society: Towards an Oceans Policy for New Zealand," (Wellington: Ministerial Advisory Committee on Oceans Policy, 2001).

[418] Foster, "New Zealand's Oceans Policy." P.476.

[419] MfE file PD OC 02-02-01. The topics were; problem definition, ministerial structure, context for policy, risks, overview of three-step process, project structure, report back, vision, seven high level policy issues, process structure and governance, project structure (detailed explanation), resourcing required by secretariat for Stage II, methodology for developing policy, Stage Two work programme, process to develop an oceans policy-timelines, consideration of seven high level policy issues. A file note from the Cabinet Office warned MfE (who had just taken over leadership of the work) that the papers deserved a "gobbledegook" award.

[420] MfE file PD OC 02-02-01

[421] Lindsay Gow pers com, "There was a lot of talking and discussion and grand ideas and not much progress. In part this was because there was no solid departmental underpinning of the exercise and no serious policy work."

[422] Lindsay Gow ibid; MfE PD OC 02-02-01.

[423] MfE file PD OC-02-01-03 Volume 1. Memo SSC to Hodgson, "…responsibility for management at officials' level of stage II of the oceans project is to be allocated to the Ministry for the Environment as from 1 July 2002."

but just on the verge of handing over to a new CEO) and asked him to lead interdepartmental work.[424] Hodgson asked for the work to be located within MfE, but not dominated by MfE staff.[425]

Thus, later in 2002, the locus of support for ocean policy development shifted from a semi-independent secretariat to more senior public service-led operation hosted by MfE. Staff were seconded from five agencies (MfE, DoC, Minfish, MED, and TPK) with MfE and DoC contributing the substance of the operation. It was overseen by a steering committee of senior public servants from MfE (Gow, Acting CEO and subsequently deputy head), DoC (Johnston, second tier general manager), Minfish (Crothers, Deputy Secretary), and MED (Perkins, third tier manager), accompanied on the committee by slightly more junior Treasury, Te Puni Kokiri and DPMC officials.[426] In Gow's view, the more solid cross departmental underpinning combined with the leadership and technical and analytical abilities of the people involved allowed the policy work to progress more effectively.

The new interdepartmental team (although still calling itself an oceans secretariat) embarked on what they called a stock take with internal papers, a suite of consultant reports, and a second round of consultations (this time just with key stakeholder groups) and submissions in March 2003. All this was aimed at reporting to Cabinet with a draft oceans policy by July 2003. [427] It was during this period that a working draft of an oceans policy was crafted ready to submit to Cabinet. It included plans for a comprehensive new framework to integrate and unify the governance of all activity in the EEZ. [428] This effort had not been achieved without internal debate between officials, largely between the environmentally-oriented arguments put forward by DoC and MfE representatives, and the rights-based economic arguments from MED, Treasury, and Minfish representatives. In order to preserve a degree of unity and cross-departmental support, the new proposed regime endeavoured to accommodate existing institutions.[429] But what was different and significant environmentally was that these would be subject to an overarching set of principles based on environmentally sustainable management. By June 2003, officials had agreed on a comprehensive new oceans regime. This was to involve an Oceans Act, an Oceans Minister, a national oceans plan, and an oceans agency - all relatively similar to the institutions Australia had put in place five years earlier, but akin to the way

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[424] Lindsay Gow pers com, "As I recall Pete rang me about the time Barry was appointed (July 2002) and said he wanted me to lead an interdepartmental exercise which while it could be hosted through MfE, was not to be MfE dominated."

[425] Memo Hodgson to MfE, May 2002, MfE file PD OC 02-02-01. MfE was instructed it must seek to co-ordinate interdepartmental input, rather than impose its own views.

[426] Pamphlet published as MfE, "An Oceans Policy for New Zealand," (Wellington: Ministry for the Environment, 2003). Details of the membership of the Oceans Policy Steering Group, Oceans Policy Secretariat in 2003 and the proposed 2003oceans policy structure were posted on www.oceans.govt.nz. This website has been decommissioned but was retrieved for the author by MfE. The same documents are held on MfE file PD OC 02-02-01.

[427] Foster, "New Zealand's Oceans Policy." P.476.

[428] Lindsay Gow pers com; Vince, "Policy Transfer in Oceans Governance: Australia, Canada and New Zealand."P.415; MfE, "An Oceans Policy for New Zealand."

[429] Vince, "Policy Transfer in Oceans Governance: Australia, Canada and New Zealand." Pp.415-6.

the RMA was designed. The primary objectives of the regime were to sustain the health of ocean ecosystems, and meet Treaty of Waitangi and international obligations. Its secondary objectives were to provide for public use, access and enjoyment, provide for public return, and provide for enhanced environmental enjoyment. Decision-making principles were to be transparent and participatory, managing within constraints of uncertainty, respecting existing rights, interests, values and future options, and avoiding, remedying, or mitigating environmental effects. The oceans plan would contain baseline ecological standards, and set national priorities, processes and tools for resolving competing uses. Maori were to be involved at all levels of decision-making. It was proposed to seek Cabinet approval after a joint Ministerial consideration in July 2003 and pursue a work plan to implement the regime by 30 June 2004. [430]

Literature on the 2003 period seems to assume that it was just a stage in the policy development process.[431] However, it is argued here that the policy was close to approval. Officials, coordinated by MfE with significant DoC and Minfish input, had achieved agreement on what the framework should be. They had the support of the key minister and, although speculative, it is entirely possible Hodgson might have carried it through to Cabinet approval. Thus, it seemed that New Zealand was about to create a new framework for managing its surrounding oceans and continental shelf. It was one based on integrated environmental principles and one that would be comprehensive, in that it applied to all marine activities.

5.3.5   The Foreshore and Seabed Issue and Aftermath

On 19 June 2003 the Court of Appeal issued a judgement saying that there was a possibility that Maori customary title might extend to areas of the foreshore and seabed.[432] The case had arisen from a local Maori claim to inshore coastal space for aquaculture in the Marlborough Sounds. The government reacted and almost immediately announced it would legislate to clarify public ownership rights to the foreshore and seabed. Maori reacted angrily. There was widespread polarised political debate.[433]

Lindsay Gow says that until June 2003, a trusting and effective working relationship had been progressively built with all sectors but particularly with Maori. The Government's response to the Seabed and Foreshore issue severed all the trust that had been built. It made it impossible to continue the working relationships. In fact, so severe was the effect, he says, that officials

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[430] MfE file PD OC 02-02-01. Memo to Ad Hoc Ministerial Group on Oceans Policy, 24 June 2003.
[431] Vince, "New Zealand's Oceans Governance: Calming Turbulent Waters." Pp.415-416. McGinnis, "Oceans Governance: The New Zealand Dimension - Summary Report." P.23.
[432] *Attorney-General v Ngati Apa [2003] 3 NZLR 643 (Ngati Apa).*
[433] J. Ruru, "A Politically Fuelled Tsunami: The Foreshore/Seabed Controversy in Aotearoa Me Te Wai Pounamu/ New Zealand," *The Journal of the Polynesian Society* 113, no. 1 (2004).

recommended to the Minister that the project as designed and as operating had to be terminated. Without Maori involvement and trust, it could not continue in its multi-sectoral and inclusive form.[434]

The effect on oceans policy of the foreshore and seabed debate was that work was effectively halted at a political level, and the inter-departmental oceans team was effectively disbanded although work by officials limped on behind the scenes for a few months. In November 2003, MfE recommended work be delayed, a small team in MfE progressed an Oceans Act "as far as possible in-house", and "assist with other projects within MfE that are currently under pressure because of lack of resource (i.e. aquaculture)."[435] In December 2003 the Cabinet Business Committee agreed that further consideration and consultation on the draft oceans package be delayed until the foreshore and seabed issue was sorted out and that only some "small amount of policy work" would continue.[436] The "small policy work" involved options for assessing and approving environmental effects of proposed activities in the EEZ.[437] Workshops were held in 2004 about information requirements and on managing environmental effects in the EEZ. [438] The results of both of these sets of workshops, however, were not published until June 2005. Ministers meanwhile grappled with the political fallout of the government decision to legislate for Crown ownership of the foreshore and seabed. The intellectual capital accumulated over the past four years amongst officials was dispersed and dissipated. Crucial cross disciplinary and cross agency work and understanding was lost. Immediate future work did not have the degree of focused senior officials' attention as had occurred in 2003. Reorganisations in MfE, DoC and Minfish meant that restarting any new work would take some time.[439]

The foreshore and seabed issue, meantime, became an intense political event. In November 2004, legislation was passed declaring the foreshore and seabed to be crown land. This was accompanied by major public controversy. A new Maori political party was created and became a feature on the

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[434] Lindsay Gow pers com.

[435] MfE file PD OC 03-B-0343 Memo to Minister Responsible for Oceans Policy

[436] Cabinet committee paper EDC Min (04) 9/4

[437] The work was deemed necessary because "there is currently no formal process requiring companies to fully assess the effects of their activities" (Cabinet committee minute EDC (04) 57). This situation was not remedied until August 2011. CAB Min (11) 19/7 B, http://www.mfe.govt.nz/cabinet-papers/cab-min-11-19-7B.pdf (accessed 24/8/2012)

[438] These workshops concluded that umbrella legislation should be drafted "over the next 2 or 3 years" and in the short term the oil and gas industry in particular should negotiate "industry wide voluntary agreement". The report of the 2004 workshops finished by saying, "Work on developing any legislation can begin once Oceans Policy resumes and Cabinet approval has been sought." Vince, "New Zealand's Oceans Governance: Calming Turbulent Waters." P. 417,

[439] Key leadership personnel moved on. "After some circling round, the decision was taken to quietly disband the operation, though its demise was not admitted publicly for some time. It was never restarted in its original form, and the only work done subsequently was to look at environmental regulation in the EEZ. As they say the rest is history." Lindsay Gow pers com.

political stage. Although Maori interests had been recognised and acknowledged in earlier oceans work, the debate meant that in future it would become an integral part of oceans governance.[440]

5.3.6 Oceans policy: the slow march to a compromise - 2003 to 2012

Although the foreshore and seabed issue had almost halted policy work, it hadn't been forgotten by some outside interests, in particular the environmental NGOs. The Green Party and the National party spokesperson for the Environment portfolio, Nick Smith, regularly questioned what the government was doing about oceans policy.[441]

In March 2005, Pete Hodgson commented in a speech that he was looking at getting the oceans "project" going again.[442] In July, the Cabinet Business Committee considered a paper on *Oceans Policy: Framework for future programme*.[443] In November, the government revealed to an NGO conference that policy work had recommenced. It was announced in a speech delivered by an MfE official on behalf of the Minister for the Environment, David Benson Pope.

> *I want Oceans policy to be a flagship of sustainable development in action and a means of optimising the value of our oceans to New Zealand. By value, I mean economically, environmentally and culturally.*[444]

But, in fact, the words in the speech suggested a scope that was far more expansive than what was actually occurring. A Cabinet paper and minute in December 2005 set the tone for the work in the future. It was to focus on "fixing the most pressing problems."[445] There is little evidence of a desire by most departments to resurrect the earlier framework. The language of "fixing" correlated with a new philosophy promoted within MfE.[446] Politically, Cabinet seems to have shied away from a comprehensive framework for oceans management in view of the controversy arising from the seabed and foreshore controversy. Some sort of regulatory regime was a more minimal way of achieving a commitment to an oceans policy without too much angst.

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[440] Ruru, "A Politically Fuelled Tsunami: The Foreshore/Seabed Controversy in Aotearoa Me Te Wai Pounamu/ New Zealand." Pp.57-72; Vince, "New Zealand's Oceans Governance: Calming Turbulent Waters." P. 416.

[441] See for example Hansard 2006 question No. 6390. Hon Dr. Nick Smith, "What is the timeline for the completion of the current stage of the oceans policy project, and what are the next steps?" http://www.parliament.nz/en-NZ/PB/Business/QWA/c/e/d/QWA_06390_2006-6390-2006-Hon-Dr-Nick-Smith-to-the-Minister-for-the.htm (accessed 21/11/2012)

[442] Launch of Oceans Survey 20/20, 16 March 2005; http://www.beehive.govt.nz/speech/ocean-survey-2020-launch-speech (accessed 21/11/2012)

[443] Cabinet committee paper CBC (05) 82.

[444] David Benson-Pope, "Seachange 05 Oceans Policy Recommenced", http://www.beehive.govt.nz/speech/seachange-05-oceans-policy-recommenced (accessed 21/11/2012).

[445] Cabinet committee paper CBC (05) 280, and committee minute CBC Min (05)19/5. See http://www.mfe.govt.nz/issues/oceans/current-work/cabinet-paper-eez-effects-legislation.html (accessed 21/11/2012).

[446] MfE, "Annual Report 2002-2003," (Wellington: Ministry for the Environment, 2003). P.2. This language coincided with the arrival of a new CEO. The language of "fixing" may reflect a then-current view amongst central agencies that MfE was too policy-centred (Lindsay Gow pers com).

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The narrower focus, the centrality now of Maori issues, and the evident caution of ministers and the bureaucracy, came together in a Cabinet paper in October 2006, confirmed in a Cabinet Minute in December 2006.[447] The thrust of the policy was to concentrate on gaps and inconsistencies in the regulation of environmental effects in the EEZ and develop a legislative option to address these (but in the short term MfE and the minerals industry agreed on a short term option of voluntary measures[448]). Cabinet agreed with officials' recommendations that policy and any new legislation was not intended to change existing fisheries, transport, maritime safety, and protected species legislation. Resource ownership and allocation issues were also excluded. [449] In these cabinet papers, it is evident the one agency, Minfish, continued to promote an integrated approach. It was recorded in the cabinet paper that Minfish thought there were benefits if the EEZ legislation set environmental standards that were binding on all legislation and activities operating in the EEZ, including the Fisheries Act 1996. The Ministry for the Environment considered this was beyond the scope of existing Cabinet directions, and that it would complicate implementation of the EEZ legislation.[450] The MfE view was the one adopted by Cabinet. Contention and controversy were avoided, and existing institutional interests were largely left alone. Nevertheless, final direction on the shape of policy took another year.

During much of 2007, officials, led by MfE, hammered out a discussion paper[451] and analysed submissions. Once again, there was comparative leisure in the speed of policy development. At the same time the Environment Minister's attention was on other matters, notably political controversy involving his interaction with his department.[452]

But, finally, a crucial decision point was reached. A new minister, Trevor Mallard, held the Environment portfolio. The Labour-led government committed itself to a policy platform that emphasised environmental sustainability as a priority. [453] In December 2007, a paper was presented to Cabinet entitled "Proposal for Exclusive Economic Zone Environmental Effects Legislation."[454] The

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[447] Cabinet committee paper CBC (06) 37/1E and Cabinet minute Cab Min (06) 47/4B.
[448] Vince, "New Zealand's Oceans Governance: Calming Turbulent Waters." P.417.
[449] See Cabinet minute Cab Min (06) 47/4B referred to in Cabinet paper Cab 07-C-0751 http://www.mfe.govt.nz/issues/oceans/current-work/cabinet-paper-eez-effects-decisions.html (accessed 21/11/2012).
[450] Ibid. To record an alternative view in a Cabinet paper indicates a department held firm views on the matter, as a dissenting departmental view in a Cabinet paper in my experience meant the issue was usually elevated to a senior official level.
[451] Approved for release in May and released in August. Cabinet committee minute EDC Min (07) 10/4.
[452] "David Benson Pope resigns", http://www.stuff.co.nz/national/politics/51486/David-Benson-Pope-resigns (accessed 24/8/2012).
[453] Speech to the annual Labour Party Conference, Helen Clark, 28 October 2006; http://www.scoop.co.nz/stories/PA0610/S00539.htm (accessed 21/11/2012)
[454] Cab (07)-C-0751, http://www.mfe.govt.nz/issues/oceans/current-work/cabinet-paper-eez-effects-legislation.html (accessed 2/12/2012).

paper was not confirmed by Cabinet till June 2008. Nevertheless, after ten years, an oceans policy seemed likely to emerge, albeit more narrow and modest than the one proposed earlier.

New Zealand's "oceans policy" was now not an overarching environmental framework as proposed in 2003. Rather, it was designed to manage environmental effects in the EEZ, where these were not covered by existing legislation, an approach designed to not disturb existing arrangements and interests.

The legislation proposed in June 2008 was to be similar to the RMA in the sense that it was principle based and proposed using a statutory policy statement to express goals, priorities and objectives. It also intended to use the RMA-like consents process based on a precautionary principle (but only for those activities not covered by environmental provisions of other legislation). Appeals could be made to the Environment Court. Environmental consent processes were to be run by an "EEZ Commissioner" (again, similar to RMA resource consent processes) based in MfE. Probably most critical was the purpose of the legislation. It was "to provide for uses of EEZ resources, and to regulate the effects of those uses in order to protect the environment and to ensure any uses (or the effects of those uses in the case of non-renewable resources) are environmentally sustainable". The Minister for the Environment was invited to report to the Cabinet Legislative Committee by the end of July 2008 with the intent of introducing a bill into Parliament before the end of August 2008. [455]

The 2008 decisions had avoided conflict with the powerful fishing lobby. They had strengthened Maori rights and interests. They had not addressed some environmental NGO concerns about conservation and creation of further spatial protection zones. Nevertheless, an oceans policy was agreed by the government

But it didn't happen as intended. Drafting of legislation took longer than expected. By the time a near final draft was complete in late 2008 a general election had been called for November. In accordance with convention, parliamentary bills were postponed.

The 2008 election resulted in a change of government and brought to power a National Party-led centre-right coalition. There were at least three features of this change that affected oceans policy work. First, the National Party-led government differentiated itself from the previous Labour Party-led government by giving priority to economic development and downplaying environmental sustainability. Second, the new government involved a coalition with, among other minor parties, the Maori Party, which had been founded on opposition to the Labour Government's handling of the foreshore and seabed issue (and a perceived link between that issue and oceans policy). Third, the

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[455] See page 5 of Cabinet minute (11) 19/7B, http://www.mfe.govt.nz/cabinet-papers/cab-paper-eez-environmental-effects-legislation.pdf (accessed 2/12/2012).

economy began to decline from late 2008, and the government looked to promote new economic activity, including in the EEZ. Nevertheless, departments argued that New Zealand's oceans governance still needed to be overhauled.[456] They were supported by the new Minister of the Environment, Nick Smith. He had long experience in environmental matters. He resurrected the work on oceans policy, but not immediately.

In April 2010, Nick Smith said in a report to Cabinet that an EEZ bill had been, "partly drafted by the previous government. In principle, I support the underlying policy for the EEZ bill." He went on to say Cabinet would consider EEZ policy in late 2010. [457] Also in 2010, the government actively sought, and received, applications for new offshore deep-water oil and gas exploration, which triggered a reaction from environmental NGOs about the apparent lack of enforceable environmental regulations.[458] In October 2011, a large container ship, the M/V Rena grounded in the Bay of Plenty causing New Zealand's largest oil spill. Gaps were found in New Zealand's marine management regime for clean-up liability, and environmental assessment and protection procedures in the EEZ – gaps that, ironically, had been identified in the very early stages of the oceans policy process as far back as 1998.[459] The government response was to resurrect the 2008 work to "fix the gaps" in New Zealand's EEZ legislation. The result was a redrafted 2008 EEZ bill with the Minister, Nick Smith, saying:

> *I propose proceeding with the legislation (approved in 2008) but changing decisions to reflect this government's different priorities with greater emphasis on supporting economic development opportunities and minimising compliance costs.[460]*

The increased emphasis on economic objectives was accompanied by a change in the tone of advice some departments gave to ministers. Whereas in 2008 combined departmental briefings (the "natural resources" group) to the incoming government emphasised environmental integrity as an

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[456] Marine issues were a priority for the grouping of departments dealing with natural resources in 2008 and in 2011. The 2008 briefing to the incoming government from the natural resources grouping of departments stressed the lack of outcomes or strategy to guide how the marine environment is managed. The briefing argued that it compromised the ability to ensure environmental integrity while providing for different uses and values (See "Briefing to the incoming government 2008: Environmental sustainability," http://www.beehive.govt.nz/sites/all/files/BIM_environmental_sustainability_0.pdf).

[457] Cabinet Economic Growth and Infrastructure Committee March 2010. www.mfe.govt.nz

[458] See McGinnis, "Living up to the Brand: Greening Aotearoa's Marine Policy." Pp. 17-28

[459] The M/V Rena grounding and oil spill occurred within twelve nautical miles and, ironically, came under the RMA's jurisdiction. It has been suggested that the RMA's strong legal remedy provisions led to greater pressure on the owners of the ship to contribute more financially than they might otherwise have done if the spill had occurred in the territorial sea beyond twelve nautical miles (Lindsay Gow pers com).

[460] Paper presented to Cabinet 16 May 2011, http://www.mfe.govt.nz/cabinet-papers/cab-paper-eez-environmental-effects-legislation.pdf (accessed 2/12/2012). Confirmed in Cabinet minute CAB Min (11) 19/7B.

ocean policy priority, by 2012, briefings from the same group of departments emphasised rights and responsibilities and benefits and costs.[461]

The EEZ bill, when introduced into Parliament in 2011 caused a barrage of criticism from environmental NGOs, academics, and the PCE.[462] The purpose of the EEZ Bill originally was to "achieve a balance between the protection of the environment and economic development in relation to activities in the exclusive economic zone." The bill was altered before its final reading to introduce a stronger environmental purpose.[463] The revised purpose was to "promote the sustainable management of the exclusive economic zone", using the definition of sustainable management set out in section 5 of the RMA. The aim of the Act, as set out in its explanatory note, was to fill gaps in the environmental management regime in the EEZ. Existing laws such as the Fisheries Act 1996 would continue to operate largely as at present. Activities covered by the EEZ Act included seabed mining, some aspects of petroleum activities, energy generation, carbon capture and storage, and marine farming. The note also said the Act gave effect to New Zealand's obligations under the United Nations Convention on the Law of the Sea to manage and protect the natural resources of the EEZ. [464]

And so, after a period of fourteen years, New Zealand finally arrived at a form of oceans policy. It had been a lengthy and tortuous mix of near success and policy paralysis. Does it, as one commentary says, help illustrate the complexities of policy development, lack of sectoral integration, and changes in policy direction? [465]

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[461] The 2012 briefing promoted enacting enabling legislation for the EEZ to regulate the environmental impacts of natural resource use including, among other things, "considering the full range of marine and coastal rights and responsibilities, along with their opportunities/benefits and costs and evaluating their potential effects on overall prosperity and ecosystems services". (Natural resources Sector Brief to Incoming Ministers, 2 February, 2011, http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011/ (accessed 21/11/2012).
[462] For criticism from PCE, see http://www.scoop.co.nz/stories/PO1208/S00013/eez-legislation-too-weak-environment-commissioner.htm, for NGO criticism see EDS press release " EEZ Bill fails to protect the environment and will damage New Zealand's international reputation", http://www.scoop.co.nz/stories/PO1205/S00267/eez-bill-fails-to-protect-the-environment-and-nz-reputation.htm , and for academic criticism see McGinnis, "Oceans Governance: The New Zealand Dimension - Summary Report." P.23, "One problem with the bill at present is that the management goal of striking a balance between competing interests and values is not consistent with international obligations."
[463] The government announcement said "Government announces proposed changes to EEZ bill", http://www.beehive.govt.nz/release/government-announces-proposed-changes-eez-bill (accessed 21/11/2012). Disappointment from industry was expressed in a business commentary withy the headline "Government buckles to green pressure" and "The government has stepped back from a key plank of its pro-growth agenda", http://www.scoop.co.nz/stories/BU1208/S00208/government-buckles-to-green-pressure-changes-eez-bill.htm 24/8/2012 (accessed 21/11/2012).
[464] Bills Digest, Digest No. 1923: Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill 2011.
[465] Vince, "New Zealand's Oceans Governance: Calming Turbulent Waters." P.412.

5.4   Discussion

The narrative of New Zealand's oceans policy shows, in summary, a period of policy-forming taking place comparatively quickly over a period of four years, and the completion and near approval of a comprehensive strategic environmental framework for oceans management around New Zealand. The proposed strategy was derailed by a related coastal and marine management issue of Maori rights. A long tail of policy development followed, drawing on the previous work but conditioned by political and bureaucratic caution arising from the way Maori rights had overturned the original proposed policy. After the M/V Rena disaster in 2011, however, policy work sped up. Even then, a less comprehensive policy in environmental terms emerged compared to that envisaged in 1999 and certainly in 2003. What can we make of the factors that influenced these various permutations of New Zealand's oceans policy?

Issues associated with developing a more integrated approach to oceans management were not especially complex, initially. What **complexity** there was early on arose from tension between commercial and environmental interests. This was manifest in the ideological toing and froing between economic objectives (which assumed dominance in 1999) and environmental objectives (which assumed dominance in 2000). Awareness and visibility of the policy problem was not very high at the start, and only became more so after the report of the ministerial advisory committee in 2000 and the policy work undertaken at the same time. The development of better knowledge and awareness seems to have helped reduce conflict potential over policy prescriptions within the machinery of government, in that it identified problems to be addressed, but paradoxically, increasing the visibility of the issues in the wider public arena may have contributed to raising the conflict potential. Where the oceans policy became more complex was after the foreshore and seabed controversy. The controversy did not arise from the proposed oceans policy itself. Nevertheless, it elevated the conflict potential hugely. This **event** awoke nascent Maori concerns about their rights. These were successfully translated onto the political stage, resulting in lower political priority for an oceans policy where it risked exacerbating Maori concerns. The influence of events is also apparent as a result of the 1999 and 2008 elections, in that 1999 increased an environmental emphasis and 2008 decreased it. The grounding of the MV Rena in 2011 (combined with growing interest in offshore oil and gas exploration) were events that increased the policy priority, but this didn't necessarily translate into significantly greater environmental priority owing to an emphasis in government on economic values compared to environmental ones. Events thus increased complexity. Together, these intervening variables affected cognitive features within government, increased the priority of political rationalities over environmental ones (as well as economic ones), and constrained the influence of institutional and agency features.

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In examining the intra-government sources of environmental policy effectiveness (the dependent variable), it is instructive to contrast the policy that nearly emerged in 2003, with the one that emerged by 2012.

In terms of **environmental effectiveness** the 2003 policy would have established environmental values as the principal priority, and, by saying that other legislation had to give effect to this principle, would have firmly integrated environmental values into the way New Zealand authorities approached ocean's management. The 2012 EEZ legislation established environmental values as a priority, but it perpetuated a sector-based approach rather than an integrated one, hence decreasing its environmental effectiveness.

In terms of potential **policy effectiveness**, the 2003 proposal set out clear authorities, law, rules, tools and means of implementation, via a proposed Oceans Act, strategic direction through a national oceans plan (a form of mandatory national policy statement), and an oceans minister and an oceans agency to carry out oversight and policy coordination. It is, of course, difficult to judge the support base for these proposals because they were never finalised. Clearly there was some support, given the findings of the Ministerial Advisory Committee, the consciousness raising effect of their public hearings around the country, and the calls for better oceans management from the PCE, environmental NGOs, and from some in the petroleum and mining sectors who wanted more certainty about rules that applied to their activities. In contrast, the fishing industry was cautious at best, and as events transpired, Maori support was highly conditional.

The 2012 legislation was less integrated both internally and externally, in that while it established the EPA as a regulator, its role was confined to those activities not already controlled under other legislation, and was more limited in its rules, tools and implementation compared with what had been proposed in 2003. It had a support base in industry and Maoridom because it either met or avoided impinging on their interests. It had (just) satisfied environmental groups by changing the purposes of the legislation at the last minute, but its lack of overall integration caused those who wanted a firmer environmental focus to oceans management to be qualified in their support.

The influence of intra-government features (the independent variables) on the 2003 ocean policy proposal and the 2012 approach are revealed to be different in effect.

In both cases **agency** was a significant driver, especially from a number of influential ministers: Upton in 1998 by getting oceans management on the policy agenda and driving an environmental emphasis; Hodgson in continuing the drive between 2000 and 2003 with a policy-process emphasis; Mallard in 2008 with a political emphasis to deliver on promises to produce some (any) sort of policy; and Smith in 2009 to 2012 because he promoted the value of an oceans policy and to deal with the political,

environmental and financial risks arising from the M/V Rena disaster.[466] Leadership within the bureaucracy was evident in the period between 2002 and 2003, particularly from senior managers of MfE. Otherwise there is no evidence that it was consistently strong. In fact, in the mid-2000s it was minimal.

Evidence a strong positive environmental **institutional effect** is apparent in the period between 2001 and 2003. For much of the rest of the time it was comparatively limited. There is evidence that the institutional arrangements up until 2002 served to delay things, not deliberately, but by emphasising policy processes at the expense of policy substance, and awkward organisational arrangements with the policy run in effect from DPMC in 1999 and for nearly two years by an *ad hoc* arrangement involving Hodgson's office. Between 2002 and 2003, however, environmental and policy effectiveness were enhanced by re-organised arrangements which focused resources, gathered together officials of both seniority and capability, and an assigned leadership role for MfE. After 2003, there was limited environmental institutional drive unless prompted from a political level. The last minute changes to the legislation in a more environmental direction in 2012 were the result of external lobbying, not a concerted institutional drive from departments or ministers.

Cognitive features - views and priorities about environmental values and how these are interpreted - emerged in what was described above as the "toing and froing" between economic and environmental objectives. Economic values came to the fore in 1999 and seemed on track to focus on opening up opportunities for offshore oil and gas exploitation and seabed mining, although acknowledging the environmental protection dimension. Environmental values came to the fore in 2000 and prevailed until 2003. Political priorities dominated until 2008, although an environmental dimension remained alive. Economic priorities reasserted themselves after 2008, even more strongly than they had in 1999.

Finally, it is interesting to observe how much **time** was involved in producing any oceans policy. It took about fifteen years. Australia and Canada had produced similar policies much more quickly. These provided models which New Zealand could have copied without embarking, as it did, on developing a policy from first principles. Furthermore, by not pressing forward with more urgency, oceans policy became subject to the exigencies of events, and led to greater complexity. This brings into question both the capacity of the departments charged with developing this particular policy (an institutional feature), and a proposition advanced in some New Zealand literature that the centralised nature of the New Zealand government system means that, potentially, it can produce

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[466] It should be remembered that Smith had been involved, along with Upton, in promoting oceans policy between 1998 and 1999, and as opposition spokesperson for environmental matters between 2000 and 2008, he had promoted an oceans policy, from an environmental perspective.

policy quickly.[467] These issues will be discussed further in Chapter 8 dealing with the overall analysis of what the case studies show.

In conclusion, actors (agency) and their views (cognitive perspectives) were the key factors that explain the more limited oceans policy that emerged in 2012, which in turn were very strongly conditioned by events, especially the foreshore and seabed controversy. This introduced significantly greater non-environmental complexity to dealing with oceans management.

However, in the 2003 proposal, institutional features, especially roles (acting as advocates), resources (seniority and numbers of staff), the way they organised (structure), views and priority applied by MfE and DoC (and Minfish), provide a contrasting set of key factors that would probably have explained a stronger environmentally oriented oceans policy if in fact it had eventuated.

Using the framework from Chapter 4, key factors influencing the 2012 policy are represented in figure 5.1.

Figure 5.1 Oceans policy 2012 influencing factors (scaled to small A, moderate A or large A)

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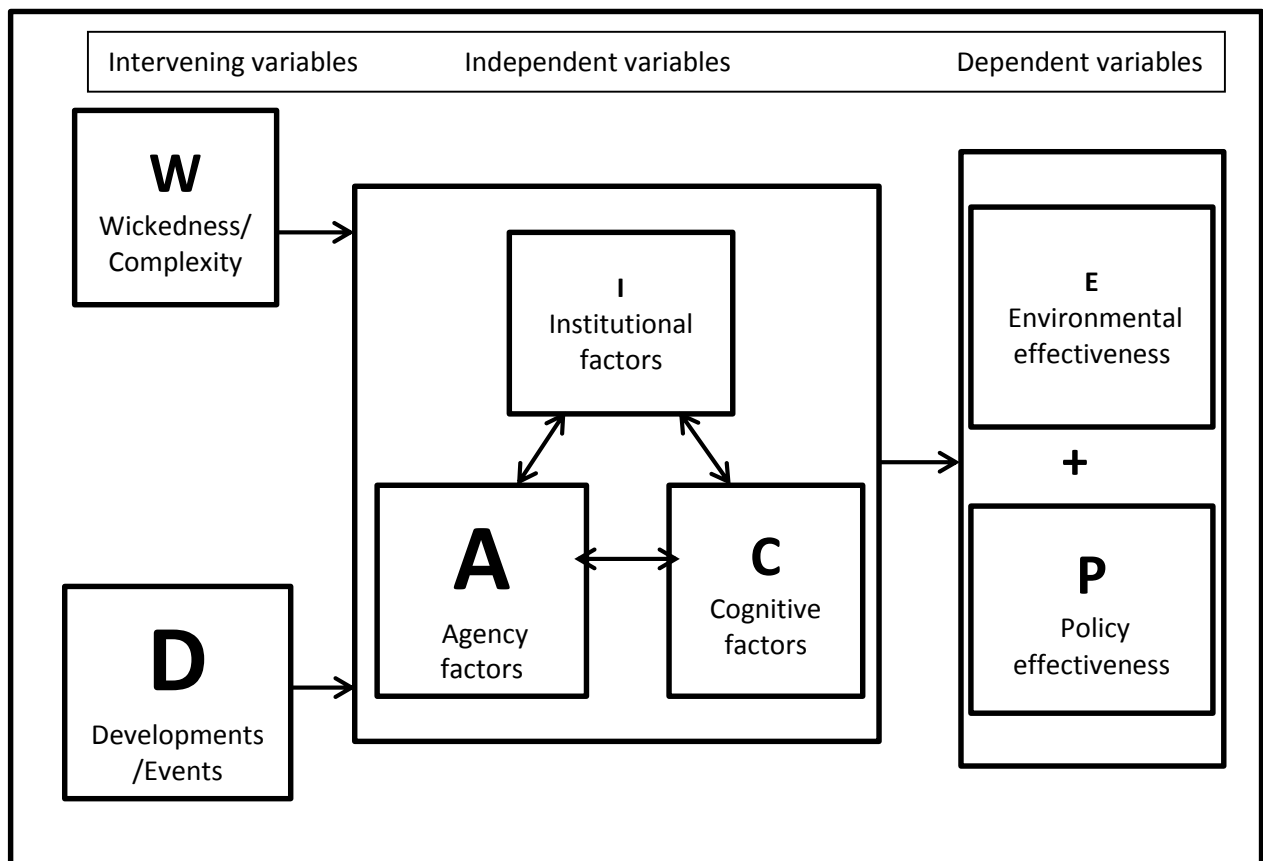
[467] Mintrom, "Participating in Agenda Setting." P.608.

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Using the framework from Chapter 4, key factors influencing the 2003 policy are represented in figure 5.2.

Figure 5.2 Oceans policy 2003 influencing factors (scaled to small A, moderate A or large A)
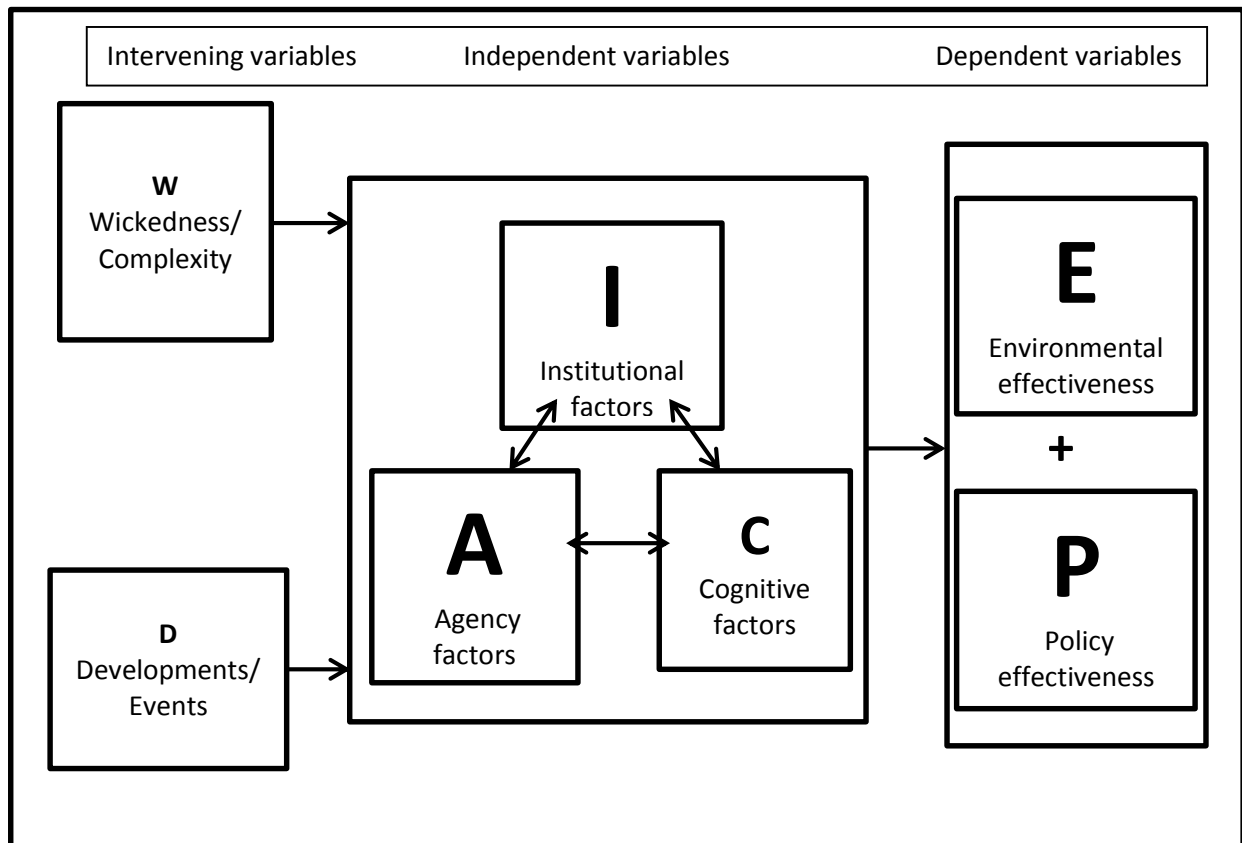
Chapter 6

Case Study: Addressing the Loss of Indigenous Biodiversity

6.1   Introduction

Declining indigenous biodiversity is a significant persistent environmental problem in New Zealand. This case study examines efforts by central government from 1990s to 2000s to establish a national framework designed to address the problem. It summarises the challenges and complexity of the issue, then relates chronologically how a national strategy for biodiversity was developed within government, and followed by discussion using the questions set out in Chapter 4.

6.2   The biodiversity issue: context and complexity

How challenging is the indigenous biodiversity issue in New Zealand?

The extent of biodiversity in New Zealand is significant by world standards in terms of numbers of unique species and ecology. It is also under pressure and declining.[468]

Isolation of New Zealand from other landmasses for over sixty million years has led to a distinctive flora and fauna. There are over 2000 species of terrestrial endemic plants, a far greater but as yet un-quantified number of terrestrial endemic invertebrates, and an indigenous vertebrate fauna dominated by birds and amphibians.[469] Humans arrived in New Zealand probably about 800 years ago, in the last stage of human global expansion (apart from Antarctica). The result was enormous change to New Zealand's indigenous ecology, widespread habitat loss, and species extinctions. [470]

Current pressure on indigenous biodiversity comes from predation and competition from invasive introduced species, land-use pressure and water quality decline, and marine resource exploitation.[471] Nevertheless, massive habitat destruction that occurred in earlier times has been halted. [472] New Zealand has created an extensive network of legally protected areas encompassing nearly 30% of the country. Many protected areas include remote regions. While New Zealand has tended to separate

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[468] Myers, "Biodiversity Hotspots for Conservation Priorities." Pp.853-858.
[469] Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. See Young's Chapter 1 for a description of New Zealand's biophysical characteristics and distinctiveness.
[470] McGlone, "Dating Initial Maori Environmental Impact in New Zealand." Pp.5-16.
[471] MfE, *Environment New Zealand 2007*. P.313 & 349.
[472] Ibid. Pp.350-402.

"protected" landscapes and uses from "productive" landscapes and uses, there are also many easily accessible protected areas close to major towns and cities.[473]

A range of interests are involved in nature conservation, with different, sometimes conflicting, motivations.[474] These include: advocacy in support of nature conservation by environmental NGOs; Maori cultural associations with species and places, and grievances arising from land acquisitions by the Crown (particularly those in the 19th and early 20th century);[475] use by outdoor recreation groups; concerns of rural land-users about weeds and pests spilling over from protected areas and regulation of landowners' use of resources; territorial local government and regional councils exercising their land management functions and representing constituent views; and tourism industry desires to use protected areas and at the same time acknowledge their attraction for their customers and as a marketing brand. [476]

Separation between so-called "protected" and "productive" landscapes, a large number of interests partly or actively supportive of nature conservation, the degree of ambiguity between Maori cultural support of nature conservation and grievance about loss of land, concern from land-users about actual and perceived constraint on use of resources because of nature conservation policies, and mixed motivations of the tourism industry all create complexity in addressing nature conservation issues in New Zealand.

Thus, New Zealand's nature conservation challenge is at one level a biophysical problem (particularly the effect of invasive species). Understanding of the causes and extent of biodiversity decline is incomplete. New Zealand's ecology is highly diverse and complex, and how it works is not well understood.[477] Protecting biodiversity from invasive species across a wide range of ecosystems is expensive, and the results of management actions are not guaranteed.[478] At another level there are human complexities that provide opportunities for action, but also constraints. At heart it is a tension between cost and values: the costs arising from protecting biodiversity in large areas of unpopulated biodiverse natural landscape in public ownership under taxpayer-funded government agency management; and differing value perspectives arising first from debate about how to manage the

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[473] PCE, "Weaving Resiliance into Our Working Lands," (Wellington: Parliamentary Commissioner for the Environment, 2002). P.15.
[474] ———, "Creating Our Future: Sustainable Development in New Zealand," (Wellington: Parliamentary Commissioner fro the Environment, 2002). Pp.15-22. MfE, *Environment New Zealand 2007*. Pp.353-356.
[475] WAI 262, http://www.waitangi-tribunal.govt.nz/scripts/reports/reports/262/05AC7023-0EEA-4ECC-8B6E-AB136A2EA7F8.pdf (accessed 6/8/2012).
[476] Tourism generated a direct contribution to GDP of $6.9 billion, or 3.8 percent of GDP, in 2011. Tourism satellite account 2011, Statistics New Zealand, http://www.stats.govt.nz/browse_for_stats/industry_sectors/Tourism/tourism-satellite-account-2011/summary-results.aspx (accessed 6/8/2012).
[477] DoC, "New Zealand Biodiversity Strategy." Pp.6-7.
[478] PCE, "Weaving Resilience into Our Working Lands: Future Role for Native Plants on Private Land," (Wellington: Office of the Parliamentary Commissioner for the Environment, 2001). P.49.

publicly held lands, and second how to encourage protection and enhancement of biodiversity on privately owned land and in populated areas.[479]

 In summary,there are gaps in the scientific knowledge of cause and effect of biodiversity decline. Biodiversity protection in New Zealand is costly, in that it requires significant management intervention. There is support for management action on the basis of cultural attachment and some recognition of economic value from activities such as tourism and marketing of national image. There is opposition to intervention where this impacts either on economic opportunity or individual or group rights, particularly rural property rights.[480]

Taken at face value, biodiversity issues present a moderate degree of complexity, rather than either a low level or a high level. The problem of biodiversity decline is publicly visible, but knowledge about means to address it is variable. There is considerable room for potential conflict, largely as a result of a clash of values about the means of addressing biodiversity decline. New Zealanders' attachments to environmental values find their principal expression in nature conservation, and hence policies to enhance biodiversity protection, while they are likely to find support in principle, can also be the subject of passionate debate over ways and means.

The next section records efforts to develop a new national framework to address the problem of biodiversity decline.

6.3   Developing a biodiversity strategy: 1992 – 2000

Between 1992 and the early 2000s efforts were made to develop goals and actions to respond to decline of indigenous biodiversity. This section charts the course of how this policy was developed and what happened within government.

6.3.1   The early phase

Biodiversity protection as a way of thinking about nature conservation began to gain currency in official circles in New Zealand because of two lines of influence: one was international; the other came from within the scientific community and the Department of Conservation (DoC).

In the 1980s the United Nations Environment Programme (UNEP) had begun to focus on biodiversity loss. In June 1992 a Convention on Biological Diversity (CBD) was opened for signing at the UN Convention on Environment and Development (the "Earth Summit") at Rio de Janeiro[481]. New Zealand was a signatory to the Convention, and ratified it in 1994. Article 6 of the Convention,

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[479] ———, "Weaving Resiliance into Our Working Lands."
[480] Ibid. P.7.
[481] For the background and context for the CBD see B Burhenne-Guilmin Glowka L., H. Synge, *A Guide to the Convention on Biological Diversity* (Gland: IUCN, 1996).

General Measures for Conservation and Sustainable Use, called on governments to "develop national strategies, plans or programmes" and to "integrate…the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies". Australia and the United Kingdom had produced nationally based biodiversity strategies by 1993 and officials in Wellington were aware of these examples.[482]

At the same time domestic influences emerged. First, in DoC, departmental biologists and ecologists advocated a change to the basis of nature conservation priorities, from species orientation to placing greater emphasis on habitat and wider ecological functioning and protection.[483] Second, as a new department created in 1987 (see Chapter 3), DoC's internal policies and programmes continued to draw on the priorities and norms that had existed prior to 1987.[484] DoC had wide responsibilities but in a time of fiscal constraint it had a reducing budget.[485] Consequently, the idea of biodiversity decline and biodiversity protection provided a theme that could potentially unify internal conservation programmes and at the same time assist in justifying ongoing government investment in conservation efforts. DoC, and the Ministry for the Environment (MfE), were looking to create new strategic directions and policies following the government structural and institutional re-organisations of the 1980s. In DoC's case these took the form of internally generated priorities based on ecological conservation. They were expressed in a draft statement of intent labeled *Atawhai Ruamano: Conservation 2000* that introduced the idea of biodiversity protection and ecosystem restoration as strategic departmental priority.[486]

Actions flowed from these lines of influence. First, the Ministry of Foreign Affairs and Trade (MFAT), assisted by DoC, received Cabinet agreement in 1993 to ratify the CBD. Officials recommended that "a New Zealand strategy for the conservation and sustainable use of biological diversity might be

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[482] Copies of the Australian and UK Biodiversity strategies, both produced by mid-1993, are on early DoC Biodiversity files. See DoC file BDY0001 Volume 1.

[483] S. R. Halloy, "Situation and Aspiration of Biodiversity Research and Resources in New Zealand," (Wellington: MORST, 1992). Memo Geoff Park to Jane Sheldon, July 1993. DoC file BDY0001 Volume 1.

[484] For example, DoC's early animal pest programmes owed much to the policies and priorities of the NZ Forest Service. While some of these were ecologically based, there was an underlying prioritisation based on forest protection as a production resource. Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. Pp.213-214. DoC, "Atawhai Ruamano/Conservation 2000," (Wellington: Department of Conservation, 1993).

[485] The conservation/recreation budget in 1987 for DoC seems to have been thirty per cent lower compared to its combined parent departments (Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P.211). In its first year DoC overspent its budget and had to undertake a major downsizing. See "A short history of the Department of Conservation: 1987-2007 - A rocky start", http://www.doc.govt.nz/publications/about-doc/a-short-history-of-doc/ (accessed 6/8/2012).

[486] DoC, "Atawhai Ruamano/Conservation 2000." Atawhai Ruamano was an evolving strategy to establish goals for the Department across all its work streams: biodiversity: historic heritage; visitor services; kaupapa atawhai; public awareness; and internal capability. A final biodiversity section was not published until 1995. The MfE equivalent to Atawhai Ruamano was *Environment 2010*, although it was less internally generated, containing considerable Ministerial direction and personal drafting, as well as input from public submissions. Lindsay Gow pers com. http://www.mfe.govt.nz/publications/ser/ser1997/html/chapter4.9.html (accessed 5/7/2013).T. Bührs, Bartlett, R.V., "Strategic Thinking and the Environment," *Environmental politics* 6, no. 2 (1997). P.84.

desirable", and that an ad hoc working group of officials convened by both MFAT and DoC would consider "implementation issues". The departmental recommendation to Cabinet said that ratification had no immediate financial implications.[487] DoC's International Section sketched out a draft strategy, proposed to seek cabinet approval, and planned completion by late 1995.[488] Second, within DoC, an emphasis on protection of indigenous biodiversity and in-situ management rather than sustainable use or ex-situ options emerged from internal debates between the department's policy units.[489] The Department used Conservation Week in July 1994 to promote publicly its ideas about the decline of indigenous biodiversity. At the same time DoC chose, deliberately it is claimed, to separate the issues of biodiversity protection from access to genetic resources.[490]Also at the same time, DoC advocated that addressing decline in indigenous biodiversity deserved a high place in New Zealand's wider environmental policy priorities, a view supported by MfE. Protecting indigenous habitat and biological diversity and representative examples of all indigenous ecosystems, and enhancing the net total area of New Zealand's remaining indigenous forest and vegetation became one of the five main goals of the government's environmental strategy, *Environment 2010*. The document said the government would produce a national strategy on biodiversity and prepare a national policy statement under the RMA on biodiversity.[491]

The various strands of development towards a biodiversity strategy, and advocacy by the Department, might suggest a strategy would have developed quickly. For example, DoC's international section had hoped to have a document completed by late 1995, but this didn't occur. Why it didn't happen in the period between 1993 and 1995 is not exactly clear. Evidence on the files and the views of one participant suggest that possible reasons are the lack of a clear Cabinet mandate (which might suggest DoC didn't make full use of the formal policy system), lack of (or not giving priority to) financial resources necessary to develop a strategy, or a degree of incoherence

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[487] Cabinet paper CAB (93) M32/7. DoC file BDY0003 Volume 3. The statement about no immediate financial implications may have been correct at the time but financial implications emerged later.

[488] "The Minister was expecting a document-type strategy", Minutes of Biodiversity Strategy Group; 27 April 1994. DoC file BDY0001 Volume 2

[489] See paper produced by DoC's biological diversity working group, P. Lawless, Stephens, T., "The Task of Conserving Biodiversity in New Zealand," (Wellington: Department of Conservation, 1994). and C. O'Laughlin, Warrington, T., "Conservation Strategy for Sustainable Land Management Covering Lands for Which Doc Is Responsible," (Wellington: Department of Conservation, 1994). In-situ and ex-situ conservation of species was covered in Articles 8 and 9, and sustainable use in Article 10 of the United Nations Convention on Biological Diversity (CBD). DoC's choices may also be attributed to its legislative mandate, which interprets conservation in preservationist terms. See Conservation Act 1987, S.2.

[490] Cabinet committee paper CIE (94) 253. See DoC file BDY0003 Volume 1. Access to biological genetic resources was the subject of Article 15 of the CBD. Transferring responsibility to the Ministry of Commerce proved fortuitous later, given Maori concerns about the commercialisation of indigenous biodiversity genetic resources. These concerns were part of the Wai 262 claim. See Footnote 495. Having the Ministry of Commerce take responsibility was claimed to be deliberate on DoC's part. Hamish Rennie pers com.

[491] MfE, "Summary of Environment 2010: A Statement of the Government's Strategy on the Environment," (Wellington: Ministry for the Environment, 1994). And ———, "Environment 2010 Strategy: A Statement on the Government's Strategy on the Environment." A draft of Environment 2010 had been put out for public comment in 1994 and the biodiversity goals and actions were essentially the same in both documents.

between various policy branches within DoC.[492] Furthermore, in May 1995, DoC senior management and the Minister of Conservation became diverted to responding to a major disaster when a DoC-built viewing platform collapsed in Paparoa National Park killing fourteen young people. This event destabilised leadership. A consequential reorganisation resulted in some key staff associated with development of a biodiversity strategy leaving the department.[493]

6.3.2   Renewed efforts post 1995

Momentum to produce a biodiversity strategy picked up in late 1995. However, it would take another four and a half years until one was finalised. The events of that period, between 1995 and 2000, provide insights into the way New Zealand policy-making dynamics and intra-government interests and forces can come to bear on environmental policy. A first phase involved getting to a draft strategy.

In November 1995, DoC sought, and received, approval from Minister Denis Marshall to proceed with a formal strategy, citing earlier Cabinet approval. No evidence of formal cabinet approval seems to exist.[494] In the following five months DoC combined with MfE and embarked on a standard inter-departmental process, using as justification the 1993 ratification of the CBD and the CBD exhortation to signatories to produce such strategies. Fifteen other departments were contacted, a process mapped out for them, and drafting begun on a Cabinet paper. DoC's statutory advisor, the New Zealand Conservation Authority (NZCA), was briefed. A group of non-government representatives was proposed to advise on suitable principles drawn from Maori, conservation, fishing, forestry, agriculture, commerce, science, and local government interests.[495] In the 1996 Budget DoC received $410k over two years to fund public input into a biodiversity strategy. Also, DoC had a new acting Minister, Simon Upton (who continued to hold the Environment portfolio). He was driving the

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[492] Hamish Rennie pers com. A lack of coherence in department's structure was later identified as a contributing factor in the Cave Creek disaster. DoC's post 1989 organisational model (which itself was imposed following a budget overrun) was based a matrix management and reporting structure. The consultants were Coopers and Lybrand. In 1994 a similar matrix structure proposed by Touche Ross consultants was applied to the Environment Agency for England and Wales. It too was seen to have accountability problems and was seen as a part cause of organisational shortcomings. See McMahon, *The Environmental Protection Agency: Structuring Motivation in a Green Bureaucracy: The Conflict between Regulatory Style and Cultural Identity*. P.156. Also Department Review, final report: Coopers & Lybrand Associates, December 1988, "A rocky start," *A short history of the Department of Conservation: 1987-2007*, http://www.doc.govt.nz/publications/about-doc/a-short-history-of-doc/references/ (accessed 8/8/2012).

[493] See Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. P.216. "Cave Creek and afterwards," *A short history of the Department of Conservation*, http://www.doc.govt.nz/publications/about-doc/a-short-history-of-doc/cave-creek-and-afterwards/ (accessed 21/5/2013).

[494] Memo Edmonds to Minister, November 1995. DoC file BDY003 Volume 4. Concerns about lack of formal approval were raised by Graeme Campbell, Conservation Minister's adviser in April 1998 (DoC file BDY0003 Volume 30). DoC could have argued approval was a given because *Environment 2010* said producing a biodiversity strategy was official government policy.

[495] Memo Edmonds to Minister, ibid. NZCA Minutes May 1996, DoC file BDY0003 Volume 4.

Environment 2010 agenda, including its biodiversity objectives. He pressed for progress.[496] DoC now planned to get a draft discussion document to Cabinet by December 1997 and a draft strategy for public release by February 1998.[497]

At this time, the first salvos of a prolonged inter-departmental debate about process, content, management, and funding of the strategy began. In May 1996, the Treasury officer responsible for overseeing Vote-Environment wrote to DoC saying that a draft should be developed in-house first. It should begin, Treasury felt, with what New Zealand was already doing via its legislative framework and active management, then clearly identify public aspirations for further biodiversity protection (based on robust empirical data), a vision, pressure points and a best mix of regulatory reform, operational services, capital and infrastructure needed to manage pressure, all within available funding using well established analytical and policy development processes and models.[498] The language of the memo reflects a difference between one view about how policy should be developed (a controlled closed rational-comprehensive process) and another, a public-engaged approach, one DoC and MfE had already set in motion.

At this stage, in late 1996, the new timetable for producing a biodiversity strategy began to drag out. There was a general election in late 1996, followed by extended negotiations with the minority New Zealand First party to form a coalition. Upton retained the Environment portfolio. A new Minister, Nick Smith, was appointed to the Conservation portfolio in January 1997. Smith announced in a speech immediately after his appointment that completing a biodiversity strategy was one of his ten key priorities for his time as Minister.[499]

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[496] In July 1996 DoC showed Upton "fact sheets' about biodiversity and the strategy. Upton noted in the margins that the fact sheets were "innocuous to the point of being worthless". DoC file BDY0003 Volume 6. Upton showed continuing support for addressing declining biodiversity. See his speech launching New Zealand's first State of Environment Report, in October 1997, where he said, "But without question, the biodiversity chapter is the piece de resistance. At 175 pages it is by far the longest section - a fitting tribute both to the uniqueness of our biota and their imperilled state", http://www.beehive.govt.nz/speech/launch-state-new-zealand039s-environment-0 (accessed 5/9/2012).

[497] Files show a great deal of activity in mid-1996, including establishing an officials committee (Cabinet committee minute CIE (96) M20/4), a draft document labeled "Towards a biodiversity action plan for DoC", and workshops involving Maori, NGOs, industry, local government, and scientists. DoC files BDY0003 Volumes 5-11.

[498] Memo Treasury to DoC, 16 May 1996. DoC file BDY003 Volume 4. Two other factors may also be relevant. Treasury and DoC relationships were strained by post Cave Creek recriminations about the degree to which budget issues were a factor in the disaster (Geoff Chapple, "Scandal at Cave Creek," *Listener*, 3/6/95 1995.) and in-house Treasury papers proposing sale of some public conservation land to provide funds for other conservation activities were passed to the news media. See "No privatization of conservation land", www.beehive.govt.nz/release/no+privatisation+conservation+land (Accessed 8/8/2012).

[499] "New directions for conservation," Speech to the Nelson Rotary, http://www.beehive.govt.nz/speech/new-directions-conservation (accessed 6/9/2012). Smith, as a youthful new member of parliament, had attended the Earth Summit in Rio de Janeiro in 1992 that agreed to the CBD, and which had highlighted global concerns about biodiversity decline.

Following the Minister's speech and the direction he gave, DoC proposed to get the draft done by June 1997, submissions analysed and an action plan done by March 1998, a draft strategy released in July 1998, and "gazettal" in March 1999.[500] This pushed the timeline for completing a strategy out nearly a year from the one proposed in 1996, and nearly three years from the original in-house DoC plan of 1993. At the same time, DoC asked for, and received, some more money in the 1997 Budget to complete the strategy. The iterative requests for more resources and changing timelines seemed to lend weight to the Treasury's concerns about just how well DoC and MfE had thought through the process of producing a strategy. And in the event, the new timetables were not met. 1997 involved change of personnel in DoC as part of the post Cave Creek reorganisation. There was a new senior management team in the department. Development of the strategy involved inter-departmental debate about content, discussions with the Minister of Conservation about process, workshops, peer reviews, and production of a working draft by December 1997.[501]

That working draft occasioned a crisis in relationships between Treasury and DoC officers. In January 1998, Treasury officers produced eight pages of comment on the draft strategy. They didn't like it and felt it shouldn't be released in its present form. In their view the draft gave no idea about the level of government financial commitment. They also commented that it failed to provide a basis for making choices as to how resources should be allocated to biodiversity activities. They felt the draft was only good as a consciousness raising document and therefore any actions proposed by the draft should be deleted.[502]

Treasury officers were not alone in their criticisms. On 21 January environmentalist Guy Salmon wrote to Treasury, copied to the Minister for the Environment, saying," I find the strategy an intensely disappointing document" and that "I suggest a fresh start is made with new personnel" .[503] His comments were passed on by Upton to the Minister of Conservation.

DoC discovered in February that the Salmon critique had been commissioned by Treasury without DoC's knowledge. Furthermore, not long afterwards (early March) Treasury had drafted a briefing for their Minister critical of progress and the lack of a 'rigorous framework'. DoC and MfE complained to the State Services Commission (SSC) about what they regarded as lack of openness in the policy

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[500] Memo Doc to Minister. DoC file BDY0003 Volume 20.

[501] DoC files BDY0003 Volumes 21-29. The Conservation Minister and some DoC staff recognised that public consultations, particularly with Maori, were likely to be delicate. The Minister suggested MfE lead the consultations. DoC was nervous about this for a number of reasons. They felt they were better placed in terms of regional capability to undertake regional and local level consultation. They were also protective of their position as the lead agency. In their Minister's view, DoC's relations with key stakeholders (at least National Party key stakeholders) were not good. He had explicitly made reference to this in his speech in January (See reference footnote505). In the end, though, the Minister did not press the issue. Doc file BDY0003 Volume 21. Differences about the respective roles of DoC and MfE would re-emerge later.

[502] Memo Treasury to DoC, January 1998. DoC file BDY0003 Volume 30.

[503] Salmon to Treasury, 29 January 1998. DoC file BDY0003 Volume 30.

development process. SSC mediated and said all three departments should get a joint departmental paper to Ministers of Conservation, Environment and Finance, saying, "Our main concern is the impact of your recommendations (*Treasury's*) which would have the effect of taking the initiative away from departments who have already accepted the need to address these issues you are raising."[504] In this regard, DoC's senior policy manager, Keith Johnston, had stepped in to oversee the strategy development process, joined by a senior manager from MfE, Craig Lawson. Over the next few months staff were seconded from Treasury, the PCE, and Ministry of Fisheries (Minfish) to form a secretariat, reporting to an inter-departmental steering group chaired by Johnston. Johnston and Lawson picked up on Treasury's comments and got Treasury to fund a study of marginal valuation of biodiversity. They also sought advice from the Ministers of Conservation and Environment jointly. Smith was reported as saying he wanted the strategy completed and out with the public, not endless officials' processes. Upton said the strategy needed a more convincing philosophical base. In his view it should be based on a cultural rationale for biodiversity, not an intrinsic one. The two departments were to speed things up, but the ministers told them not to shy off debating issues more strongly with Treasury officials.[505]

The strategy was redrafted again with more specific action plans. In particular it adopted the idea of "goal levels" with explicit actions and funding levels for each goal level. The objective was to allow the government to make decisions on how much work it would agree to and how much each goal level would cost. It also meant that Treasury had fewer grounds to criticise the strategy conceptually, once they had accepted the view that decline in indigenous biodiversity was an issue. In late May 1998 the Conservation and Environment Ministers were updated on progress. A file note records the ministers were happier.[506]

At the same time a second strand to a biodiversity strategy was emerging. This related to addressing decline of indigenous biodiversity on privately owned land. *Environment 2010* had suggested in 1995 that this could be promoted through the RMA using a National Policy Statement (NPS) on biodiversity. Upton in particular promoted an NPS. He felt an NPS would lessen regulation, increase certainty, and lower costs.[507] There was an added context at this time. A number of high profile arguments were going on about district councils seeking to regulate (or deliberately choosing not to regulate) the protection of significant areas of indigenous vegetation on private land through their land use plans. This in turn led to legal challenges in the Environment Court involving on the one

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[504] Trotman memo. DoC file BDY0003 Volume 30.
[505] Notes of meeting held 18 March.DoC file BDY0003 Volume 30.
[506] DoC file note 26 May. DoC file BDY0003 Volume 31.
[507] Ibid.

hand environmental advocates and on the other affected landowners.[508] The issue had raised concerns from farmers, traditionally National Party supporters. The farmer lobby group, Federated Farmers, opposed an NPS. Their position was that voluntary approaches were preferable. They argued that rather than national direction, it was over to the community to determine any values that should be attributed to significant natural areas. Federated Farmers said, "With limited resources, the community will prioritise, such that protection will be afforded to those sites that the community deem to be most significant."[509] Officials, led by MfE, nevertheless worked on early stages of a biodiversity NPS.

On 25 September 1998 Keith Johnston told the inter-departmental steering group that it was anticipated that in the week beginning 5 October a draft Cabinet paper, consultation plan, regulatory impact statement, and a draft strategy would be completed and, pending Cabinet approval, the draft strategy might be released in early December.[510]

This signaled the final stage before some key Cabinet decisions. Departments stated their positions. Minfish was supportive because they were getting recognition of the significance of marine biodiversity. MAF, which had been playing a relatively muted role to date, began to take greater interest and argued that the draft didn't acknowledge sufficiently the role of introduced biodiversity, good management practices in agriculture, or sustainable forest management.[511] The Ministry of Commerce felt the draft was light on "use" values. Te Puni Kokiri (the Maori development agency) was concerned about Maori claims to indigenous flora and fauna (the Wai 262 claim), the views of some iwi about DoC management, and rights of indigenous people. Treasury reiterated its concerns about fiscal and economic implications. A DoC official noted on the file wryly that, "saving biodiversity causes bureaucratic stress and shortage of breath and..."[512]

In the event, a draft biodiversity strategy was considered by the Cabinet Economic Committee on 5 November, and on 11 November the Cabinet Business Committee decided that the draft strategy should be released for four months of public submissions. Key decisions to emerge were: the strategy should aim to stabilise biodiversity loss (in other words, officials had recommended, and Cabinet had agreed, on a specific target level, with the resourcing requirements that went with that

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[508] N. Ericksen, "Planning Paradise with the Cheshire Cat: Governance Problems under the RMA," in *New Zealand Planning Institute Conference* (Hamilton2003). Pp.5-6.

[509] Federated Farmers to Smith 30 September 1998. DoC file BDY003 Volume 40. See also a similar view point produced in a Treasury working paper, M Claridge, Kerr, S., "A Case Study in Devolution: The Problem of Preserving Kiwi Habitat in the Far North," in *Treasury Working Paper 98/07a* (Wellington: Treasury, 1998).

[510] Note of meeting. Doc file BDY0003 Volume 36.

[511] This was the period when a debate over the logging of government owned native forests by the state owned company Timberland's West Coast was at its height, and MAF were on the defensive on the issue. See N. Hagar, Burton, R., *Secrets and Lies: The Anatomy of an Anti-Environmental P.R. Campaign* (Nelson: Craig Potton Publishing, 1999).

[512] Fax and memos to Doc, October 1998. DoC file BDY 0003 Volume 39.

level of target); there should be consultation over the patenting of biodiversity in conjunction with consultation over the strategy (raising the risk of Maori opposition); and officials should look at landowner concerns about compensation for biodiversity protection (suggesting that landowner and Federated Farmers lobbying had had some effect). Nevertheless, the Prime Minister signaled her intention to be associated with the strategy herself.[513]

At this point, discussions between officials and with ministers showed up different views about how the strategy might be implemented, as well as some political nervousness about landowner reaction hinted at in the Cabinet decision.

On 13 November a workshop had been held at MfE on sustaining biodiversity on private land with Australian specialist, Mike Young. He advocated an approach to private land biodiversity protection involving a mix of regulation, incentives, education, signaling, and subsidiarity while expressing caution about too much "high level government intervention."[514]

On 18 November the Minister of Finance met with the Minister of Conservation and officials and raised Treasury views about fiscal implications of increasing efforts to address indigenous biodiversity loss, risks posed by farmer lobby opposition, plus another risk that local and regional government who might be expected to play a role would say this was all a matter for central government to manage, and fund.[515]

At the same time a Treasury briefing note entitled "Biodiversity Strategy: roles and responsibilities and reallocating of existing funding" suggested a contestable system of allocating biodiversity funding independent of existing agencies along the lines of a funder /provider split. Treasury now estimated the cost of the draft strategy over 20 years at $720 – 944M (this was described as a "fiscal risk"). They said,

> *Biodiversity conservation needs to be integrated into everyday decision-making. The role of central government will be to co-ordinate the strategy and provide the initial investment in information and management systems to enable measurable improvements in biodiversity effectiveness and efficiency. Implementation will not necessarily be undertaken completely by central government. Instead, the aim will be to transfer responsibility for implementation to local government.[516]*

There followed briefings to their ministers from DoC and MfE on sustaining biodiversity outside protected areas, and on an NPS and incentives. DoC and MfE also set out in writing for both their

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[513] Cabinet committee minute CBC STR (98) M36/7. DoC file BDY0003 Volume 41.
[514] Notes from Mike Young workshop. DoC file BDY0003 Volume 40. See also N. Gunningham, Young, M., "Towards Optimal Environmental Policy: A Case of Biodiversity Conservation," *Ecology Law Quarterly*, no. 24 (1997). Pp.243-281.
[515] File note. DoC file BDY0003 Volume 41.
[516] Treasury note, 19 November. DoC file BDY0003 Volume 41.

ministers arguments why one or the other should lead in producing an NPS. MfE's argument was that the RMA (from which NPSs originated) was their responsibility; they had greater expertise in how it worked, and better relationship with key stakeholders. DoC argued that it had produced the only existing NPS to date, felt MfE would be "neutral", would treat DoC as just another stakeholder, and the result would be an NPS which didn't do much. This exchange was interesting because two government agencies were so open with both each other and their respective ministers about what they thought about the other agency. The result was Ministerial direction about the division of labour between DoC and MfE. An officials' project team was proposed on the NPS led by MfE, while DoC would continue to lead the overall strategy.[517] In addition, both agencies recommended an external advisory committee on biodiversity protection on private land, arguing it could be an informal or formal board of enquiry, or an advisory body. Upton plumped for the advisory committee model.[518] Officials also raised the idea of boosting existing private land conservation funding bodies like the Nature Heritage Fund, Nga Whenua Rahui and the Queen Elizabeth 2 Trust (a land covenanting body) to address the issue of compensation via incentives. All these interactions were by way of seeking to satisfy the Cabinet concerns about the strategy, the NPS, and the landowner compensation issue.

In the event, the approach worked. While the evidence suggests the government had concerns about political risk, the strategy also appeared to have political attraction. Both of the current and previous National Government Prime Ministers in the 1990s, Jenny Shipley and Jim Bolger, had associated themselves with some conservation initiatives.[519] Prime Minister Shipley herself launched the draft, unchanged, in January 1999 saying,

> *Recently I announced the ten Strategic Priorities for my Government. One of these Strategic Priorities, alongside our social and economic goals, is to: 'Turn the tide on the decline of indigenous biodiversity, by concerted action to protect habitats and control introduced pests.[520]*

In a speech in April, Upton said,

> *For most developed countries, on-going industrial pollution and the need to clean up a legacy of toxic and hazardous waste are at the top of the agenda. By contrast, we are only lightly*

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[517] Joint briefing note MfE/DoC to ministers 23 December. DoC file BDY0003 Volume 42. DoC had produced the New Zealand Coastal Policy Statement in 1994.
[518] This was the origin of a Ministerial Advisory Group. See later in the Chapter.
[519] Shipley promoted the idea of a major new national park on Stewart Island and Bolger, for example, was supportive of initiatives to end native logging in the Central North Island. "National Park proposed for Stewart Island/Rakiura" http://www.beehive.govt.nz/release/national-park-proposed-stewart-island-rakiura (accessed 5/5/2013). Young, *Our Islands, Our Selves: A History of Conservation in New Zealand*. Pp.224-225.
[520] "The draft New Zealand Biodiversity Strategy", 20 January 1999, http://www.beehive.govt.nz/speech/draft-new-zealand-biodiversity-strategy (accessed 8/8/2012).

industrialised. It is, rather, the destruction of habitat and the species that once lived here that is our developmental legacy.[521]

Having the Prime Minister and ministers officially launch the draft strategy was useful for officials in that it increased its political priority. The trick now was to get it to a final approval stage.

6.3.3 Getting from a draft to a final strategy 1999 – 2000

A New Zealand Biodiversity Strategy was approved and officially launched in March 2000. The period between the public announcement of a draft strategy, in January 1999, and a final strategy launch, fourteen months later, involved public engagement, re-drafting, negotiations between officials and with ministers, lobbying, and a change of government. These influences affected in different degrees the timetable, orientation, and content of the strategy.

During 1999 two intersecting strands of policy development related to the biodiversity strategy were progressed. The first was the overall strategy itself (led by DoC). The second was how best to advance protection of biodiversity on private land (led by MfE).

The draft strategy was subject to a round of public consultation accompanied by public submissions. The consultations involved fifty meetings and attracted 7,800 submissions, of which 437 were substantive.[522] The overall feedback from meetings and submissions called for stronger commitment to reversing the decline in indigenous biodiversity and raising the goal level above the objective in the draft of "stabilising" decline.[523] DoC and MfE reflected this feedback in a revision of the draft, completed by August 1999. This occasioned further inter-departmental debate, which took place against a background of an impending general election, and a desire by the Ministers of Conservation and Environment to have the strategy completed and approved before then.

Some officials felt that Cabinet shouldn't consider approving the document, as major policy, so close to an election, but MfE, also representing DoC and with Ministerial support, argued otherwise.[524] Debate also took place about content. MAF officials expressed unease at the way the revised draft appeared to be being rammed through and thought the document too 'protectionist' and too oriented to indigenous biodiversity. Te Puni Kokiri repeated the comments it made in 1998 that the draft should strengthen the Maori role, direct management agencies to enhance their relationship

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[521]Biodiversity and the role of biosecurity, 8 April 1999, http://www.beehive.govt.nz/speech/biodiversity-and-role-biosecurity (accessed 4/12/2012).

[522] DoC, "New Zealand Biodiversity Strategy." P.136.

[523] Ibid. See also summary of submissions prepared by Tonkin and Taylor. DoC file BDY0003 Volume 68. Significant in the public consultation was engagement with Maori through nationwide hui, and an influential one involving the Maori Queen and Tumu Te Heu Heu at Hopu Hopu.

[524] This particular debate occurred in the Officials Economic Committee, which had the responsibility of considering draft Cabinet papers with economic implications, before those papers were put to Cabinet. Memo MfE to DoC. DoC file BDY0003 Volume 69.

with Maori, more consistently implement and state that the Treaty of Waitangi was the overarching principle under which the Strategy was developed, and to provide an avenue for active Maori participation in biodiversity management. Minfish asked for changes to expand the marine theme.[525]

The biggest difference conceptually came in the views of the Treasury officials. They were no longer critical of the overall principles behind the strategy. Now they focused on what they regarded as structural matters. On 17 September a Treasury official wrote to DoC saying,

The quality of the overall strategy from a biodiversity perspective is good. In particular the interventions around the goal levels have been extensively peer reviewed by technical workshops during the consultation process and appear to be of a reasonably high standard.

But Treasury now had concerns that the regulatory impact assessment was inadequate; roles and responsibilities were too central-government orientated; management, governance and accountability structures were not yet developed; costings had increased since estimates in 1998 and were very vague; and "we have no means to assess efficiency or effectiveness."[526]

Furthermore, they were concerned about how the goals had been changed. Shifting goal levels from "a minimum set of representative populations of indigenous species in selected habitats" (which was consistent with a goal of stabilising decline) to "populations across their natural range" (which had been done to reflect the weight of public submissions and was consistent with a goal of halting a decline) would greatly increase costs, they said. Treasury noted that the previous estimates for stabilisation were $37-45 M per annum over 20 years but these had now grown to $45-55M per annum over 20 years. What in fact DoC and MfE had done in the new draft was indeed shift from the "stabilisation" goal, but also they had altered the wording of the original "halting "goal. The new draft now committed to "restoring and protecting remaining representative habitats and ecosystem", which was less ambitious than committing to "populations across their natural range". However, it allowed ministers to describe the goal as "halting" without the full cost of maintaining and restoring all remaining natural habitats as described in the draft goal objective for "halting."[527] Treasury was also critical of some language in the draft. For example, they also took issue with the draft's statement that intervention was a core government role. In their view "as previously discussed with DoC and MfE", the criteria should be identification of market failure, and where government intervention provided a positive net benefit. If the intervention met the two criteria then it was a core government role. If it did not meet the market failure criteria then it was not a core government role and should not be undertaken.[528] Treasury officers, in proposing this, had revealed their policy prescription for the delivery of biodiversity protection, based in neo-classical

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[525] Memo MAF to DoC; memo TPK to DoC; Memo Mfe to DoC re Minfish views. DoC file BDY0003 Volume 72.
[526] Memo Treasury to DoC 17 September. DoC file BDY0003 Volume 72.
[527] See Cabinet committee paper ECO (99) 135. DoC file BDY0003 Volume 72.
[528] Memo Treasury to DoC 17 September. DoC file BDY0003 Volume 72.

economic theory, less state intervention and application of market principles. As a general prescription, however, it was beginning to be questioned in some New Zealand policy circles.[529]

By the 23 September Treasury officials' views had firmed up such that they wanted MfE to be the lead agency for the strategy. They wanted the Minister of Finance to be on any Ministerial oversight team. They favoured reconsidering how the funding should be administered. They felt funding, and funding levels, should be "neutrally evaluated" to determine whether this would provide for more effective long-term management of biodiversity assets on particular important sites than the current arrangements. "How those interventions are managed and who implements them should be based on who can most efficiently and effectively do so on a case-by-case basis. This will often not be central government" and, "the Biodiversity Strategy is about managing biodiversity trade-offs at the national, regional, and local level and between alternative economic uses." Finally, in their view, the strategy needed "concrete realistic proposals including funding."[530]

The inter-departmental debate reflects the process of bargaining and negotiation that was going on in the bureaucracy amongst mid-level officials, the various ideological orientations of the departments, and a degree of tactics and maneuvering. All this was taking place in a climate of urgency with the election due. Furthermore, the second strand of the strategy, dealing with biodiversity on private land, was increasing the tempo.

Simon Upton had appointed a ministerial advisory committee (MAC) in early 1999 to look at the issue of private land biodiversity protection. The committee's brief was to recommend ways to promote effective and sustainable management of biodiversity on private land. By September 1999, and after discussions with various interested parties, it had prepared a draft report and discussion document that promoted national and local accords on biodiversity, a national policy statement, non-statutory guidance, and government action and incentives.[531] The advisory committee's report was due to be considered by a Cabinet committee at the same time as the revised draft of the strategy.

The draft biodiversity strategy and the advisory committee's report were considered together by the Cabinet Economic Committee on 11 October, with split recommendations about the strategy from officials.[532] The committee recommended Cabinet approve the strategy. They noted it would cost $45-55 M per annum (DoC and MfE's preferred funding level) to be met either by savings or a new budget bid next year. It supported DoC's and MfE's proposal to raise the goal level. But it also supported the Treasury recommendation that a Ministerial oversight team should include the

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[529] See Chapter 3, Section 3.3.3.
[530] Memo Treasury to DoC 23 September. DoC files BDY0003 Volume 72.
[531] MfE, "Bio-What? Preliminary Report of the Ministerial Advisory Committee," (Wellington: Ministry for the Environment, 2000). Pp.7-8 & 89-91.
[532] Memo to DoC to Minister of Conservation. Also Cabinet paper ECO (99) 135. DoC file BDY0003 Volume 72.

Minister of Finance, and that MfE should be the lead agency, not DoC. The Cabinet committee watered down Treasury's recommendation for independent oversight and evaluation, benchmarking, and contestability of funding. The committee instead "invited" the Minister for the Environment to report back on how the strategy would be implemented to ensure funds are used efficiently and effectively on priority activities, on approaches to encouraging broad community participation, on best mechanisms to coordinate central and local government and the community, on approaches to encourage innovation, on monitoring and evaluation, and on realistic funding proposals that could be considered against other priorities as part of the government's overall budget process. It also recommended the report of Upton's ministerial advisory committee (MAC) be released for public submissions.[533]

Thus, after nearly five years of preparation and debate, a strategy was nearly complete. With some redrafting, a final document, including a foreword for signature by the Prime Minister Jenny Shipley, was prepared for full Cabinet consideration in early October.

In the meantime, the President of Federated farmers had written to the Prime Minister, repeating concerns expressed in 1998. These were that:

1. *The consultation process had been inadequate. It was an attempt to 'sell' the document. No link between the desire of individuals to conserve and a commitment to bear the cost.*
2. *The policy framework was based on regulatory control and DoC's command and control.*
3. *There were no links to mechanisms for trade-offs.*
4. *There was not enough about the government's resource commitments*
5. *It didn't have enough on use or development of resources. The legitimate value for biodiversity is one which optimises the social, economic and cultural needs of the community.*
6. *It needed to provide a net benefit. It cannot be at the expense of economic and social goals. "Strategy must explicitly acknowledge that biodiversity values need to be balanced and prioritised with economic and social values".*
7. *The government must fund and communities be allowed to continue to prioritise relative to local social and economic constraints.*
8. *It must give more emphasis to QE 2, Streamcare and Landcare groups, supported by landowners. The emphasis needs to be on non-regulatory methods.*
9. *Landowners must be recognised as the key to achieving desired outcomes on private land.*
10. *Secure property rights are essential.*
11. *The federated farmers were opposed to an NPS and only support a light one if the government provided funding. A consistent approach to significance is needed but local communities need to be allowed to prioritise. [534]*

In the event, Cabinet deferred approving the strategy or releasing the MAC report, noting that representations had been received from Federated Farmers.[535] Simon Upton met with Federated

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[533] Cabinet committee minute ECO (99) M19/7 and ECO (99) M19/8.
[534] Federated Farmers submission. DoC file BDY0003 Volume 73. See also Hartley, *Conservation Strategies for New Zealand*. The book was commissioned by the libertarian thinktank , the New Zealand Business Roundtable
[535] Cabinet paper CAB (99) M25/19.DoC file BDY0003 Volume 73.

farmers in an effort to placate them and reported back to Cabinet. But on 1 November Cabinet formally decided to defer further consideration of issues until early 2000; in other words, after the election.[536]

The November 1999 General Election resulted in a centre-left coalition of the Labour Party and the minority Alliance Party forming the government. They also established an agreement of support with the Green Party, but that party decided to remain outside the government. The new government was presented with an opportunity to take advantage of the proposed biodiversity strategy and a programme that had already been extensively debated and worked through. It was one that was broadly compatible with the sympathies of the new government. What appeared to happen is that both external interests, and those inside government advocating the strategy, seized the initiative.

DoC and MfE recommended to their new ministers that the strategy should be approved and the advisory committee's report released. DoC emphasised the importance of the strategy, and that it should be funded by an additional $45m per year over 20 years.[537] Environmental NGOs immediately lobbied the new Minister of Conservation, Sandra Lee, asking for copies of the draft.[538] They wrote to her in January 2000 wanting the strategy made more ambitious, and what they called "Treasury speak" language removed. Suggestions of a funder-provider organisational model was, they said, "dangerous and should be rejected."[539] In December and January there was a flurry of activity around process and strategy content. The new Minister of Conservation pressed for action. DoC in particular, but also MfE and Minfish, seemed to respond quickly. Lee's Office wrote to the Prime Minister's chief of staff saying Lee wanted to re-submit the strategy to Cabinet in January 2000 as a matter of urgency saying it was a critical issue for the Conservation portfolio.[540] While the Cabinet Office thought there should be another round of departmental consultation, DoC successfully argued otherwise.[541] On the issue of who should lead the strategy, Environment or Conservation (recalling the previous October Cabinet decision that it should be the Minister for the Environment), DoC was

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[536] In a commentary on 18 November, perhaps deliberately timed to coincide with the election which took place on 27 November, the Royal Forest and Bird Protection Society issued a press release saying, "Cabinet rejects Biodiversity Strategy". The release said it was a "huge setback for National's two green ministers. Forest and Bird believes it was overturned by development minded ministers and backbenchers supported by ACT and Federated Farmers". (on DoC file BDY0003 Volume 73) Nick Smith mentioned to me later that the Forest and Bird release was close to the truth, and that he and Upton felt a positive election opportunity had been sacrificed.

[537] Brief to incoming Minister 1999, p.20, http://www.doc.govt.nz/upload/documents/about-doc/role/policies-and-plans/a-briefing-for-theminister-new--of-conservation-(dec.-1999).pdf (accessed 8/8/2012). There was no mention in the brief of funding from within baselines. See also MfE 1999 Briefing to Incoming Minister, www.mfe.govt.nz/publications/about/briefing-oct99.pdf.

[538] Sandra Lee had previously been on the Executive of the Royal Forest and Bird Protection Society before entering Parliament.

[539] Webber/Wallace letter to Lee. DoC file BDY0003 Volume 74.

[540] Memo Campbell to Simpson DoC file BDY0003 Volume 74.

[541] Memo Campbell to Johnston. DoC file BDY0003 Volume 74.

able to convince MfE that it should be the senior minister – who happened in this instance to be Lee. Hence DoC cemented its role as the lead department.[542]

There then followed a series of meetings between ministers and officials and some departmental exchanges prior to a cabinet committee paper being submitted in late January 2000. Treasury officials thought it was premature to send the papers to Cabinet so soon in view of the October 1999 decisions.[543] Their concerns about how the strategy should be implemented and ensuring funds were used efficiently and effectively, as well as "realistic funding proposals", were retained in the paper, but the Cabinet paper now noted that instead of an option of funding the strategy from departmental baselines (one of the options agreed in October), funding should "should take priority for additional environmental expenditure."[544]

At the end of January 2000 the Cabinet Business Committee recommended releasing of the New Zealand Biodiversity Strategy, but asked the Ministers of Conservation, Environment, and Forestry to revise some wording " to align it with current Government policy."[545]

At a Cabinet meeting on 31 January the New Zealand Biodiversity Strategy was approved. It was launched officially in March 2000.[546] However, two significant issues remained outstanding: funding; and the policy work started on biodiversity protection on private land.

The goal level and actions approved by Cabinet had been costed. Furthermore, Cabinet had already agreed to recommendations that the strategy should have first call on any new environment funds. What happened between February and May 2000 was that operational departments bid for new resources, and were successful. A total budget package was agreed on 15 May 2000.[547] In bald terms it involved $187 m over five years. The largest proportion went to DoC for weed and pest control, species recovery, and habitat security/restoration. Minfish received substantial resources for marine management. Other initiatives involved funds to support biodiversity protection on private land, resources for new information systems, and funding to produce an oceans strategy (see Chapter 5),

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[542] DoC/MfE brief to Lee. DoC file BDY0003 Volume 74.

[543] Memo treasury to DoC. BDY0003 Volume 74.

[544] Cabinet Committee paper CBC (00) 7. DoC file BDY0003 Volume 74.

[545] Cabinet minute CAB (00) 2/7.DoC file BDY0003 Volume 74. Those amendments included a Labour Party election commitment to end indigenous forest logging on publicly owned land, and commitments to address and manage use of genetically modified organisms. Another commitment was included to protect 10 % of New Zealand's marine environment in a network of representative marine protected areas by 2010. Also included was a concept of kiwi sanctuaries (thus satisfying the campaign run by the Royal Forest and Bird Protection Society in 1999). Language in the document was changed to promote property-owner "responsibilities" as well as "rights" and to emphasise the interests of society and the public as well as landowners and, in the marine environment, "rights holders."

[546] Cabinet minute CAB (00) M2/7. DoC file BDY0003 Volume 74. Introduction of Prime Minister at Biodiversity Strategy launch, (accessed 8/8/2012).

[547] Cabinet minute CAB (00) M 16/6(4).DoC file NHB02 Volume 1.

and a new strategic approach to biosecurity, all of which were regarded as important to help halt the decline in indigenous biodiversity.

Besides the budget, there were also the private land issues that the ministerial advisory committee had been established to address. The initial report from the committee, although held over from October 1999, was released for public input in March 2000. It was followed by extensive consultation.[548] This provided an outlet for concerns about the strategy and an NPS expressed to the previous National Party-led government. The draft report by the advisory committee had recommended an NPS. Their final report recommended against one.[549] The committee argued that voluntary measures and guidelines were better, and that information, education and financial incentives would deliver just as good results. MfE reported that "Local Government is divided on the merits of an NPS". A letter from Hobbs to Lee said:

> *promulgating an NPS does risk igniting fears of increased regulation amongst landowners and increased central direction among those parts of local government fiercely protective of local discretion. The possibility of some perverse consequences, at least in the interim, should not be dismissed.*

Therefore, the letter said, MfE "cautions against undue reliance on an NPS". Their view was that it should be part of a wider package of working with local government and guidance.[550] In the event, after internal and external debate, Cabinet agreed in December 2000 to proceed with an NPS.[551]

The point at which it was agreed to proceed with an NPS, in late 2000, is a convenient point to end this study's chronological sequence of events in developing the biodiversity strategy. The NPS was the last part of the overall architectural framework of the strategy. A New Zealand Biodiversity Strategy existed as a policy document; it contained goals, actions, and responsibilities; and was funded to a level that surpassed any previous single environmental initiative in New Zealand. But it had taken seven years from the ratification of the CBD until a strategy was finalised. And it could have been quite a different document but for the impact of combinations of external and intra-governmental influences.

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[548] MfE, "Annual Report 1999-2000."

[549] ———, "Final Report of the Ministerial Advisory Committee on Biodiversity and Private Land," (Wellington: Ministry for the Environment, 2000). P.3.

[550] Hobbs to Lee referencing the views of MfE. DoC file NHB02 Volume 1.

[551] Cabinet committee minute FIN (00) M37/21. DoC file NHB02 Volume 1. Also "Government launches package to address biodiversity on private land", http://www.beehive.govt.nz/release/government-launches-package-address-biodiversity-private-land (accessed 8/8/2012).
The fact that an NPS on biodiversity wasn't, and still hasn't been, produced after twelve years, and why, would necessitate another case study. The National coalition government recommitted to achieving a National Policy Statement on biodiversity in January 2011. See "New policy proposed on biodiversity protection", http://www.beehive.govt.nz/release/new-policy-proposed-protect-biodiversity (accessed 8/8/2012).

6.4 Discussion

Developing a biodiversity strategy in New Zealand took eight years. There were three attempts to reach agreement within the bureaucracy and with ministers on a strategy, in 1994, in 1996, and between 1998 and 2000, each involving increasing levels of effort on the part of DoC and MfE. The final result was impressive in environmental policy terms, in that it represented a major step forward in nature conservation policy in New Zealand, and a significant increase in the levels of resources available to address biodiversity problems compared with what had gone before. The various twists and turns in the narrative are revealing in terms of influences on environmental policy within government.

The **complexity** involved in the biodiversity strategy flowed from debate amongst the constellation of affected interests. This is shown in the positions taken by the Federated Farmers on one hand and environmental NGOs on the other. There was a measure of agreement about the overall objective of addressing indigenous biodiversity decline. The difference was that one side promoted voluntary measures, and the other wanted direct intervention backed by rules. This same tension was evident throughout the internal government debates about the strategy. The knowledge and awareness of the causes and effect of biodiversity decline were well-known. The technical solutions, however, were more problematic, and added to the debate about how to implement a strategy. An interesting feature of the biodiversity strategy in complexity terms is that Maori interests did not arise to the extent they did in the ocean's case study. It is possible that the policy process and policy proposals accommodated Maori. However, this answer seems too simplistic. Certainly, senior figures in Maoridom had been actively sought out and engaged with the strategy. Maori were sympathetic to the overall objectives of the strategy.[552] Nevertheless, it may have been fortuitous for the strategy that it was produced before the Waitangi Tribunal heard and deliberated on the WAI 262 claim to indigenous flora and fauna.

The strategy was also influenced by **events**, in this case the 1999 election. It is possible that a less effective strategy may have emerged after 1999 had it not been for a combination of a change of government, an ideologically sympathetic government, and a passionate conservationist with senior cabinet ranking as Minister of Conservation. However, care should be taken with such counterfactuals. While there could have been alternative policy rules and tools given ideological differences, and lesser resources, it is important to recall that strategy was all but approved by the previous government, and with Prime Ministerial support.

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[552] For example, it was advantageous that the Maori Queen and the paramount chief of Ngati Tuwharetoa had taken a positive interest in the strategy. See DoC, "New Zealand Biodiversity Strategy." Pp.93-98.

6: Biodiversity policy

The biodiversity strategy represented, for its time, an environmentally effective policy. Its **environmental effectiveness** arose out of making environmental values a priority, by seeking to reverse decline in indigenous biodiversity. Furthermore, it was integrative in that it provided a platform for other environmental policy work on oceans policy, biosecurity policy (resulting in a national biosecurity strategy[553]), work towards a national policy statement on biodiversity under the RMA (even though, despite intentions, one hadn't been produced by the end of 2012), and regional and district policies and planning instruments.[554]

Its **policy effectiveness** lay in the fact it had clear actions (it was more than symbolic). It ended up being well resourced, it made provision for new knowledge (it set up new terrestrial, freshwater and marine information systems and funded new research), and it influenced subsequent behaviour (the term entered the lexicon of discourse about nature conservation and environmental management).[555] It provided a platform for other policy work. It supported instruments that reached beyond existing protected areas by expanding national contestable funding mechanisms such as the Queen Elizabeth II National Trust, Nga Whenua Rahui, the Nature Heritage fund, and set up a biodiversity condition fund and a biodiversity advice fund.

This is not to say that the biodiversity strategy was either perfect or that it "solved" the problem of indigenous biodiversity decline. [556] There was bipartisan support for the overall strategy from both sides of the political spectrum. Given that the strategy had been developed under a National-led government, this was not surprising. Where there was a potential policy weakness was in the support base for how to implement the intent of the strategy on privately owned land. Opposition to rules and government intervention was widespread amongst landowners, and some environmental groups, who believed biodiversity protection was best achieved by voluntary approaches and appealing to hearts and minds.[557]

However, in terms of Schneider and Ingrams' criteria described in chapters 2 and 4, a framework for action was created. It was one that advanced the issue of addressing biodiversity decline in terms of knowledge and support. Furthermore, it dealt with biodiversity decline in an integrated way. So, what particular combinations of internal government features influenced these results?

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[553] Biosecurity Council, "Biosecurity Strategy," (The Biosecurity Council, 2003).
[554] DoC, "New Zealand Biodiversity Strategy." Pp.105-114.
[555] Ibid. Pp.105-114.
[556] W. Green, Clarkson, B., "Turning the Tide? A Review of the First Five Years of the New Zealand Biodiversity Strategy: The Synthesis Report," (Wellington: Department of Conservation, 2005). Pp. 1-3. MfE, *Environment New Zealand 2007*. P.5. The State of Environment report and the Briefing are examples also of how biodiversity had entered the official lexicon.
[557] ———, "Final Report of the Ministerial Advisory Committee on Biodiversity and Private Land."

Agency influenced the biodiversity strategy through ministerial advocacy of Upton and Smith in the 1990s and the drive by Lee in early 2000. Whereas in the earlier 1990s the role of Marshall of acquiescence rather than strong advocacy meant departmental initiatives were more important. The role of individual officials in leadership is also evident, particularly that of Johnston from DoC and Lawson from MfE. The history of individual officials influencing policy development is well recognised in the literature.[558] An example from New Zealand, little known but well illustrated by Thomson, is the role of a middle ranked Lands and Survey Department official, Ron Cooper, in developing New Zealand's 1953 National Parks Act.[559] However, when examining the role of officials in policy development, the influence on them of institutional features, and the interaction between those institutional features and officials' cognitive perspectives should not be underestimated. The biodiversity strategy's development shows institutions and ideological views played a very significant part in the policy result.

Evidence of **Institutional effect** is pronounced. From an intra-departmental perspective, DoC would always have been, or else endeavoured to be, a key player. Protecting indigenous biodiversity was DoC's core business. Furthermore, the strategy was an opportunity for DoC to increase the profile of nature conservation in terms of government priorities and to secure more funding to improve biodiversity protection. It is noticeable, however, that DoC was slow to organise itself internally to develop the strategy effectively. Various shuffling of staff and different functional policy teams dealing with the strategy made DoC's efforts disjointed and disorganised up until late 1997. This raises the possibility that, as an operationally focused department, DoC had not developed a sufficiently dedicated policy-process capacity to press on with a major project like a biodiversity strategy. After 1997 faster progress was made once a team with greater staffing, focus and seniority was put in place. MfE's focus arose from *Environment 2010*'s commitment to a biodiversity strategy, but it just as likely would have arisen without it given MfE's environmental policy responsibilities.

Both departments' institutional functions influenced the way they approached policy assumptions, design, and objectives, best illustrated in exchanges between the two departments (and with Treasury) over how to implement the strategy, who should take charge of which bits, and why. The cognitive perspectives of the two departments derived, in part, from the way they had been set up in the mid 1980s, and their functions, and the way operational departments view policy departments (thinkers, not doers) and the way policy departments view operational departments (doers, not thinkers).[560] This provides an additional explanation (besides one of government priorities and

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[558] Heywood, *Politics*. Pp. 392-395.

[559] J. Thomson, *Origins of the 1953 National Parks Act* (Wellington: Department of Lands and Survey, 1975). P.10. The principles of the 1953 Act were copied into the 1980 National Parks Act and remain the basis of national park management in New Zealand today.

[560] Peters, "Concepts and Theories of Horizontal Policy Management." Pp.129-130.

resources) for DoC's desire to exercise control and leadership, and the department's support for direct intervention by national agencies to improve the condition of biodiversity (seen in actions in the strategy that involved increased management action by DoC and Minfish), and MfE's preference for local government and community delivery. Intra-departmental effects are also evident in the actions of Treasury. It was driven by concerns about cost arising from its role as protector of the public purse, mixed up with policy prescriptions that arose from and re-inforced that role. While it can be argued that, on one level, DoC was self interested in a strategy that garnered more resources for the strategy, the same type of argument could be made that Treasury was self interested in policies that minimised the effect on the government's budget.

In terms of policy process and rules of engagement, the biodiversity strategy shows that where a lead department, in this case DoC in the period from 1992 to 1998, was not very skilled, then policy development could not only be slow, but it also ended up being driven by other departments. Although there are elements of a controlling rationality from Treasury about poor process and analysis, there was a strong element of truth that the early iterations of the strategy had not been rigorously thought through. It was only when DoC and MfE built up an interdepartmental team and began to coopt other departments into understanding the nature of the policy problem, the resource implications and policy responses, that headway was made at an interdepartmental level. At this time (1990s) Treasury was in a dominant position and either convincing them, or neutralising them with bureaucratic politics, was the key feature of the rules of engagement over policy. It is here that **cognitive features** played a role in influencing the nature of policy.

Simon Upton has been quoted as saying that the National Party caucus of the 1990s was not deeply sympathetic to environmental matters.[561] Nevertheless, protecting indigenous biodiversity received at least a measure of support when considered by Cabinet in the late 1990s. As noted, the Prime Minister was willing to be associated with it. Where there does seem to have been government reservation in the 1990s was about the way the strategy planned, in an integrative way, to span biodiversity protection for public land and private land. Cabinet, Upton, and Smith displayed political caution both about the nature of engagement with landowners (witnessed by their preference to use MfE rather than DoC), and the tools to be used. The ideological orientation of the centre-left coalition that came to power after 1999 was more favourably disposed to the totality of the strategy. It also accounts in part for their favourable consideration of new budget proposals, which under another administration may have been more sparing.[562] In practice, the new government was handed a near-completed strategy on a plate. Where they had ideological reservations was about the

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[561] Young, *Values as Law: The History and Efficacy of the Resource Management Act*. P.37.
[562] The strategy had a mechanism for funding levels, so it seems likely that in any approval of the overall strategy some funding would have been forthcoming.

theoretical underpinnings of governance and delivery proposed the draft strategy, in particular the funder-provider model.

Ideology is also evident at a departmental level. DoC was committed to the idea of integrated conservation management based around state involvement, action on the ground, and technical leadership. This can be seen in the type of actions promoted by DoC and in exchanges with Treasury and MfE. MfE's orientation was more to the concept of community empowerment. Treasury advanced a consistent policy prescription for the delivery of biodiversity protection that challenged the institutional rationale of integrated conservation management on which DoC was based. The Treasury officers' view was that any central government role should be confined to coordination, providing information, and initial investment, while implementation should preferably be transferred to local government. Just what a Treasury or an MfE dominated strategy might have actually looked like, however, enters the realm of the counterfactual. It would have been more devolved. There may be grounds for speculating that funds on specific projects might have been used more efficiently in cost terms (aligning with an economic rationale). And it might have meant greater community voice in governance (aligning with a communitarian rationale). But devolution to local councils might also have given rise to parochial debates about whether funds should be applied to nationally important issues or sites, or allocated on a regional basis. The model was also likely to involve considerable transaction costs and, given biophysical complexities of biodiversity issues, would have presented measurement and consistency challenges that a centralised model has found easier to address, at least in the absence of national standard or direction, as has been the experience with the RMA. This is not to say that there weren't elements of devolution or contestability in the delivery of the strategy. Rather, this feature was applied in the end to private land, rather than becoming a principal design feature. All this, however, is speculation. And furthermore, it couldn't be predicted that a funder-provider model would definitely have eventuated if there hadn't been a change of government, given that public policy thinking was already beginning to question a blanket application of these models to public service.[563]

The main point is that departmental ideologies and rationalities were at work during the development of the strategy. Eventually, it was a DoC view, mixed with elements of MfE's communitarian perspective that emerged in the final biodiversity strategy.

Just how **time** taken to arrive at a completed the biodiversity strategy played a part in its effectiveness is ambiguous. It took eight years. Conceivably it could have been completed earlier with better policy capacity on DoC's part. But it is hard to say whethera strategy developed any earlier

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[563] Boston, "State Sector Reform and Renewal in New Zealand: Lessons for Governance." P.34. Halligan, "Reform Design and Performance in Australia and New Zealand." Pp.52-55.

whether would have been more effective. Probably it wouldn't have been, given the fiscal constraints applied to public service expenditure in the early and mid 1990s. And time mean that it was finalised under a government more sympathetic to environmental values. Time didn't result in issues becoming more complex. In fact, as knowledge and visibility increased, potential points of conflict lessened, reinforcing the 'conflict potential-knowledge awareness' model of complexity drivers described in Chapter 4.

In conclusion, institutional influences, particularly intra-departmental ones, and cognitive features working in combination are the key factors that explain how, for this particular case study, a strong environmentally effective policy emerged out of the development of the biodiversity strategy. Events played a role in the final shape of the policy, as did agency, but in comparative terms, institutional and cognitive features are more prominent.

Using the framework from Chapter 4, key factors influencing the biodiversity strategy are represented in figure 6.1.

Figure 6.1 Biodiversity strategy influencing factors (scaled to small A, moderate A or large A)

6: Biodiversity policy
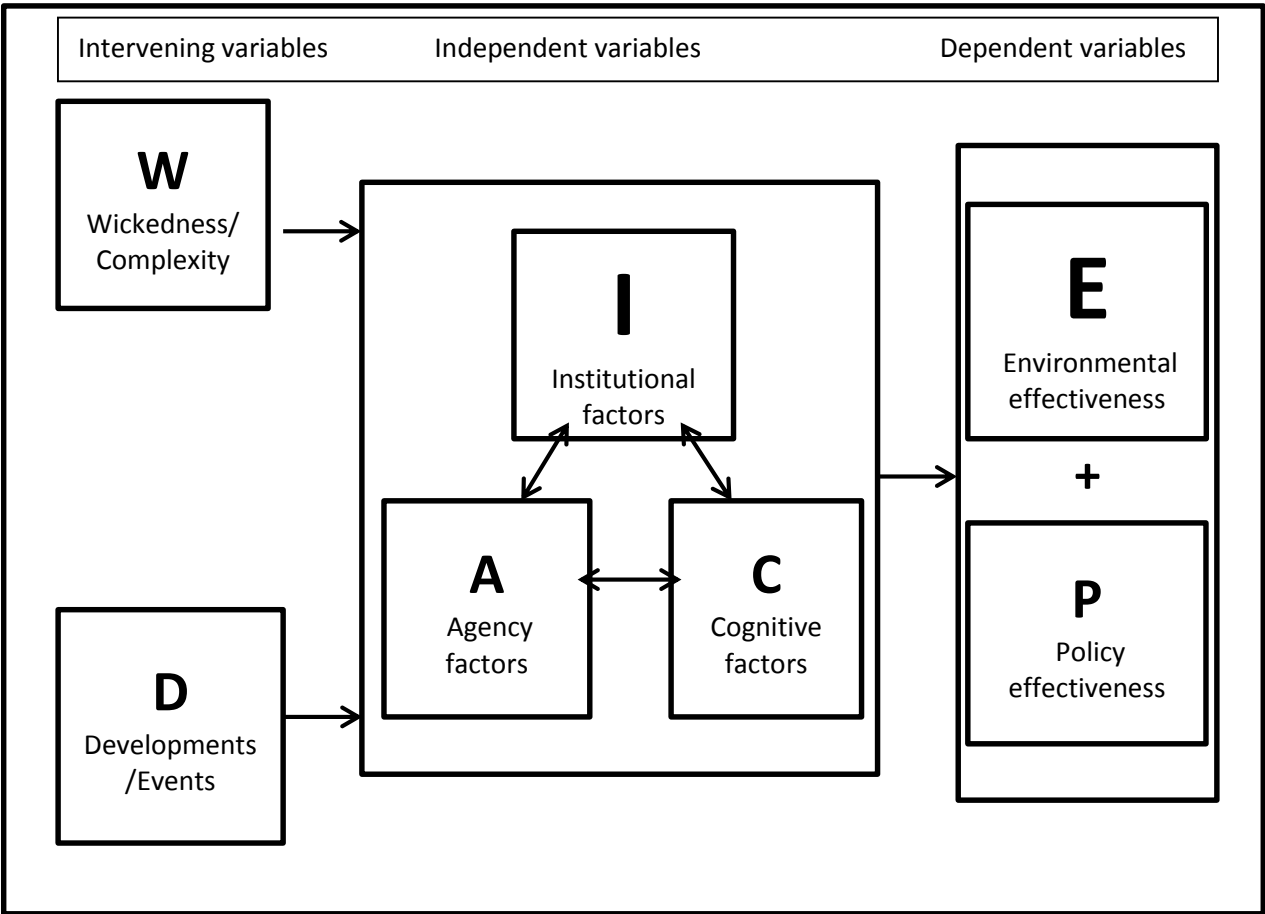
Chapter 7

Case Study: Addressing Decline in Freshwater Quality

7.1 Introduction

Water quality has been a recurring issue for environmental management in New Zealand. Various regimes for water management and water care have existed over the past sixty or so years. From the mid 1990s, questions arose about the adequacy of existing policy to maintain water quality, on the basis of evidence of decline caused by diffuse sources of pollution. This case study examines government attempts to establish new environmental policy to tackle freshwater quality decline from the early 1990s to the 2000s, based on the research questions set out in Chapter 4.

7.2 Freshwater quality: context and complexity in the late 20th and early 21st century

The ready availability of freshwater in New Zealand has until recently been taken for granted, as has the environmental quality of freshwater. Freshwater is abundant in many parts of the country. The New Zealand's 2007 State of Environment Report says freshwater is both clean and in good supply by international standards.[564] However, over the past twenty years water quality has come under increasing pressure, particularly from non-point-source discharges as a result of agricultural intensification, nutrient runoff, access to waterways by cattle, urban storm water run off (with its associated contaminants), and forestry.[565] Throughout all of the 1990s and most of the 2000s there were no mandatory national freshwater standards, except for drinking water quality.

Agriculture provides much of the recent pressure on New Zealand freshwater. Pressure arises from a combination of expansion of irrigation, growth of dairy cow herds, and a six fold increase in use of nitrogenous fertilisers, from around 60,000 tonnes in 1991 to a peak of 355,000 tonnes in 2004 (with an average of around 325,000 tonnes since 2004).[566] Recent MfE reports say the quality of water has deteriorated in rivers mainly as a result of farming. Any environmental gains in terms of reduced point-source pollution of waters by regulation and management measures are being overshadowed

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[564] MfE, *Environment New Zealand 2007*. P.261.
[565] R. Cullen, Hughey, K., Kerr, J., "New Zealand Freshwater Management and Agricultural Impacts," *The Australian Journal of Agricultural and Resource Economics* 50 (2006). Pp.327-328.
[566] Editorial, *Fertiliser Matters*, Fert Research Newsletter, Issue 56, November 2011.

by increasing 'diffuse' pollution. The reports say lakes and rivers in pasture-dominated catchments and in towns and cities commonly have degraded water quality.[567]

A wide range of interests are involved with freshwater and its use. It underpins New Zealand's agricultural productivity. The farming sector invests heavily in water infrastructure, and promotes increasing use of water to expand areas irrigated for agriculture. Water is essential for many industrial and manufacturing activities. Natural freshwater sources such as aquifers and protected water catchments provide relatively clean drinking water, by world standards.[568] It is a recreational resource for swimming, boating and fishing. [569]   Rivers, lakes, and freshwater springs are culturally significant for many New Zealanders, especially Maori for whom freshwater has spiritual and identity associations. Maori also claim use and ownership rights based on customary interests and provisions of the Treaty of Waitangi.[570]

Many industry organisations focus on freshwater and its use. These include the main farming lobby associations such as Federated Farmers, Irrigation New Zealand, Horticulture New Zealand, Meat and Wool New Zealand, Dairy New Zealand, and industry groups like Water New Zealand. Environmental non government organisations (NGOs) such as the hunting group, Fish and Game New Zealand, and the nature conservation NGO, the Royal Forest and Bird Protection Society, are active in promoting protection of enhancement of freshwater quality.

Water is managed in New Zealand as a public resource. The primary legislation for water management is the Resource Management Act (RMA). There is no specific national water agency. Three government departments have direct national responsibilities for water management policy; the Ministry for the Environment (MfE) for general water policy and water protection measures, the Department of Conservation (DoC) for protection of indignous freshwater species and freshwater recreational fisheries and freshwater habitats, and the Ministry for Primary Industries (MPI).[571] MfE and DoC's responsibilities are environmental ones and listed in their empowering Acts.[572] MPI's responsibilites arise from its function to promote primary industry but are non-statutory. MPI's priorities are business growth, exports, and innovation. It describes its role in freshwater as encouraging and supporting irrigation projects, monitoring and managing the impact of farming on

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[567] MfE, *Lake water quality*, http://www.mfe.govt.nz/environmental-reporting/freshwater/lake/ and MfE, *River water quality*, http://www.mfe.govt.nz/environmental-reporting/freshwater/river/ (both accessed 4/9/2012).
[568] Ministry of Health, "Annual Review of Drinking Water Quality in New Zealand 2004," (Wellington: MInistry of Health, 2005).
[569] In 2004, 79% of New Zealanders identified themselves as recreational users of water. MfE, "Water Bodies of National Importance: Potential Water Bodies of National Importance for Recreational Value," (Wellington: Ministry for the Environment, 2004). P.1.
[570] Bargh, "Freshwater: Issues for Maori."
[571] For the most of this study MPI was known as the Ministry of Agriculture and Forestry – MAF
[572] Environment Act 1986, S.2, 17 & 31; Conservation Act 1987, S.6

fresh water, and supporting the development of policies and rules governing how freshwater is managed and allocated.[573]

Implementation of freshwater policy is devolved to Regional Councils. They are significant actors in promoting their views about how water should be managed at a national level. They represent a suite of regional and local interests, as well as having their own institutionalised perspectives on freshwater management.[574] But they do not have direct formal role in national-level policy development as MfE, DoC and MPI do.

Freshwater management in New Zealand is complex. Institutionally, there are a number of different government departments with direct responsibilites. There is a tier of separate regional governments that set regional policies within a framework established by the RMA, carry out day to day management, and who have their own parochial perspectives. There is a level of consensus scientifically about causes of freshwater quality decline but also scientific and technical debate about how best to address it. Public perception early on was that New Zealand water quality was good, but this changed in the late 1990s and concern about decline in quality has grown.[575] There are a wide range of economic, social, and cultural interests involved with how water is managed. Freshwater use lies at the heart of the New Zealand economy (dominated as it is by agriculture). There is a special New Zealand cultural and constitutional dimension in Maori interests in freshwater. Freshwater is used for recreation by a significant proportion of New Zealanders. The large number of interests with different objectives create significant conflict potential. When combined with debate about causes of freshwater decline, and growing public concern about decline, developing new water-related policy is likely to be complex and demanding.

7.3   Developing freshwater policy: 1990s-2013

7.3.1   Policy background and the Resource Management Act

In 1991 the Resource Management Act (RMA) replaced a longstanding regime of water and catchment management. The earlier regime was based on the 1941 Soil Conservation and Rivers Control Act and the 1967 Water and Soil Conservation Act. This regime involved management by a network of regionally elected Catchment Boards. The network was supported and to some extent overseen by a central government water and soil directorate as part of the Ministry of Works and

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[573] MPI, "Water", http://www.mpi.govt.nz/environment-natural-resources/water (accessed 21/4/2013).
[574] P. Ali. Memon, Skelton, P., "Institutional Arrangements and Planning to Allocate Freshwater Resources in New Zealand: A Way Forward," *New Zealand Journal of Environmental Law* 11 (2007). B. Chamberlain, "Strategy for New Zealand Water Management with Particular Reference to National Policy and Interventions," in *New Zealand Association Resource Management Annual Conference* (New Plymouth: NZARM, 2011).
[575] See for example "Report into dirty dairying", *TV One News*, Tuesday 25, 2002. Also Hughey, "Public Perceptions of New Zealand's Environment: 2010." Pp.75-76.

Development.[576] The RMA changed the old regime dramatically. It devolved day-to-day management of freshwater to regional government, with the central government role largely confined to establishing national objectives and standards. This was the responsibility of MfE.[577]

Some policy work on water management instruments was undertaken by MfE in the late 1980s during the design of the RMA, but otherwise water specific initiatives were taken no further at that time.[578]

The RMA was viewed initially as environmentally positive for management of freshwater. The Act made the preservation and protection of freshwater bodies a "matter of national importance."[579] A major change ushered in by the RMA was the ability to apply integrated catchment management, which potentially meant control of all sources of water quality degradation. Early analyses said the RMA had considerable potential for better environmental management generally because of the way it integrated environmental values in New Zealand's resource management regime.[580] However, the Act and its institutional arrangements began to exhibit implementation shortcomings.[581] It appeared to deal effectively with point-source discharges but not at all sufficiently with diffuse sources.[582] Other issues were that no national level objectives or standards for water management were produced, there was a significant degree of variability in management approach by different regional councils, and, in the views of some, regional councils were weak political authorities overly susceptible to vested interests of existing water users.[583]

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[576] For the history of the water and soil conservation regime and its replacement by the RMA, see Roche, *Land and Water: Water and Soil Conservation and Central Government in New Zealand 1941 - 1988*.

[577] Some elements and principles of the old water and soil regimes were retained, such as catchment management, water conservation orders, and what has been described as a "prior appropriation framework." Memon, "Institutional Arrangements and Planning to Allocate Freshwater Resources in New Zealand: A Way Forward." P.249.

[578] "We looked at water pricing when developing the RMA", Denise Church pers com; Basil Sharp, "Water rights needs to be traded to find their best use", *NZ Herald*, Thursday September 6, 2012.

[579] Resource Management Act 1991, S.6 (a).

[580] For the early hope, with reservation, about the RMA see Bührs, *Environmental Policy in New Zealand: The Politics of Clean and Green?* Pp.157-159. Young, *Values as Law: The History and Efficacy of the Resource Management Act*.

[581] J. B. Frieder, "Approaching Sustainability: Integrated Environmental Management and New Zealand's Resource Management Act," (Wellington: Ian Axford New Zealand Fellowship, 1997). P.54. For debate about how the role of environmental values may have changed through interpretation see P. Skelton, Memon, A., "Adopting Sustainability as an Overarching Environmental Policy: A Review of Section 5 of the RMA," *Resource Management Journal* 10, no. 1 (2002). Pp.1-10., and S. Upton, Atkins, H., Willis, G., "Section 5 Re-Visited: A Critique of Skelton & Memon's Analysis," http://www.arcadia.co.nz/rm/section5.htm Accessed 4/9/2012.

[582] Lindsay Gow pers com.

[583] Frieder, "Approaching Sustainability: Integrated Environmental Management and New Zealand's Resource Management Act." P.54. Memon, "Institutional Arrangements and Planning to Allocate Freshwater Resources in New Zealand: A Way Forward." P.253. The arguments in defense of Regional Councils is that they can bring to bear the necessary scientific skills, catchment knowledge, and management capacity in a way that is responsive to the aspirations of their local communities and is more effective, than central government. See

Debates about RMA implementation, whether the principles of the RMA itself led to efficient, equitable, or effective management of natural resources, coupled with influential economic, social and cultural interests in water, and the emerging evidence of increasing land use pressures, demands for access to more water, water availability limits, and declining freshwater quality, created the basis for policy review.

7.3.2 The 1990s: sustainable land management & national agenda for water

By the mid-1990s, water quality began to feature as an environmental policy priority. Managing water resources was one of the key goals of *Environment 2010*, the then government's environmental strategy document. The strategy's water objective was to manage quality to meet current and future needs of ecological systems, communities, agriculture and industry.[584] *Environment 2010* bore the personal imprint of the Minister for the Environment, Simon Upton, but its detail was the product of MfE.[585]

Drawing from *Environment 2010*, MfE produced, as part of an interdepartmental effort, a sustainable land management strategy aimed in part at maintaining and enhancing water quality, arguing two principles: first, sustainable land management rested with the individual land user, and second, environmental considerations must be integrated along with economic and social goals in management. [586]

Linked to the sustainable land management strategy, MFE also worked on what became known as a national agenda for sustainable water management. The agenda was published in 1999 after a three year programme consulting with stakeholders.[587] Using scientific/technical information, the national agenda on water was clear about the causes of freshwater quality decline. The proposed actions, however, were very general. They focused on more research, and on government departments taking a non-interventionist approach, playing a facilitative or brokering role rather than regulating.

The thrust of the Sustainable Land Management Strategy and the national agenda for water was to persuade individual property owners and land managers to change management techniques and behaviours, encourage community participation, provide guidance for regional councils to improve implementation of the water management provisions of the RMA, target research efforts, and to

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Chamberlain, "Strategy for New Zealand Water Management with Particular Reference to National Policy and Interventions."

[584]MfE, "Environment 2010 Strategy: A Statement on the Government's Strategy on the Environment."

[585] Upton, for example, personally wrote the chapter on environmental principles. Lindsay Gow pers com.

[586] MfE, "Sustainable Land Management: A Strategy for New Zealand," (Wellington: Ministry for the Environment, 1996).

[587]———, "Making Every Drop Count: The National Agenda for Sustainable Water Management- Action Plan," (Wellington: Ministry for the environment 1999).

supply information to assist Maori participation in water management processes.[588] There was mention that some form of national standards or direction might be introduced, but this was tentative.[589] The tenor of these proposed government actions emphasised voluntary action and incentives.

Reasons for the approach taken in the 1990s to water quality can be attributed to the climate of ideas within government. Water governance at this time relied on the principles and the implementation of the RMA. The legislation was regarded at the time as world leading in its integration of environmental values in resource management.[590] It was, however, a dramatic change in an implementation sense in that it shifted the locus of government action to regional and local authorities. Bedding the legislation in needed considerable resource and skill, and MfE's ability to participate was hamstrung by lack of resources.[591]

There was also a difference of ideas about the assumptions inherent in RMA, and the type of rules that could, or should be used in implementing the Act. Within government, economic departments argued the Act was being interpeted to place too much emphasis on environmental outcomes, and insufficient on economic outcomes. Ideas for central government direction through national standards received limited support, although one National Policy Statement, setting standards for coastal development, was produced by DoC in 1994.[592] The economic development departments, led by Treasury and the Ministry of Commerce, were in general opposed to greater central direction.[593] And as the decade went on the economic development ministries became stronger in their criticism of the RMA as a constraint to economic growth.[594] In the processes of negotiation and bargaining regarding any new policies, MfE was placed in a position of defender of the RMA. The MfE view was that, with the right support, or incentives, or assisting actions, the RMA could be used to address water quality issues. Furthermore, the centrality of the RMA to MfE's role and functions influenced the growth of an ideology within MfE supportive of devolved management, and the value of community action (linked to the idea that with the right incentives, the individual will look after natural resources). This in turn may have been reinforced by structural design. MfE looked on

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[588] ———, "Sustainable Land Management: A Strategy for New Zealand." Pp.10-15. ———, "Making Every Drop Count: The National Agenda for Sustainable Water Management- Action Plan." Pp.2-3.

[589] "An option of an national policy statement will be kept open at this stage",———, "Sustainable Land Management: A Strategy for New Zealand."P.12. Ecosystem management frameworks were to be produced for rivers (in 2002), lakes (in 2004), groundwater (in 2006) and estuaries (in 2008). ———, "Making Every Drop Count: The National Agenda for Sustainable Water Management- Action Plan." P.3.

[590] Bührs, *Environmental Policy in New Zealand: The Politics of Clean and Green*, Frieder, "Approaching Sustainability: Integrated Environmental Management and New Zealand's Resource Management Act."

[591] Young, *Values as Law: The History and Efficacy of the Resource Management Act*. P.32.

[592] Treasury, "Brief to the Incoming Government," (Wellington: Treasury, 1990). P.165. Young, *Values as Law: The History and Efficacy of the Resource Management Act*. Pp.10-11. The Minister of Conservation was responsible for those provisions of the RMA dealing with coastal issues.

[593] See the Biodiversity case study, Section 6.6.2 and Section 6.6.3.

[594]Treasury, "Brief to the Incoming Government 2002," (Wellington: Treasury, 2002). P.60.

regional councils, in particular, as an "operating arm." This tended to make MfE especially responsive to council views and wary of being directive. In the 1990s, a non-interventionist view from central government coincided with a parochial regional government view (in part a mechanism of defence against certain minimalist views of territorial local government promoted within central government), and hence militating against national direction.[595]

Another influence was the effect of MfE's Minister, Simon Upton. Upton was a forceful cerebral Minister.[596] His relationship with MfE was contradictory. He enjoyed debate about ideas. He drew heavily on non-departmental advisers. But he was supportive of the Ministry, except where he felt its policy ideas did not meet his high expectations about policy advice and how government departments should perform.[597] Upton himself has said his influence should not be over-emphasised, however. In his view MfE was not supportive of ideas to develop national direction in the later 1990s, with an inference that MfE's position prevailed.[598]

In the end, the sustainable land management strategy and the national agenda for water did not get very far, possibly because their actions were ill-defined, but definitely because they were overtaken by a change of government. In 2002 the PCE reported that the sustainable land management strategy was reviewed in 1998 and was still being implemented, and the national agenda was considered obsolete.[599]

The combination of MfE's limited resources in the 1990s, difference in approaches between departments, MfE's cultural attachment to the devolved institutional system, MfE's unwillingness to advocate strongly for national level direction, and the paradoxical relationship with its Minister seem to provide some explanation about why the issue of water quality did not progress further than statements of proposed light handed action. In the event, proposed actions on water quality proceeded no further due to a change of government in late 1999.

7.3.3 Late 1999 to Mid-2000s: sustainable development

A change of government in late 1999 resulted in a reassessment of environmental policy priorities. MfE argued that the issue of freshwater quality decline was a nationally significant environmental issue. They said this in their 1999 briefing to the incoming centre left Labour-Alliance party coalition

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[595] Bush, *Local Government and Politics in New Zealand*. Pp.300-303. For a summary of MfE's view of its relationship with territorial local government see MfE, "Brief to Incoming Minister." P.26.
[596] Young, *Values as Law: The History and Efficacy of the Resource Management Act*. P.31.
[597] For example, Upton, as Minister in Charge of State Services between 1997 and 1999, initiated a review of the quality of government department policy advice. See S. Upton, "Politicians & the Genesis of Public Agencies," in *The governance of public agencies & authorities* (Bratislava2001).
[598] Young, *Values as Law: The History and Efficacy of the Resource Management Act*. Pp.38-39.
[599] PCE, "Creating Our Future: Sustainable Development in New Zealand." P.14 & 18.

government.[600] In March 2000, the new Minister for the Environment, Marian Hobbs, said that water quality issues were in the "problems to be fixed basket."[601] But water wasn't the highest priority. Water was not among the topics to receive a new injection of funds in the 2001 Budget. New funding was given instead to waste minimisation, supporting the Royal Commission on Genetic Modification, supporting the operation of the RMA (largely through promoting best practice), climate change response, creating a National Policy Statement on biodiversity, and a national environmental indicators programme. [602]

By mid-2001, however, Hobbs signalled that water quality was a priority.[603] MfE had persuaded the government that water management should be a flagship programme in New Zealand's sustainable development strategy, produced in mid 2002 in preparation for the World Summit on Sustainable Development. This was accompanied by an injection of specific new funding to the Ministry for work on water issues.[604]

Just as *Environment 2010* had provided government departments with a priority for action on water in the 1990s, the *Sustainable development for New Zealand: Programme of action* purported to do the same in the early 2000s. The document was unequivocal when it came to water. It set out three objectives: to allocate and use water in a sustainable, efficient, and equitable way; to maintain water quality for all appropriate needs; and to protect water bodies with nationally significant natural, social, or cultural values.[605]

There were, however, some aspects of the water programme, as approved in the sustainable development strategy, that had potential to divert attention away from water quality. The Ministry of Agriculture and Forestry (MAF) had argued successfully that the economic issues related to water use (supporting greater agricultural intensification) also had to be looked at in tandem with water quality. Consequently, two departments (MAF and MfE) and two Ministers (Agriculture and

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[600] MfE, "Brief to Incoming Minister."
[601]Speech to Water 2000 Conference, 21 March, 2000, www.beehive.govt.nz/speech/water+2000+conference+carlton+hotel+auckland (accessed 10/7/2013).
[602] Funding boost for Ministry for the Environment, 9 May 2001, http://www.beehive.govt.nz/release/funding-boost-ministry-environment (accessed 3/4/2011).
[603] Sustainability cornerstone of environment, http://www.beehive.govt.nz/release/sustainability-cornerstone-environment-policy (accessed 3/4/2011).
[604] DPMC, "Sustainable Development Programme of Action." The key message of the Strategy was that the New Zealand Government would commit itself to the triple objectives of sustainable development (environmental, social and economic). The Strategy identified three other flagship programmes besides water: sustainable and efficient energy use, sustainable cities, and investment in child and youth development, plus a reporting programme. The Strategy was not without its critics, however. See PCE, "Sustainability Forum" in 2007 at , http://www.pce.parliament.nz/publications/all-publications/ (accessed 3/8/2012) and Bosselmann, "Why New Zealand Needs a National Sustainability Development Strategy."
 Money for water work, 15 May 2003, http://www.beehive.govt.nz/release/money-water-work (accessed 3/8/2012). The 2003 Budget allocated $2 Million for research, policy work and consultation over two years.
[605] DPMC, "Sustainable Development Programme of Action."

Environment), rather than one, were made responsible for results.[606] This arrangement relied on a close working relationship that might not always be guaranteed given that one ostensibly worked to an environmental outcome and the other to an economic development outcome. In addition, government departments were expected to give effect to a principle of partnership, and that meant that proposals needed some degree of negotiation with other interested parties, including the collective of regional and local government, recreational groups, agriculture, energy producers, and Maori. [607]

The early stages of the water programme, nevertheless, proceeded relatively smoothly and in accordance with common policy development practices in the New Zealand public service. By mid-2004 technical working papers and background reports were produced on water allocation and use, effects of rural land use on water quality, and potential water bodies of national importance (to which officials had argued successfully to include economically important water bodies). [608]

Within just over a year, in October 2004, departmental officials had developed a programme that proposed using RMA tools for national direction (National Policy Statements, and National Environmental Standards), a market management mechanism (water transfer and trading), and priority allocation rather than first-in first-served, but was more equivocal about nationally consistent default values for water quality and protecting water bodies of national importance.[609]

Public consultation on proposals was launched in December 2004 with a document entitled *Freshwater for a sustainable future: Issues and options*.[610] In February 2005 public meetings, meetings with local government and hui with Maori were held at 20 locations and 292 written submissions were received.

The results, contained in the consultation summaries, were fairly predictable. Environmental NGOs wanted clear mandatory national direction. Agricultural and commercial water users were lukewarm about rules but would accept something if it provided more certainty about access to water. Local

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[606] An interagency committee was created to monitor progress. MfE and MAF were committee co-leads, with representation of DPMC, Department of Internal Affairs, Ministry of Economic Development, DoC, Ministry of Health, Treasury and Environment Waikato (representing regional councils) and the Marlborough District Council (representing local territorial councils). The Ministry of Culture and Heritage was added in 2004
[607] DPMC, "Sustainable Development Programme of Action." P.11.
[608] See Cabinet committee paper POL (04) 320, http://www.mfe.govt.nz/issues/water/prog-action/cab-paper-consultation/ (accessed 10/7/2013).
[609] Ibid. The drivers of the equivocation are not entirely clear. Speculatively, it may have been a combination of MfE's ambivalence, MAF's (and regional councils') dislike of the national water body protection mechanism of water conservation orders, and regional council advocacy against national prescription. See Cabinet paper POL (06) 321, paragraph 19, and Chamberlain, "Strategy for New Zealand Water Management with Particular Reference to National Policy and Interventions."
[610] MfE, "Freshwater for a Sustainable Future: Issues and Options," (Wellington: Ministry for the Environment, 2004).

and regional government, giving voice to their position in favour of "local choice", were generally unhappy about central government direction. [611] Maori wanted more involvement in management and acknowledgement of their rights.[612]

At this stage officials had a policy mandate, completed scoping policy proposals, sought direction from Cabinet, and completed public and stakeholder consultation, within the space of two and a half years. However, it took nearly another year, until April 2006, for officials to go back to Cabinet with a proposed implementation programme. The proposed programme remained tentative. It proposed a leadership group of representatives from local government and stakeholders to advise on priorities, further work by officials on the need for and likely content of NPSs to address more efficient water use and demand management, further work on establishing criteria for nationally outstanding natural water bodies, and developing tools to improve water management.[613] The message from the language of the Cabinet paper is that, after three and a half years, departmental officials were recommending more work. Possible contributors may have been an election and a change of Environment Minister in 2005, but general environmental policy settings had not changed; nor had the degree of pressure from external interests, at this stage. Thus it seems plausible to argue that causes lay within the bureaucracy.

First, there were different views amongst departments. The co-lead department, MAF, ensured economic objectives were prominent. DoC argued that the voluntary approaches that lay at the heart of the package would not achieve sufficient protection of freshwater ecosystems quickly enough. Treasury and the Ministry of Economic Development (MED) argued that measures such as consent transfer and cap-and-trade approaches were essential. Statutory regimes, they said, required "more flexibility" and "minor legislative change."[614]

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[611] Bush, "Local Government." P.303.

[612] MfE, "Reflections: A Summary of Your Views on the Sustainable Water Programme of Action," (Wellington: Ministry for the Environment, 2005). Cabinet minute CAB 2006 11/11 http://www.mfe.govt.nz/issues/water/prog-action/cabinet-paper-implementation-package.html (accessed 15/10/2012).

[613] The tools included enhancing transfer of water consents and water user management of water under cooperative regimes, improved environmental flow methodologies, improving the ability of Regional Councils to recover costs, methods to protect natural character and biodiversity, methods to manage over allocated catchments including alternatives to the RMA's supposed first in, first served allocation mechanism, model consents and model conditions, and better alignment with science priorities. See Cabinet minute CAB 2006 11/11, http://www.mfe.govt.nz/issues/water/prog-action/cabinet-paper-implementation-package.html (accessed 15/10/2012).

[614] Ibid. In the author's experience it was not a regular occurrence during the period of the Labour Government between 1999 and 2008 for departments to display differences in cabinet papers. Ministers preferred to see department come to a common position.
See also a suite of papers produced by Treasury between 2002 and 2004 on property rights, environmental policy and water allocation (www.treasury.govt.nz/publications/research-policy), and R. Hawke, "Improving the Water Allocation Framework in New Zealand: Enhanced Transfer," (Wellington: Ministry of Economic Development, 2006).

Second, MfE had undergone a significant internal restructuring in 2004 and 2005 resulting in a new senior management team, an internal structure based on major stakeholder groupings, and an internal priority on "fixing the most urgent matters."[615] It reinterpeted its role from being primarily a policy ministry to one that "works effectively with others to achieve the sustainable development of New Zealand".[616] The Ministry was embroiled with intense political debate about the costs of proposed climate change policies.[617] Water policy was dealt with in the unit known as Working with Local Government. The title of the unit suggested a priority on relationship management, not necessarily on policy substance. Furthermore, some staff who might otherwise be working on water policy were diverted to deal with water management in the Waitaki River in Canterbury and a review of flood management following floods in the Manawatu region.[618] Also, MfE's overall expanding work programme, although now better resourced than in the 1990s, was creating competition for management attention. The numbers of staff working on water policy were small.[619]

Finally, having two lead agencies required them to work together seamlessly, and particularly for them to draw in other agencies. The different departmental views evident in the mid-2006 Cabinet paper suggest this wasn't happening as well as it might.

What this meant for environmental and policy effectiveness is that no clear new framework to advance environmental values regarding water management was emerging, beyond the existing RMA statutory requirements.

7.3.4 Mid 2000s to 2008: sustainability and stronger ministerial steering

After mid-2006 the tempo of action regarding water management began to change. Public concern about the slow rate of progress on freshwater matters led to stronger Ministerial intervention.[620] Soon after, the Prime Minister announced that environmental sustainability would be a top priority for the government.[621]

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[615] MfE, "Annual Report 2002-2003." P.91.

[616] ———, "Protecting People and the Environment: Briefing to the Incoming Minister for the Environment " (Wellington: Ministry for the Environment, 2005). P.4.

[617] Kelly, "Climate Change Policy: Actions and Barriers in New Zealand." P.78. D. Bullock, "Emissions Trading in New Zealand: Development, Challenges and Design," *Environmental Politics* 21, no. 4 (2012). Pp.661-662.

[618] See C. Kilner, "The RMA under Review: A Case Study of Project Aqua," *Political Science* 58, no. 2 (2006).. MfE, "Meeting the Challenges of Future Flooding in New Zealand," (Wellington: Ministry for the Environment, 2008).

[619] See ———, "Annual Report 2005-2006."Pp. 2-11. Also commentators on climate change policy noted bureaucratic infighting and procrastination during this time. See Boston, "The Complicated Politics of Climate Change." Pp. 215-216.

[620] "Action must follow state of environment report" Fish and Game Council, 30 January 2008, http://www.scoop.co.nz/stories/PO0801/S00236.htm (accessed 4/12/2012).

[621] Prime Minister's statement to Parliament 12/2/2008, http://www.beehive.govt.nz/speech/prime-minister039s-statement-parliament (Accessed 3/8/2012).

7: Freshwater policy

There is evidence of political frustration about the slow progress on water policy. Cabinet wanted progress reports and work completed by specified dates.[622] Then, under the tenure of acting Environment Minister, David Parker, decisions were taken to proceed with an NPS on freshwater management, and a National Environmental Standard (NES) on ecological flows.[623] Parker, although only an acting minister, had earlier experience in RMA water matters and a track record of pushing policy issues.[624] He claimed to have driven the water policy instruments.[625] Parker was followed in the Environment portfolio late in 2007 by an experienced and senior minister, Trevor Mallard. Furthermore, Parker and Mallard, and MfE, would have been helped by the Prime Ministerial priority for environmental sustainability, accompanied by greater awareness of the economic significance of environmental quality. Economic departments were now saying environmental sustainability was a significant component of economic growth.[626] Consequently, the intra-government climate was potentially favourable to environmental initiatives. At a departmental level, however, MfE 's leadership changed rapidly, with a succession of four different chief executives between 2006 and 2008, and controversy about the extent to which the department had become politicised.[627] Some progress was made on water issues, but it was not fast.

An NES on measurement of water-take was agreed in February 2008, pending drafting of the regulation, and agreement with regional councils on exemptions.[628] In March 2008 a discussion document on an NES on ecological flows and water levels was produced, accompanied by a press

[622] See the language in Cabinet committee paper POL (06) 321, Paragraph 3.
http://mfe.govt.nz/issues/water/prog-action/cab-paper-progress-report/ (accessed 10/7/2013).
[623] See Cabinet minute (09) 20/12, Appendix 1. RMA instruments had been regarded as part of the policy mix since 2004, but up until 2007 officials were still equivocating about their sue, nature, and scope, apart from requiring better measurement of water-take on a nationally consistent basis.
[624] See Statement of evidence on behalf of David William Parker in an application to amend the Kawerau Water Conservation Order 29 May 2009, http://www.mfe.govt.nz/rma/central/nps/hearing-proceeding/20-1-statement-evidence-david-parker.pdf (accessed 3/8/2012).
[625] "As acting minister for the environment I unblocked the national policy statement on freshwater quality", Red Alert blog, 30/7/2012, http://blog.labour.org.nz/2012/07/30/i-seek-leave-to-make-a-personal-explanation/ . The author supports this assertion, based on personal experience as CEO of MfE at the time.
[626] Helen Clark, Labour Party Annual Conference keynote address, October 2006, http://www.scoop.co.nz/stories/PA0610/S00539.htm (accessed 4/12/2012). The Natural Resources Sector briefing to incoming ministers 2008, http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011/nrs-bim-2011.pdf (Accessed 4/9/2012).
There is evidence the shift had begun earlier within Treasury. See Treasury, "Growing Higher Living Standards for New Zealanders: Briefing to the Incoming Government," (Wellington: Treasury, 2002). Pp.58-64.
 "Our priority sustainability initiatives are…working towards a National Policy Statement on freshwater management." Prime Minister's statement to Parliament 12/2/2008, http://www.beehive.govt.nz/speech/prime-minister039s-statement-parliament (Accessed 3/8/2012).
[627] David Benson Pope resigns, *Dominion Post*, 27 July, 2007, http://www.stuff.co.nz/national/politics/51486/David-Benson-Pope-resigns (accessed 4/12/2012).
[628] Cabinet committee minute POL (08) 16, http://www.mfe.govt.nz/issues/water/prog-action/cabinet-paper-measurement-of-water-takes.html (accessed 2/3/2011).

release from Trevor Mallard saying the standard aimed to promote consistency across the country in decision-making to ensure there was sufficient amount of water flowing in water bodies.[629]

Missing from the mix was any announcement about protecting nationally important water bodies, one of the objectives of the 2003 sustainable development strategy. In 2004 officials led by DoC had already identified criteria and a list of potential waters of national significance. It had been expected that decisions on this subject would be made in 2005.[630] In 2006, Cabinet papers reported work was under way on further criteria.[631] By mid-2008 it no longer appeared on the officials' work programme. Whether this was deliberate is not clear. What appears to have happened is that officials widened the scope of what should be protected to include all values (including economic and cultural ones).[632] Establishing and then agreeing on criteria across the wide range of values became very complicated. Without strong leadership, no consensus could be reached. Some topics, including protecting waters of national significance, were no longer evident as part of the work programme. Just why is not clear. Perhaps ministers were persuaded it was less of a priority than the RMA instruments, or it was dropped by officials. Furthermore, the two lead agencies, MfE and MAF, were not supportive of water conservation orders, the existing national-level tool for freshwater protection.[633] From now on, reference was to water bodies of "outstanding" significance, rather than "national" significance, and the process for identifying and protecting them was delegated to regional councils.[634]

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[629] MfE, "Proposed National Environmental Standard on Ecological Flows and Water Levels: Discussion Document," (Wellington: Ministry for the Environment, 2008). Ensuring healthy water-national environmental standard, 2/3/2008, http://www.beehive.govt.nz/release/ensuring-healthy-water-%e2%80%93-national-environmental-standard (accessed 2/3/2011).

[630] ———, "Water Programme of Action: Potential Water Bodies of National Importance," (Wellington: Ministry for the Environment, 2004). MAF stated that final decisions on waters of national importance would be taken by the end of 2005.See RMupdate at http://maxa.maf.govt.nz/mafnet/publications/rmupdate/rm14/rm14-01.htm (accessed 3/8/2012).

[631] Cabinet committee paper POL (06) 321, Paragraph 23. "The Department of Conservation is leading the development of these criteria in consultation with the Ministry for the Environment and the Ministry of Agriculture and Forestry. Initial work is underway on developing criteria and the focus is now on identifying existing tools that can be used to assess the relative natural values of different water bodies. The next stage will involve using the tools to test the draft criteria, and to identify the extent of likely overlap between natural values and nationally significant development opportunities."

[632] Cabinet committee paper POL (04) 320

[633] This assertion is based on: first, the fact that it had disappeared from view; second, that there was a political imperative to deliver some action on water; third, and more speculatively, that Parker, and then Mallard, with the Environment portfolio, would have been receiving more exposure to RMA interventions, than protection of water bodies, which was aligned more with the Conservation portfolio; and fourth, that MfE and MAF were at best ambivalent about water conservation orders, one of the protection mechanisms suggested for waters of national importance.

[634] MfE, "Proposed National Environmental Standards on Ecological Flows and Water Levels.," (Wellington: Ministry for the Environment, 2008). Policy 1 (2) & (3.2).

An NPS, the water policy centre-piece, and a key priority for the government, was finalised as a draft and then released in July 2008.[635] Producing the draft required input and negotiation, and bargaining and compromise, between a multitude of departments at multiple levels and at multiple times. In addition, the draft also required MfE to prepare a regulatory impact statement. The general test required by regulatory impact statements was that, "the problem cannot be adequately addressed through private or non-regulatory arrangements and that a regulatory solution is required in the public interest."[636] The type of language used in the draft , including wording like "progressive enhancement of the overall quality of Freshwater Resources", and "including actions to ensure appropriate freshwater resources can reach or exceed a swimmable standard" drew criticism not only from environmental NGOs, but also Simon Upton, the previous National Party Minister for the Environment for most of the 1990s. He also criticised MfE for not having a big enough team devoted to such an important environmental issue. Upton's view was that the officials' processes had resulted in an insipid and environmentally ineffective document.[637]

By late 2008, the water-take measurement NES was ready for final approval. The framework for an NES on ecological flows had received public feedback and was back with officials. The draft NPS was under review by an independent Board of Inquiry.[638] The entire suite of measures was overtaken, however, by the election at the end of that year and a change of government.

In summary, policy work picked up momentum after 2006. Intra-government factors that contributed to momentum appear to be an increasingly favourable climate of political support, a softening of ideological differences about environmental values between departments, and priority put on the subject politically (and possibly personally) by Ministers for the Environment. Nevertheless, by the end of 2008, some form of framework to address water quality had not yet been achieved, although one involving an NPS and four NESs was in train. There seemed to be intra-government constraints in

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[635] "Our priority sustainability initiatives are…working towards a National Policy Statement on freshwater management." Prime Minister's statement to Parliament 12/2/2008, http://www.beehive.govt.nz/speech/prime-minister039s-statement-parliament (Accessed 3/8/2012). ———, "Proposed National Policy Statement for Freshwater Management," (2008).

[636] Treasury, *Regulatory Impact Analysis Handbook* (Wellington: Treasury, 2009). P.8.

[637] The qualified language of the draft drew criticism from environmental NGOs and other commentators. Five national environmental NGOs united and called for "far reaching changes". See "Critical issues with the officials' draft national policy statement", 26 June 2008, Memo from national NGOs, http://www.ecologic.org.nz/?id=61&page=Freshwater+policy (accessed 4/12/2012).
Upton, now a private consultant ostensibly removed from political points scoring, described the draft as "one of the most insipid and evasive attempts to grapple with a major environmental policy issue that I have ever seen" He criticised the "fuzzy" language, asked what "appropriate "meant, and commented that "I am told that despite employing 262 people, the Ministry for the Environment has only five devoted to water. This, despite the fact that water quality is New Zealand's toughest environmental challenge." ("Silence greets insipid freshwater proposal", *Dominion Post* 29 July 2008).

[638] http://www.beehive.govt.nz/release/board-inquiry-appointed-water-policy-stmt (accessed 2/3/2011). The RMA requires for any proposed national policy statement that the Minister appoint a formal board of enquiry (Section 47), or to decide not to use a board of enquiry, but then to follow similar processes required of a board of enquiry (Section 46).

departments' capacities to advance the environmental components of water policy: in MfE either because of competing priorities, insufficient numbers of people assigned to develop water policy, or leadership issues; and a combination of DoC, MAF, and MfE inabilities to further the concept of waters of national significance.

7.3.5   2008-2013: A "New Start for Freshwater"

The 2008 election returned a centre-right government. It put an ideological emphasis on promoting economic growth, rather than on environmental sustainability that had featured as a policy priority in the closing years of the previous Labour-led government.[639]

MfE argued in its briefing to the new government that water quality decline was one of New Zealand's critical environmental issues. It was supported by economic development departments.[640] Departmental briefings in late 2008 laid emphasis on the environmental parameters of water management, while in 2011 more emphasis was placed on the economic growth dimensions, and by 2013 Cabinet papers increased this emphasis even more.[641] The new Minister for the Environment, Nick Smith, made dealing with water management, and water quality, one of his key priorities. Work by the Board of Inquiry proceeded with the earlier NPS work. An NES on water take measurement was promulgated. Smith established a new Scandanavian-derived approach to assist on water policy known as the Land and Water Forum (LAWF).[642] LAWF was designed as a sectoral, rather than departmental, form of policy development, drawing on the idea that sectoral policy development resulted in greater acceptability of policy proposals.[643] The LAWF policy process was championed by Guy Salmon, an adviser to Smith both when Smith was in Oppositon, and when he became Minister for the Environment. Another influence was the ex-senior public servant and chair of LAWF, Alister Bisley. As well, a range of initiatives to encourage better land use practice and water care were

[639] Speech from the throne, 9 December 2008, http://www.beehive.govt.nz/speech/speech-throne (accessed 4/12/2012).
[640] MfE, "Briefing to the Incoming Government 2008: Environmental Sustainability
" (2008). Pp. 8-10, and The Natural Resources Sector briefing to incoming ministers 2008, http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011/nrs-bim-2011.pdf (Accessed 4/9/2012).
[641] The Natural Resources Sector briefing to incoming ministers 2008, http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011/nrs-bim-2011.pdf (Accessed 4/9/2012). The Natural Resources Sector briefing to the incoming government 2011 http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011/nrs-bim-2011.pdf (accessed 4/9/2012). Cabinet paper "Water reform: Overview", November 2012 and "Water reform overview: implementing the water reform strategy", December 2012 (Cabinet paper reference number unknown) http://www.mfe.govt.nz/cabinet-papers/topics/freshwater.html (accessed 21/4/2013).
[642] Salmon, "Governance of the Rural Environment - Are Existing Approaches Working?.", Salmon, "Collaborative Governance on Environmental Policies Affecting Rural Landowners: Comparing Nordic and New Zealand Practises.." Salmon was an adviser to the Minister and widely seen as the architect of this initiative. While LAWF became a central sounding board for ideas about water management reform, the government continued to seek views about Maori aspirations regarding water management from the Iwi Leaders Forum that had come into existence in 2007.
[643] Nilsson, "Framework for Analysing Environmental Policy Integration." P.354.

introduced.[644] The NPS Board of Inquiry, whose work spanned the election, made substantial changes to the earlier version of the policy.[645] These changes were seen as improving the draft that had been so criticised in 2008, both environmentally and in process terms.[646] The Board of Inquiry's report was not considered immediately, but referred to LAWF. It in turn recommended the Board's report be accepted largely unchanged.[647] The Board's recommendations, however, were diluted when approved by the Minister. The Cabinet paper on the NPS stated, "While I have sought to retain the Board's recommendations wherever possible, I have made some changes to improve the workability of the NPS and its fit with the government's broader policy approach, including a better reflection of people's ability to provide for their economic well-being."[648] The changes made to the NPS at Ministerial level have been criticised as providing only a weak form of national direction.[649] Nevertheless, the NPS could be described as providing some sort of policy framework, however flawed in the views of some critics, and that the LAWF process eventually proved successful in reaching consensus in environmental terms, probably more than the prior departmentally dominated processes.[650]

While these developments were going on, MfE's internal structure went through a series of changes, from the relationship model of the mid 2000s, to a model of a policy directorate and a programme directorate from 2008. A water reform group was set up within one of the Divisions of the Policy Directorate. In late 2012 a new stand-alone water directorate was created within MfE (to take effect in March 2013) reporting to the chief executives of MfE and MPI, with 40 staff from MfE and

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[644] See *Freshwater reform: Fresh start for water*, http://www.mfe.govt.nz/issues/water/freshwater/fresh-start-for-fresh-water/ (Accessed 27/10/2012), and *Land and water forum*, http://www.mfe.govt.nz/issues/water/freshwater/land-and-water-forum/ (accessed 27/10/2012). The initiatives were a freshwater clean-up fund and an irrigation acceleration fund.

[645] Board of inquiry into the proposed national policy statement for freshwater management, "Report and Recommendations of the Board of Inquiry into the Proposed National Policy Statement for Freshwater Management," (Wellington: Ministry for the Environment, 2010).

[646] LAWF, "Report of the Land and Water Forum: A Fresh Start for Freshwater," (Wellington: Land and Water Forum, 2010). P.16.

[647] Ibid. P.5.

[648] Para 64 Cabinet paper "National policy statement for freshwater" (Cabinet paper reference number unknown), http://www.mfe.govt.nz/cabinet-papers/freshwaternps.pdf (accessed 15/5/2013).

[649] G. Charlton, Brunette, B., "Development and Water Use in New Zealand: Water Priority and Allocation under Section 5 of the Resource Management Act 1991 and the National Policy Statement," in *Water and Society*, ed. D.W. Pepper, Brebbia, C.A., (Southampton: WIT Press, 2011). P.355.

[650] J. Sinner, "Implications of the National Policy Statement on Freshwater Management," (Nelson: Cawthron Institute, 2011), Charlton, "Development and Water Use in New Zealand: Water Priority and Allocation under Section 5 of the Resource Management Act 1991 and the National Policy Statement." P.355. R.M. Fisher, Russell, S., "Water Policy and Regulatory Reform in New Zealand," *International Journal of Water Resources Development* 27, no. 2 (2011). P.14.

secondees from MPI, the Ministry of Business, Innovation and Employment (MBIE), DoC, Treasury, DPMC, and the Office of Treaty Settlements (OTS).[651]

Following the promulgation of the NPS, policy evolution continued, demonstrating the axiom that policy is rarely if ever finished.[652] A question of how to give effect to the NPS and deal with government priorities remained. LAWF, in its second and third report recommended a suite of measures to support the NPS and improve water management.[653] LAWF had completed its work and ceased to operate by late 2012. Interest group lobbying began to reassert itself.[654]

The National-led government was concerned primarily about two issues: ensuring regional government gave stronger consideration to economic growth (believing Regional Councils, if left undirected, would not do this, and instead give priority to environmental considerations), and how to satisfy Maori cultural interests in water and their aspirations for water ownership. Officials were exercised about how to set national standards in order to provide national coherence to environmental limit-setting, how to give effect to the NPS's policy requiring regional councils to identify and protect outstanding water bodies, and about consistency and efficiency of access to and use of water, essentially to expand agricultural productivity. The concerns of both ministers and officials are evident in the language of Cabinet papers supporting a new freshwater agenda known as Freshwater Reform 2013 and Beyond.[655] It signalled reforms that would be progressed, over time.[656]

7.3.6 Summary

Improvement of freshwater quality has been part of government environmental agendas for over twenty years, to greater and lesser degrees. In 1999 the national agenda on water said:

> *We have made good progress on many of the water management issues that emerged in the 1960s. But we now need to make progress in the following areas:*

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[651] "Government pools bureaucrats to finalise water policy", National Business review http://www.nbr.co.nz/article/govt-pools-bureaucrats-finalise-water-policy-bd-132523 (accessed 21/4/2013).
[652] Schneider, "Policy Design: Elements, Premises, and Strategies." P.80.
[653] LAWF, "Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity, and Freshwater Policy- and Plan-Making through Collaboration," (Wellington: Land and Water Trust, 2012). ———, "Third Report of the Land and Water Forum: Managing Water Quality and Allocating Water," (Wellington: Land and Water Trust, 2012).
[654] Federated Farmers national spokesperson on water, Ian McKenzie, "Good Management Practices can deliver quality outcomes across all water quality parameters," Farmers Weekly NZ**,** Monday, May 27, 2013. New Zealand Fish and Game Council, "Govt plans will wreck river protection." March 11, 2013. http://www.fishandgame.org.nz/newsitem/govt-plans-will-wreck-river-protection (accessed 5 May 2013).
[655] See Cabinet paper "Water reform: Overview", November 2012 and "Water reform overview: implementing the water reform strategy", December 2012 (Cabinet paper reference number unknown) http://www.mfe.govt.nz/cabinet-papers/topics/freshwater.html (accessed 21/4/2013).
[656] See Cabinet paper "Water reform: Permission to release freshwater reform proposals and approval to undertake targeted engagement", February 2013 (Cabinet paper reference number unknown) http://www.mfe.govt.nz/cabinet-papers/topics/cab-paper-water-reform-permission-release-freshwater-reform-proposals-approval-undertake-targeted-engagement.pdf (accessed 21/4/2013).

7: Freshwater policy

Allocation, efficiency and equity issues and impacts of abstraction on instream values;
The condition of our lowland stream ecosystems, especially in intensively farmed areas;
Groundwater, quality and quantity, and the impacts on streams of abstraction of groundwater;
Estuaries and harbours, in particular, the impacts of storm water;
Microbiological contamination, especially of freshwater (surface and groundwater);
Eutrophication and loss of habitat in our lowland lakes.[657]

In 2010 Land and Water Forum said:

New Zealand has made good progress in clearing up point source pollution over the past twenty
years, but monitoring shows that our water quality is declining in many places, particularly in
lowland water bodies. Also, urban waterways remain highly polluted, including on account of
sewage leakages, stormwater run-off and discharges from processing factories. At a national
level, diffuse discharges now greatly exceed point source pollution.[658]

In one sense these two quotes support a contention that policy work is always on-going.[659] However, they are almost identical. It is remarkable how little emerged between the early 1990s and 2010 in terms of policy frameworks with environmentally effective elements given the length of time that it was the focus of policy attention, the amount of effort from ministers and departments, and a succession of decisions at Cabinet level to act. Between 1995 and 2007 almost nothing formal emerged in national policy terms besides what was already in Section 6 (a) of the RMA.[660] Only after the start of 2008 can it be said that new directive policies began to develop, and emerged in 2011 in policies A1 to A4 in the NPS that direct regional councils to set nutrient limits.[661] Even then, critics say that environmental values are subservient to economic growth priorities in current approaches to water management.[662]

Between the mid 1990s and 2013, policy development to address freshwater quality decline had been nearly continuous, despite a hope in 1991 that the RMA alone would deal with the issue. Although it was not intended to analyse the RMA in this chapter, a number of features about how it has been implemented are evident: ideological attachment to its promise and the principle of devolved management; implementation shortcomings and lack of national standards; political pressure for alternatives (particularly ones that water down the RMA's central environmental premise); and constitutional debate over Maori interests. What the chapter provides so far is the

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[657] MfE, "Making Every Drop Count: The National Agenda for Sustainable Water Management- Action Plan." Pp.2-3.
[658] LAWF, "Report of the Land and Water Forum: A Fresh Start for Freshwater." P.xi.
[659] Schneider, "Policy Design: Elements, Premises, and Strategies." P.80.
[660] There is a question whether interpretations of the RMA constitute policy. In strict constitutional terms it doesn't, but in practice it may. Judicial interpretation is not, however, the focus of this study.
[661] National Policy Statement Freshwater Management 2011, Policies A1-A4. See Sinner, "Implications of the National Policy Statement on Freshwater Management." P.9. Sinner argues nutrient limits may arrest decline in water quality, but it will depend on Regional Councils acting quickly to set limits, which Sinner regards as a risk.
[662] Ibid. See also Cabinet paper "National Policy Statement for Freshwater Management." Paragraph 64.Cabinet paper reference number unknown. http://www.mfe.govt.nz/cabinet-papers/freshwaternps.pdf (accessed 2/10/2012). Charlton, "Development and Water Use in New Zealand: Water Priority and Allocation under Section 5 of the Resource Management Act 1991 and the National Policy Statement." P.355.

information base on which to analyse drivers within government and how they influenced environmental policy. The remainder of the chapter undertakes this analysis using the research framwork and applying the research questions.

7.4 Discussion

Policy development designed to address decline in freshwater policy has spanned a period of 22 years and is still continuing. In this time at least two policy initiatives, the national agenda on water in the late 1990s and the sustainable programme of action on water in the mid-2000s, were largely ineffective. Only after 2007 is it possible to identify clearer national-level actions. This despite freshwater quality decline being at, or near, the top of environmental policy agendas for the whole period.

The level of **complexity** in managing freshwater in New Zealand is high. The economic importance of use of freshwater by primary industries (the heart of New Zealand's economy), and tension between economic, cultural and social values, have always created potential for conflict and lack of policy consensus. By contrast, there is a considerable scientific knowledge of causes of freshwater quality decline. However, public visibility of the issue has only grown significantly since the early 2000s.[663] Complexity is clearly a feature with a potential to cause delays in policy development.

There are few singular **events** directly impacting on freshwater policy in the way that occurred in the other two studies. The foreshore and seabed controversy spilled over into freshwater policy in 2006 causing delays because of political and constitutional concerns about water ownership. Maori aspirations to resolve the ownership issue have remained a potent consideration in water policy development since, contributing to conflict potential and complexity. Policy development was influenced by cognitive shifts and ideological effects of elections in 1999 and 2008, but whether these were dramatic shifts is debateable. This will be discussed later in this section of the chapter.

Assessing the **environmental** and **policy effectiveness** of freshwater policy depends at what point the assessment is made. If one looks at the national agenda on water produced in 1999, an assessment could be that its potential environmental effectiveness was moderate in the sense that it emphasised environmental values. But, in terms of integration it was weak in that it didn't integrate either internally or externally. There was nothing new other than the existing policy in the RMA. Furthermore, its policy effectiveness was weak. It actions relied on guidance and light handed advice to regional and local councils, with no formal means of direction and no apparent commitment to resources for implementation.

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[663] K.F.D. Hughey, G.N. Kerr, R.Cullen, *Public Perceptions of New Zealand's Evironment* (Christchurch: EOS Ecology, 2006), K.F.D. Hughey, Kerr, G.N., Cullen, R., "Public Perceptions of New Zealand's Environment," (Christchurch: Lincoln University, 2008), ———, "Public Perceptions of New Zealand's Environment: 2010."

Nationwide debate, research, and technical workshops and guidelines in the 2000s led to industry agreements, and, at a sub-national level, policies in regional and local plans, and specific operational action at key crisis sites.[664] But, again, this took place under existing RMA policy.

Developments between 2007 and 2013 present something more concrete to assess in environmental and policy terms.[665] By 2012, two national policy instruments were in place that dealt directly with freshwater quality, besides the general provisions to the RMA. These policies were the national standard on freshwater drinking quality produced by the Ministry of Health in 2007, and the National Policy Statement for Freshwater Management 2012 (the NPS). Regulations provided for nationwide measurement of large water abstraction.[666] There was additional voluntary guidance on technical matters dealing with ecological health, managing waterways in rural areas, groundwater sampling protocols, best practice guidance on surface water quality, and microbial water quality guidance for recreational use of freshwater areas.[667]

The key policy product was the NPS. It incorporated environmental values in all objectives and policies. The objectives of the NPS require every regional council to ensure the overall quality of freshwater within a region be maintained or improved. It was also explicit about requirements for integrative management in Objective C1 and policies C1 and C2. In these senses, the NPS could be described as potentially moderate to strong in terms of environmental effectiveness, because it incorporated environmental values in a clear and integrative way. In policy effectiveness terms, the NPS had the weight of law behind it. It is mandatory for regional councils to give it effect in their statutory planning documents. In this sense the NPS meets one of Grant's criteria for policy effectiveness: backing by rules and laws. There are, however, alternative views about both the environmental and policy effectiveness of the NPS.[668] The main criticism is that it needed to be accompanied by national standards for water quality.[669] The reason why critics say the NPS should be complemented with national standards is that otherwise it runs the risk of perpetuating issues of lack

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[664] For example, a nutrient trading scheme had been introduced to combat the increased nitrification of lake water from intensified farming in the Taupo catchment, the Waitaki catchment had been made subject to a specific water management plan and, in Rotorua, action was taken through rules and engineering work to reduce nitrogen and phosphorus entering lakes from land use. Water resources plans had been implemented for all of New Zealand's regions, except the important Canterbury region.

[665] For the purposes of this research this does not include a package called "Freshwater reform 2013 and beyond", as it is still in progress.

[666] Resource Management (Measurement and Reporting) Regulations 2010.

[667] See MfE, "Guidelines and tools"' http://www.mfe.govt.nz/issues/water/water-quality.html (accessed 21/4/2013).

[668] Sinner, "Implications of the National Policy Statement on Freshwater Management.", Fisher, "Water Policy and Regulatory Reform in New Zealand."

[669] See press release from the Environmental Defence Society, "EDS recommends the Greens' plan for cleaning up New Zealand's rivers", http://www.taiaoraukawa.co.nz/whatshappening/index_dynamic/containerNameToReplace=Middle/focusModuleID=4101/overideSkinName=newsArticle-full.tpl (accessed 21/4/2013).

of clarity and uneven implementation that have existed since 1991.[670] In this sense the NPS was insufficiently integrated internally with other policies (national standards and further direction regarding implementation).[671] Allied to this criticism is the argument mounted in the past by the OECD that New Zealand national water policies rely too heavily on guidance and voluntary measures (evidenced in the range of voluntary standards and guidance on MfE's website).[672] Statutory national standards for water quality have been worked on by MfE since 2007 and advocated by the Land and Water Forum in its final report, but as of mid-2013, nothing has eventuated.[673]

There was support for an NPS, witnessed by the consensus of interests that developed during the NPS. But, as was argued in the second LAWF report, further national environmental standards for water quality were needed, on the grounds that without that guidance traditional regional resistance of regional councils and some industry bodies to national direction would reassert itself, a feature many have argued has been a perennial source of ineffectiveness in New Zealand's freshwater quality policy.[674]

The overall picture is of an environmental policy product in mid 2012 that had potential for environmental and policy effectiveness, but also potential integration and policy vulnerabilities including residual opposition to national direction from the implementation agencies (regional councils), and industry bodies and individuals who were sceptical of nationally based standards and rules.

Taking a long view, what is remarkable is how it took many years to arrive at even this point, a policy of the type Simon Upton says he had come to favour in the late 1990s, while Minister of the

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[670] Charlton, "Development and Water Use in New Zealand: Water Priority and Allocation under Section 5 of the Resource Management Act 1991 and the National Policy Statement." P.355.

[671] There is evidence that the integrative weakness in water policy is recognised by officials, and action recommended by officials in new policy proposals. See Cabinet paper, "Water reform: Implementing the water reform strategy." Cabinet paper reference number unknown. http://www.mfe.govt.nz/cabinet-papers/topics/cab-paper-water-reform-overview-implementing-water-reform-strategy.pdf (accessed 21/4/2013).

[672] OECD, "Environmental Policies in New Zealand," (Paris: OECD, 1981), ———, *OECD Environmental Performance Review: New Zealand* (Paris: OECD, 1996), ———, *OECD Environmental Performance Review: New Zealand*.

[673] See MfE, "Proposed National Environmental Standard on Ecological Flows and Water Levels: Discussion Document." The Cabinet paper "Water reform: Implementing the water reform strategy" December 2012 says that something will be produced. http://www.mfe.govt.nz/cabinet-papers/topics/cab-paper-water-reform-overview-implementing-water-reform-strategy.pdf (accessed 21/4/2013). It remains to be seen whether this will happen and what form it might take.

[674] "We welcome the fact that it *(the NPS)* has finally been approved and provides some direction. However it will not on its own achieve the step-change improvement in water quality sought by the Land and Water Forum and EDS". "Freshwater announcements need to go further" Press release Environmental Defence Society 12 May 2011. LAWF, "Second Report of the Land and Water Forum: Setting Limits for Water Quality and Quantity, and Freshwater Policy- and Plan-Making through Collaboration." Pp.9-11.

Environment.[675] As discussed above, complexity is a contributing factor, but the narrative of freshwater policy development points to other explanations.

The effect of **agency** on water policy is seen in the influence of external groups identified in Section 7.2 of this chapter, and of a number (but not all) ministers and advisers within government. Less apparent is influence of individual officials. The evidence of this case study points to periods of activism under Upton, Parker, Mallard, and Smith, and quiescence in between.[676] Upton worked together with MfE on *Environment 2010* and the sustainable land management strategy and national agenda on water that followed, but, as noted, Upton believed there were different ideas between him and the Ministry about how to achieve better water quality, which may suggest why things did not proceed then as rapidly as they might have. Parker and Mallard provided strong drive for progress with policy development between 2007 and 2008. The influence of the Prime Minister Helen Clark between 1999 and 2008 should also not be underestimated, both in the shape of the Sustainable Development Strategy (including water management as a key priority) and in the government commitment to environment sustainability as a top policy goal between 2006 and 2008. The 2011 cabinet paper approving the NPS suggests Smith personally directed changes to give the policy greater emphasis on economic considerations. The influence of ministerial advisers such as Guy Salmon, and chair of the LAWF, Alister Bisley, is also evident, but relative to the overall time period, this influence is isolated. However, there doesn't appear to be a stand-out example of influence or strong leadership of individual public servants outside of their institutionalised positions. While it may have occurred (possibly in recent developments and hence not yet revealed), it is not obvious. If the influence of agency had been strong, especially from activist ministers and between 1999 and 2008 with a supportive Prime Minister, faster progress might have been expected. That it didn't happen means that other factors were also in play.

Intra-departmental **institutional effects** constrained MfE in the 1990s. It had very limited resources to deal with a large number of problematic environmental issues besides water quality, such as bedding in the RMA, developing climate change reponse policies, and creating a new regime to manage pollution and hazardous substances. Lack of resources, however, has less validity after 2003 when MfE received substantial new funding to develop water policy.

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[675] See Section 7.3.2. Young, *Values as Law: The History and Efficacy of the Resource Management Act*. Pp.38-39.

[676] The Ministers of the Environment from 1999 to 2007 were Marian Hobbs and David Benson Pope respectively. The more recent Minister of the Environment, from 2008 to 2012, Nick Smith, had a reputation as an activist. See "Loss of a very capable environment minister" Press release: Environmental Defence Society, 21 March 2012, http://www.scoop.co.nz/stories/PO1203/S00276/eds-loss-of-very-capable-environment-minister.htm (accessed 21/10/2012).

MfE was also constrained in an organisational sense by having to rely on regional councils for data, expertise, and implementation, which carried transaction costs and required negotiation. MfE generally wanted to keep regional councils on-side wherever possible. MfE depended on regional councils, and local councils, to implement the RMA (effective implementation of the RMA was a key priority for MfE for much of this period) and felt it couldn't push councils too much. But regional councils did not want to be directed, which is precisely what national direction would do. At the same time, while sometimes supporting calls by economic departments for market type instruments, MfE was also conscious that such instruments had onerous implementation and relationship issues for councils.[677]

Just as the overall structural arrangements between MfE and regional councils created an institutional effect on how MfE came to view policy proposals, so too did some of the ideological foundations of the RMA. For much of the time of this case study MfE was sceptical about a range of directive instruments to improve water quality. It preferred voluntary approaches, information, and guidance over direction, and was cautious about narrative forms of national direction and what it felt might turn out to be overly prescriptive national standards (based on a science view that water quality was influenced by biophysical conditions at a catchment and sub-catchment level just as much as by land use). As discussed in Chapter 2, the rules an organisation works under can set up patterned ways of thinking. This becomes an institutional effect as much as a cognitive one. The RMA's mode of environmental management is devolved (and very highly devolved in the absence of national direction). Hence it seems plausible that MfE's caution about national direction, or new and different policy directions, and its support for voluntary measures as locally empowering instruments to solve water quality issues, may be attributable, in part, to departmental ideology arising from the RMA, despite Ministerial preferences for greater direction.

There is also evidence that MfE's internal structure was an issue in the mid-2000s. Water quality involved new policy development, but MfE was structured for nearly four years on relationship lines with an emphasis on partnership (in part encouraged by the ideology of the government at the time favouring a partnership style in working with territorial local government, plus a view within the government arising from some of MfE's earlier policy work, such as climate change policy development, that the Ministry was too policy-centric and detached from day-to-day realities).[678] The number of staff allocated to water policy varied and was never large until recently. Compared to examples described in other case studies, water policy did not seem to receive the same degree of

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[677] MfE, however, led the work that introduced a form of policy market instrument applied to the Lake Taupo catchment to manage nutrient discharges into the lake from use.

[678] For the emphasis on partnership see DPMC, "Sustainable Development Programme of Action." P.10. For MfE's structural changes and their rationale, see MfE, "Protecting People and the Environment: Briefing to the Incoming Minister for the Environment ".

firm departmental underpinnings that driving new policy requires. Thus, the institutional design of MfE, its internal organisation, and departmental culture help account for the types of policy preference promoted by the Ministry, and delays during the policy process.

Water policy development was also influenced the rules of engagement for this particular policy. First, MfE shared the leadership of policy development with MAF, whose organisational goals and objectives were not primarily environmental. MAF perceived that MfE's prime legislation, the RMA, constrained the flexibility of agricultural production. For MAF, a priority was to increase agricultural production through more irrigation.[679] By early 2000, MAF was beginning to recognise the economic importance of water quality, as were other departments, notably Treasury. The point was, though, that the institutional arrangements gave greater rein to competing ideological views about how to address water quality decline, and, where there was not firm leadership, bargaining and negotiation dragged on.

Second, there was not the same degree of cross department institutional cooperation in the way that had occurred in the later stages of the biodiversity strategy development or the oceans policy task force model in 2002-2003. In both those cases, the combination of skills and senior representation from two environmental departments, MfE and DoC, created an organisationally strong environmental team. Once the emphasis on waters of national importance disappeared, DoC's role in the water policy development diminished. The environmental departments did not actively use the rules of engagement to capitalise on a favourable political climate of ideas about water quality between 2003 and 2007. The formal interdepartmental team approach only began to emerge after 2008, but by that time the ideological climate was changing.[680]

Cognitive features at a political level can account in part for the ideological orientation of proposals for water policy in the 1990s, the mid 2000s, and after 2009. In the 1990s, government views of environmental values ranged from ambiguous to unsympathetic according to Simon Upton, combined with an attachment to neo-liberal policy prescriptions.[681] The 2000s was pro-environment, in fact strongly so between 2006 and 2008, based on a sustainable development environmental paradigm.[682] After 2008, the political climate was not conducive to environmental initiatives unless

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[679] MAF, "Post Election Briefing to Incoming Minister: Emerging Strategic Issues Domestic," (Wellington: Ministry of Agriculture and Forestry, 2002). Pp.1-4.

[680] The most recent, and ambitious, manifestation is the creation of a dedicated Water Directorate within MfE of 40 staff from MfE and other departments, commencing in March 2013. National Business Review November 19, 2012, "Govt pools bureaucrats to finalise water policy" http://www.nbr.co.nz/article/govt-pools-bureaucrats-finalise-water-policy-bd-132523 (Accessed 21/4/2013).

[681] Young, *Values as Law: The History and Efficacy of the Resource Management Act*. P.32. Upton himself was a consistent advocate for environmental values.

[682] C. James, "(Un)Sustainable Politics," *Management Magazine* 2008 August.

there was a proven economic benefit.[683] The political priority was economic growth. There were shifts in the climate of thinking within the non-environmental parts of bureaucracy from the mid 2000s about how to address environmental issues: moving from regarding environmental issues as externalities that, if they required government action at all, could be dealt with by market mechanisms, to an ecological modernisation perspective.[684] However, while this feature can be seen as a factor that influenced a light-handed approach to environmental policy development in the 1990s, and the promotion of economic development from 2009 on, given the comparative cognitively favourable attitudes evident at a cabinet level earlier in the 2000s it doesn't, of itself, tell us why water policy failed to eventuate then, or why it took till 2011 for anything concrete to emerge. What this suggests is that despite a commitment to environmental values, between 2006 and 2008, such attitudes do not necessarily translate into environmentally effective policies without institutional support.

This raises the question about the impact of **time** on water policy development. As discussed in Chapter 4, time is not an agent, but it is an indicator of system effectiveness and can serve to increase or decrease complexity. In the case of water policy it shows an apparent inability of the machinery of government, in the period covered by this case study, to develop policy in a timely way to deal with a significant environmental issue. Freshwater quality declined, and continues to decline, in catchments dominated by agriculture and urban development.

In conclusion, the freshwater quality study represents the most complex of the three case studies in terms of conflict potential, but not the most challenging in terms of events. Complexity helps explain in part the length of time taken over policy development. It might be expected that agency would speed up policy adoption where there were activists involved, particularly ministers, but this doesn't seem to have happened. There is evidence where ministers sought to address institutional constraints, for example by Smith and his promotion of the LAWF policy process, but even here the LAWF process (an institutionalised one) took three years, with as yet uncertain environmental outcomes. Upton, Parker and Mallard were not able to drive policy to conclusion. Admittedly, they were short-circuited by events, in this case elections, but it is not as if these were unanticipated. Government priorities (cognitive factors) similarly can provide only some explanation for policy delay. They help account for different policy approaches and styles of the past twenty two years. However, if they were overidding factors why wasn't new water policy finalised in the mid-2000s

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[683] ———, "Water on a Stone: Making Policy Stick," *Management Magazine* 2009 October.
[684] MfE, "Briefing to the Incoming Government 2008: Environmental Sustainability ". ———, "Environmental Stewardship for a Properous New Zealand: Briefing for the Incoming Minister for the Environment and Minister for Climate Change Issues," (Wellington: Ministry for the Environment, 2011).

when there was declared government intention to act? A significant explanation for policy variability in this case study is the influence of institutional factors; an institutional attachment to a particular policy approach (non-regulatory, admittedly cognitive, but institutionalised); organisational arrangements internally and externally that made it harder to develop environmentally effective policy; and difficult rules of engagement that required sufficient departmental capacity in order to develop the type of close departmental cooperation to operate well. Recent organisational changes (the Water Directorate), and process initiatives (LAWF) are attempts to address these issues institutionally, but it is too early to say if they will eventuate in increased environmental policy effectiveness.

Using the framework from Chapter 4, key factors influencing the freshwater quality policy in the period of this case study are represented in figure 7.1.

Figure 7.1 Freshwater policy influencing factors (scaled to small A, moderate A or large A)
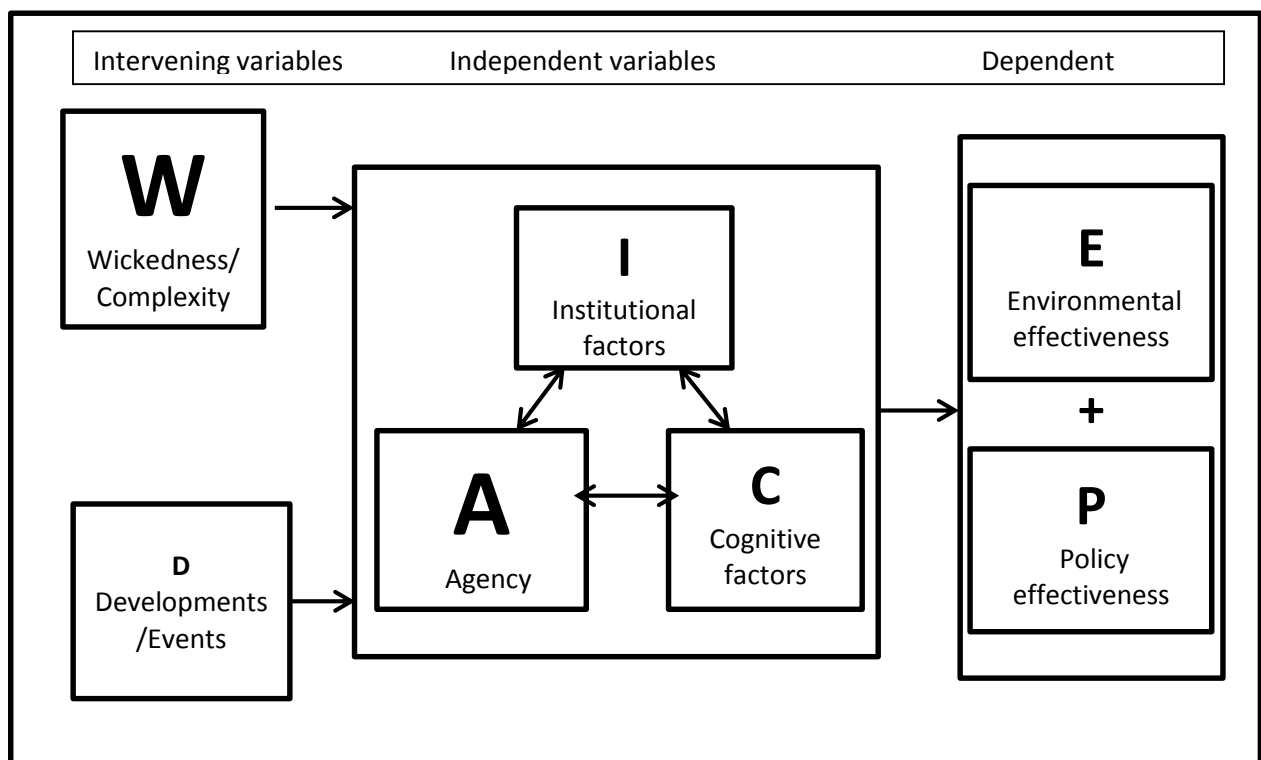
Chapter 8

Conclusions

8.1   Introduction

The aim of this research has been to investigate the development of New Zealand environmental policy by the Executive branch of government and especially its environmental departments. The main question of the research is how are environmental policy efforts of environmental departments in New Zealand influenced by internal factors within government and how have these factors contributed to policy variability? The initial idea was that two factors would be principal determinants of effective environmental policy: the degree of government commitment to environmental values; and how the government's environmental departments contributed to environmental policy development.

Analysis of three prominent examples of environmental policy-making that took place between the mid-1990s and early 2010s reveals that the initial proposition is partially supported; but also that the picture is more complex. The main finding of the research is that whether environmentally effective policy is produced depends on four variables:

- The level of Cabinet commitment to environmental values relative to other values;
- The environmental commitment and 'will and skill' of 'environmental' ministers (environment and conservation);
- The 'will and skill' of officials within the environmental departments, notably their ability to provide leadership;
- The extent to which environmental departments are organised and equipped to play a lead role in developing environmental policy (with regard to internal resources, and departmental capacities to engage with government institutional rules around policy development).

All four factors are interdependent and 'necessary' conditions for the development of environmentally effective policy. Where only the first three conditions are met an environmental policy may result but is likely to be not so environmentally effective, given the fourth variable's influence in sustaining or constraining policy development over time.

The following sections of this chapter elaborate on this general finding, as well as presenting observations about other relevant features that emerged in the course of analysis of the case studies, including a distinctive environmental policy approach and the effect of political/constitutional influences.

8.2 Environmental policy effectiveness: comparing the case studies

How did the case studies compare in terms of environmental effectiveness and policy effectiveness?

Taking environmental effectiveness first, the most effective policies were the biodiversity strategy and the proposed 2003 oceans policy. Both had environmental objectives as principal priorities. They were structured in a way to integrate environmental considerations: the biodiversity strategy across wider environmental policy; and the proposed oceans policy across traditionally non-environmental policy domains. Freshwater policy, when it finally found expression by 2011 in the national policy statement (NPS), was found to be moderately effective environmentally. It was explicit about environmental objectives compared with other priorities although, by the time it was approved by Cabinet, these objectives were less comprehensive environmentally than those recommended by the NPS Board of Inquiry. The 2012 oceans policy, as translated into legislation, was more restricted in environmental effectiveness given the limited degree of integration with other policies governing marine management. Last minute changes improved what would otherwise have been an even more narrowly prescribed policy in terms of environmental effectiveness.

In policy effectiveness terms, both the biodiversity strategy and the proposed 2003 oceans policy had sound structural logic, but also some shortcomings.

The proposed 2003 oceans policy had clear integrative rules and tools, including means of implementation. However, it might be argued that its political architecture was flawed in that it failed to anticipate the foreshore and seabed controversy. The counter-argument, however, is that the policy incorporated strong provisions for Maori engagement and recognition of Maori interests (although because it was silent on ownership issues this argument may not be how Maori saw things), and the policy may well have been adopted if the government had responded differently to the court decision about the foreshore and seabed issue.

The biodiversity strategy had a clear overall structural logic to its policy design in that it sought to influence central government action across a range of policy domains, it assigned responsibilities for action, and involved considerable resources for implementation. Where it was less effective in policy terms was in its design to deal with privately owned land. In an endeavour to satisfy landowner opposition (to reinforce the political architecture of the policy), the mechanisms for implementation were based on incentives and voluntary action. It has also been argued it didn't make sufficient provision to fully engage territorial local government. Proposals for clearer national guidance were never fully completed. Some have argued that voluntary action is a preferable approach to biodiversity protection policy (and this was the nub of the Federated Farmers opposition to the overall policy), but shortcomings in implementation, particularly in the variability of how biodiversity

is protected at a regional and local government level, has been the basis of subsequent calls for clearer national direction.

The 2012 oceans policy was moderate to strong in policy effectiveness terms. It had clear rules and tools for what it was trying to do. It had support, at least for its limited environmental objectives.

Freshwater policy, as articulated in the 2011 NPS, had significant policy shortcomings. In structural logic terms, while it had clear rules, it wasn't accompanied at the same time by specific tools to address a long-standing issue with the Resource Management Act (RMA) of variable implementation by regional councils, for example by stipulating clearer environmental bottom lines. Thus, its support base was split between those who argued that additional instruments were essential for it to be effective, and those, particularly in some key target groups such as Federated farmers, who upon the completion of the final report of the Land and Water Forum (LAWF), reasserted the value of voluntarist policy approaches.

In summary, using the criteria developed for this study, the proposed 2003 oceans policy and biodiversity strategy were more effective as environmental policy than the 2011 freshwater NPS or the 2012 oceans policy. Later sections of this chapter discuss the comparative influence of various sources of variability that contributed to this result. First, however, the question of the length of time taken to develop these policies is discussed.

8.3   Time as a dependent variable and indicator of sources of variability

Developing an oceans policy took fifteen years. The biodiversity strategy took eight years. There were sixteen years between when the government, in the *Environment 2010* strategy, said it would act on freshwater quality and when a form of substantial national policy was produced.[685] In contrast, other jurisdictions produced policies that addressed the same issues earlier, for example: Australia adopted its oceans policy in 1998 and its first biodiversity strategy in 1993; Canada its oceans policy in 1997; and the United Kingdom its biodiversity strategy in 1993. This is not to say that these other nations' policies were any better for being produced more quickly. But the case studies are not the only examples of prolonged environmental policy development in New Zealand. Climate change policy evolved from the early 1990s through at least three iterations of different proposals, finally arriving in the form of an emissions trading scheme in 2008.[686] A national policy for the management of waste took from the early 1990s until a Waste Minimisation Act was passed in

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[685] The "National agenda for sustainable water management" produced in 1999 might be regarded as a form of weak policy, but in effect it was only a work programme. See Chapter 7, Section 7.3.2.
[686] Harbrow, "Trends in New Zealand Climate Change Policy". Bullock, "Emissions Trading in New Zealand: Development, Challenges and Design."

2008.[687] There are examples of faster policy development, such as the Resource Management Act in the late 1980s and hazardous substances policies in the mid-1990s but these took place when there was greater Executive influence over the system of government, prior to the MMP electoral system diluting that influence somewhat.

Environmental policy does not happen quickly in New Zealand. But the role that time played is ambiguous. Time served to strengthen the biodiversity strategy. Opportunities were missed in the case of oceans policy. This suggests that time can be a significant factor in whether policies flourish or wither, but that time is not the driver. Rather it is a dependent variable. For example, the long time taken to develop policy suggests that the relatively high degree of Executive power in New Zealand is not as important a factor in policy production as one might expect. Instead, it supports the argument that the three year electoral cycle is a strong constraint and can intervene to prolong policy development in cases of greater complexity or where government commitment is not strong, because it takes time to get agreement on common ground or to accommodate competing interest (Roe described this as a process of policy-makers seeking to 'stabilise assumptions').[688] Thus, longer time taken for policy development is rather an indicator of other factors at work, such as the electoral system. The significance of other intervening and independent variables is discussed in the following sections.

8.4   Sources of variability: comparing the case studies

8.4.1   Complexity and developments/events: intervening variables

The most complex of the three case studies is the freshwater example, because of its conflict potential. The policy target groups – industry, agriculture, and local government –represented interests that traditionally have exercised considerable power in New Zealand politics. From the mid-2000s the rise of Maori political power, brought about by MMP and Treaty of Waitangi jurisprudence, further increased the potential for conflict by bringing water rights and ownership debates to the fore. Knowledge and understanding about causes of water quality decline (intensified land uses leading to increased nitrification, phosphorous loadings, turbidity, and bacteriological loadings) and remedies (changed land management practises) were relatively well understood, but the public visibility of the issue, and causes, was not high until the early/mid-2000s.

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[687] MfE, "National Waste Data Report," (Wellington: Ministry for the Environment, 1997), ———, "The New Zealand Waste Strategy: Towards Zero Waste and a Sustainable New Zealand," (Wellington: Ministry for the Environment, 2002), ———, "Waste Minimisation in New Zealand," (Wellington: Ministry for the Environment, 2009).
[688] See Chapter 2, Section 2.4.3.

8: Conclusions

In contrast to the freshwater case study, public understanding that there was a problem with biodiversity decline was higher, even though the scientific knowledge about detailed ecological functioning and interactions between that functioning and management interventions to address biodiversity decline was less certain. Conflict potential, although apparent, was not as fraught as in the freshwater case given New Zealanders' strong appreciation of nature conservation. Furthermore, policy target groups supported or acquiesced in the objectives of the policy, although holding differing views about policy tools.

Oceans policy represented a mix of nascent conflict potential combined with a low public visibility of the policy issues. This meant it was only potentially complex if the policy debate either perpetuated the low visibility (which may have then have led some to question why any policy was needed) or stirred up concerns of interest groups (which, when it happened, wasn't because of the policy *per se* but because of the foreshore and seabed issue).

Of the three case studies, oceans policy stands out as an example of how a particular event elsewhere (the foreshore and seabed issue) derailed policy development. A legal issue about whether an iwi might have special rights to establish marine farms in the Marlborough Sounds inflated into wider questions about the nature and extent of state authority generally over the inshore waters surrounding New Zealand and in the wider EEZ.

The same issue about Maori rights and ownership affected freshwater policy. The difference between the oceans and freshwater case studies is that the proposed oceans policy framework was largely abandoned, whereas in the freshwater case it resulted in short term delays and the formulation of an approach that allowed policy development to continue while still reserving Maori future interests.

Events also affected the biodiversity strategy, but in a different way. In its case, the policy benefitted from an election, resulting in a large new budget and a changed form of governance. As argued in chapter 6, however, the 1999 election didn't alter the overall policy goals but it did result in greater budgetary backing and rejection of ideas for a New Public Management (NPM) - inspired style of implementation.

Elections, indeed, had an effect in all three case studies. They brought to power after 1999 a government that promoted environmental values and, after 2008, one that emphasised economic priorities over environmental ones. Elections are thus powerful influences. The importance of elections in these case studies is not that they initiated or stopped the policy development. What was important was the opportunities or constraints presented by elections and how various actors within government responded.

Complexity (particularly the dimension of conflict potential) and events intervened in the three case studies. In oceans policy in 2003 they became the primary influencing factor. However, across the case studies their degree of influence was not constant. Events are always dynamic and unpredictable. Complexity is to some extent linked to structural conditions. New Zealand's economic, cultural, social and biophysical context created different levels of social conflict about freshwater, biodiversity and oceans policy, and at different times. Consequently, context and levels of conflict are important in explaining policy variability, especially given likely political sensitivity to issues of social conflict. But at the same time, given political sensitivity, one might expect government policy systems to be designed to be able to respond to complexity and the effect of events. Hence events and complexity can only be part of the explanation for the variability that emerged in the three case studies. We need to look to other features to provide a more complete picture of sources of variability and their comparative effect.

8.4.2 Institutional features

Institutional features influenced the nature of policy development in each of the three case studies. This section looks at three intra-government institutional features specifically: organisational ones; institutional frameworks for environmental management; and the rules of engagement for policy development. Analysis draws on ideas discussed earlier in the thesis that intra-government institutional arrangements can be constraints or strengths; constraints if those arrangements inherently confine environmental values compared with other collective values, or strengths if they hold open opportunities to recognise environmental values and the need for their integration in policies.

Organisational factors played a significant role in the biodiversity strategy and the proposed 2003 oceans strategy. In each case, there was evidence of the following features: internal reorganisations; collaborative structures between the two environmental departments; clear internal (and external) environmental mandate; mobilisation of resources; and assigned leadership roles. Improved organisation provided a platform to counter different institutional and cognitive influences that might otherwise have marginalised the policies' potential effectiveness.

In the case of the final 2012 oceans policy, institutional organisational factors were less influential from an environmental perspective when compared with other intra-government features or extra-governmental lobbying.[689] With freshwater policy, internal organisational institutional influences had more of a constraining influence. More specifically, at potentially opportune times such as the early

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[689] This assertion comes with a caveat, as pointed out in Chapter 5. When the record of departmental views and inter-departmental exchanges are made public, it may be that one or more departments' repeated advocacy of stronger environmental provisions was influential in last minute changes that strengthening of the 2011 policy's environmental provisions.

and mid-2000s, shortcomings in MfE's internal organisational arrangements meant the Ministry was slow to take advantage of a political climate favourable to environmental quality improvement. In these examples, the organisational shortcomings constrained how officials were able to perform, and lengthened the time taken in policy development.

Institutional frameworks for environmental management influenced development of freshwater policy and the biodiversity strategy, especially where it was proposed to apply to private land. Frameworks conditioned departmental thinking about appropriate policy tools. In this sense the institutional frameworks can, where they give priority to environmental goals, support environmental effectiveness but detract from policy effectiveness. MfE, for example, was at odds with the preferences about policy tools of some potentially influential ministers like Upton, late in his time as Environment minister, or Parker in 2007.[690] The post-1987 New Public Management –based structural design of MfE as a policy ministry and fourteen regional councils as regulatory and implementing agencies, combined with regional council opposition to central direction or national standards, gave rise to a particular voluntarist policy approach as a standard response. It was an example where ideology became institutionalised, and constrained further thinking, whereas emerging environmental problems often call for new ways of thinking. In the freshwater case, the MfE/regional council structural framework in particular channelled policy thinking, and notably combined with MfE's organisational shortcomings, contributed to policy delay in the mid 2000s. Equally, the nature conservation and fisheries management structural frameworks influenced how DoC and Ministry of Fisheries approached policy tools for biodiversity protection and oceans management. Both departments displayed a preference for a more directive approach and standards-based provisions (fisheries applied through market based instruments, and conservation through national rules via locally derived but compliant plans). This is not to say that one approach is better than any other. What this shows is the influence of these institutional arrangements on subsequent policy proposals. They may be a strength or a constraint to environment policy effectiveness depending on policy design. Which approach is adopted depends on the political assumptions about policy tools at the time (a cognitive feature) and on the effect of rules of engagement.

Rules of engagement around the policy process are a third important intra-government institutional influence in the case studies. The formal policy development rules that govern interdepartmental engagement are meant to ensure relevant government interests are brought to bear on a policy

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[690] See Chapter 7. Upton argued that he had begun to support firm national standards, but was not supported by MfE. Young, *Values as Law: The History and Efficacy of the Resource Management Act*. Upton earlier in his political career had advocated neo-liberal policies. Parker has said he had to unblock freshwater policy in 2007. Red Alert blog, 30/7/2012, http://blog.labour.org.nz/2012/07/30/i-seek-leave-to-make-a-personal-explanation/.

issue. But, as discussed in chapters 2 and 3, the process is not a level playing field. Some departments are more powerful than others, and some are more capable than others. This is evidencedin the case studies: for example, the greater power of Treasury relative to MfE and DoC in the biodiversity strategy; of DPMC relative to the combination of MfE, DoC and Minfish in the early oceans strategy work; and the influence of MAF on MfE in freshwater policy development. Progress was made environmentally in each case study where there was a cross-departmental team, under the leadership of one or both of the environmental departments, headed by senior personnel able to commit resources, negotiate with authority with other departments, and linked directly to ministers. Another feature was where the more powerful economic or political management departments (essentially Treasury or DPMC) were either suborned into, or had internally developed, a supportive view. It wasn't necessarily a question of formal power (because the Treasury's formal power, although exercised, didn't eventually result in their preferred views being imposed on the biodiversity strategy) or resources (because despite considerable resources, freshwater and oceans policy both took an extraordinarily long time with mixed results). What was important from an institutional perspective was when environmental departments' organisation and operating procedures promoted agility in dealing with the rules of engagement and dominant policy approaches.

Overall, the case studies show organisational arrangements, environmental structural frameworks, and rules of engagement can detract from environmental effectiveness and potential policy effectiveness. There can be organisational shortcomings that lengthen the time taken to address issues and develop policy. Structural frameworks can shut out new ideas. Rules of engagement can present barriers by being dominated by other rationalities. But such institutional constraints can be overcome by organisational capacity where the following features are present:

- A clear mandate to achieve an environmental result, not necessarily at all costs or to the exclusion of other priorities, but a result where environmental priorities are emphasised;

- Resources such that the policy focus is not starved, but at the same time is not over-resourced (too few resources seem to be a problem, as in the mid 1990s, but generous budgetary provisions, such as those in the 2000s, may not necessarily assist progress);

- Concentration of effort in policy processes such that it enables using the rules of engagement in ways that advance environmental objectives;

- Capacity to recognise strengths and weaknesses arising from departmental institutionalised cognitive perspectives and internal ideologies, as well as those of other departments, and to bring this to bear in processes of bargaining and negotiation.

Looking at institutional features, however, does not give a full picture. Focusing on institutions alone is too deterministic. How institutions are changed, and skill in applying organisational capacity, and navigating around rules of engagement are agency features. Hence agency and political assumptions, and how these are interpreted, also play important roles in the degree of potential environmental effectiveness.

8.4.3   Agency features

Ministers and officials exercised a consistently strong to moderate influence in the case studies. At times their influence was decisive. With regard to ministers, this is not at all remarkable in the New Zealand context. Constitutional and policy-process arrangements place ministers and Cabinet at the centre of the policy system. In the biodiversity example, Upton and Smith played significant roles in process and policy direction, and Lee acted to bring the strategy to the Cabinet table (encouraged by DoC and MfE officials). In the oceans example, in the period between 2000 and 2002, Hodgson was an even more significant driver of <u>both</u> content and process, as was Smith in the period of 2009 to 2011. Similar levels of high ministerial influence occurred in freshwater policy under Parker in 2007, and Smith from 2009. Ministers, and at times Prime Ministers, demonstrated political will in advancing environmental policies in the late 1990s and 2000s. After 2008, although individual ministers promoted environmental policies, overall political will was lacking.

The extent of the role played by individual departmental officials in the case studies, compared with that of ministers, presented an evidential challenge. File sources reveal individuals who were influential, but, as noted earlier in the thesis, there are internal incentives for both the public service and politicians to <u>not</u> identify the role played by the public service to avoid the accusation of government by bureaucracy. In addition, institutions can channel the choices individuals make, especially given that individual officials invariably operate as agents of their departmental mandates. But mandates and rules are open to interpretation. Officials make choices, at times at odds with departmental or ministerial preferences. Individual skill and will is involved in persuading others. In the biodiversity strategy, for example, leadership, initiative and skill in persuasion, bargaining and bureaucratic politics was displayed by Johnston and Lawson. And officials seized the opportunity of a change of government to quickly advance the strategy. In the oceans policy case, Gow and the interdepartmental team were significant drivers in the shape of the proposed 2003 oceans policy. With freshwater policy, however, it is more difficult to identify a consistently dominant departmental official either between the late 1990s and 2008, or once the LAWF process got underway as the

forum for policy development, although perhaps an argument will be made in due course for senior MfE officials guiding that process.[691]

Despite evidence in the case studies for the influence of agency, there is also evidence that, even when there was drive on the part of ministers and decisions made in Cabinet, this did not necessarily result in action. For example, Cabinet decided to proceed with an NPS on biodiversity, but none eventuated. Work on oceans policy lacked focus and speed in the period between 2000 and early 2003, despite Hodgson's drive. Decisions were made in late 2005 to recommence and complete an oceans policy, but nothing was in fact completed until 2012. Formal decisions were made in 2006 to develop a freshwater NPS (based on relatively clear signals of the New Zealand Sustainable Development Strategy finalised in mid-2002) but one was not completed until 2011. If agency on the part of ministers and officials was the sole factor that decided the fate of policy, one might have expected results sooner.

Evidence from the case studies suggests while agency is a decisive feature, its influence is the result of interaction with structural features and, from the point of view of effective environmental policy, it is also conditioned by cognitive factors.

8.4.4   Cognitive features

Cognitive assumptions are part and parcel of policy development, whether those assumptions are formed on the basis of individual experience and learning, or shaped by other forces such as culture, rules, or other norms and ideologies. Cognitive factors help shape the debates within government about whether an environmental issue deserves attention and what needs to be done about it.

What do the case studies reveal collectively about cognitive assumptions, the comparative degree of influence of government priorities for action, and the types of reasoning applied to those priorities?

What comes through between the mid-1990s and late 2000s is evidence of a gradual convergence of ideas about the value of environmental quality espoused by the environmental departments and government political commitment to similar values, with the economic departments arriving later in this convergence. After 2008, there appears to have been a trend of divergence between the views

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[691] As noted in Chapter 7, the influence of Guy Salmon, an external influence on the minister, is discernible in the policy process, as is the influence of the chair of LAWF, Alastair Bisley, who might be seen as a *de facto* official. There is evidence from other environmental policy areas of influential departmental officials, such as in climate change policy by Murray Ward in the late 1990s and early 2000s or Dave Brash in 2008. See http://www.gtriplec.co.nz/who-is-gtriplec/ (accessed 1/11/2012) and "An emissions trading scheme for New Zealand", John Whitehead, Speech to the Journalists Training Organisation, 8 August 20007, http://www.treasury.govt.nz/publications/media-speeches/speeches/emissionstrading (accessed 21/11/2012).

of the political arm of government (where economic development was seen as more important than maintaining or enhancing environmental standards), and the environmental departments and the economic departments where convergence of views about the value of environmental quality was developing. The convergence is evident in the evolution of support for a biodiversity strategy, and how the government applied environmental priority to freshwater and oceans policy in the early 2000s. The divergent trend is seen in Cabinet papers and public pronouncements of the government after 2008, in contrast to the more pro-environment cross-departmental briefs of 2008 and 2011. However, again from the evidence in these case studies, just because there is government commitment to environmental values, and expressions of support for those values, as with the various centre-left coalition governments of the 2000s, this does not necessarily mean that these translate into policies. Otherwise one might have expected environmentally oriented freshwater and oceans policies to have emerged quite quickly by the mid-2000s.

Politics is, after all, about choices between competing values. Other cognitive assumptions influence both what values have priority and what choices are made. Assumptions about the importance of economic development and property rights are part of the reason why biodiversity protection on private land was approached so cautiously, why there was sectoral fragmentation in oceans policy post 2003, and for the Cabinet decision for a shared lead by MfE and MAF (rather than a sole MfE lead) on freshwater policy work. Similarly, social equity and justice considerations formed part of political deliberations, eventually, about Maori interests in oceans and freshwater policy.

The case studies highlight a distinctive approach to policy tools as a default policy prescription for many environmental issues in New Zealand. This approach comprised devolution of implementation, few national standards and reluctance to be prescriptive, preference for voluntary measures, and promotion of tradeable rights as policy instruments. Earlier in this chapter it was argued that institutional structural arrangements helped reinforce this approach and had influenced interdepartmental debates about possible policy tools and political architectures for biodiversity, oceans, and freshwater policies. While the institutional perspective suggests a hierarchical approach to policy development, in the first instance it involves competing ideas and belief systems of multiple actors and networks. However, in the bargaining and negotiation during the policy development process, ideas and beliefs that ran counter to prevailing views were harder to argue, which brings into play agency features of skill and competency, and institutional features of organisational capacity. How these features combine, their patterns and their effects, is the subject of the next section.

8.5 Combinations and patterns in the case studies

This section looks at the effect of complexity and events (the intervening variables), and institutional, agency, and cognitive factors (the independent variables) to identify patterns of influence on New Zealand's environmental policy from an intra-government perspective.

If we look at all these influences together and compare them with the case studies' environmental policy effectiveness, agency (in terms of political will and skill), combined with cognitive factors (in terms of how much value is put on environmental quality and the dominance of a particular form of policy design) are consistently significant features within the New Zealand government environmental policy system.

Events are neutral factors, in that they occur whatever the issue or whatever the policy domain. Clearly events influence policy. But it is how they are responded to that is important, as shown in the different responses to the foreshore and seabed controversy (and hence degree of effect on policy development) in the case of oceans policy and freshwater policy respectively.

What stands out, and differentiates the case studies, is first, the impact of complexity, in particular its conflict potential, and second, institutional features. Both conditioned the exercise of agency by ministers/officials and the effect of government priorities and how departments responded.

The influence of complexity is not a surprising finding, given that this is a recurrent feature of policy variability mentioned in the literature. Complexity is not, however, an intra-government factor of itself. Rather, when it comes to forming policy, degrees of complexity create different levels of challenge in any efforts to get agreement on common ground or to accommodate competing interests (stabilising assumptions), both within and outside government. Conflict potential is reduced by stabilising assumptions.

What this research shows is that what is significant amongst intra-government factors is the correlation between degrees of environmental policy effectiveness and an interaction of agency and institutional features, particularly organisational ones. The idea that institutions matter has long been recognised in public policy. The case studies reveal that, in New Zealand, departmental capacity is an important contributor to levels of environmental policy effectiveness. This finding throws a different light on the proposition that agency and cognitive factors are the dominant intra-government influences.

Where a more environmentally effective result emerged in case studies, either or both MfE and DoC did the following: ensured environmental objectives were a policy priority, in a determined way; secured overall leadership of the policy process (with a senior official exercising day-to-day

oversight); re-organised themselves internally (they changed their standard organisational structure to focus capacity on the issue at hand); integrated processes with other departments; and drew in senior officials from those departments that might seek to constrain environmental objectives. This can be summarised as concentration of effort, driven by an environmental imperative, and the application of political bureaucratic skills to the rules of engagement in ways that advance environmental objectives. These features were then used to affect the processes of policy development, either in tandem with, or in spite of, the influences of wider environmental management institutional structures and the accepted rules of engagement.

The features described in the previous paragraph represent an exercise of agency on the part of officials. Thus, agency can enable structural/institutional changes that facilitate environmental organisations to take a leadership role. The changes <u>then</u> organise and equip departments in an institutional sense to play a more effective role in the development of environmental policy. But where institutions do not allow or facilitate this to happen, agency is likely to be constrained or ineffective. The result can be policy delay or lower effectiveness. This illustrates a necessary interdependence between agency and structure in the context of environmental policy development within the Executive branch of government.

8.6   The analytical framework and its value

This study has approached the research from a perspective that government policy is shaped by political factors related to state capacity and subsystem complexity. It has used a framework that examines a suite of key operating conditions that affect how public policy is produced and then evaluated them in terms of their effect on environmental policy. The approach has proved a useful heuristic. It provides a consistent way of investigating and contrasting three prominent examples of environmental policy development and helps tease out different degrees of influence of features that affect policy development.

The challenge in using environmental policy effectiveness as a form of measurement is that effectiveness can have many different interpretations. Having selected a biophysically oriented interpretation of the term "environment", I have then employed a meaning of environmental effectiveness based on ideas that it occurs when it is both a priority policy objective, and when that priority is integrated, <u>within</u> environmental policies and/or <u>across</u> wider policy domains. Similarly, with policy effectiveness I have used criteria that are widely recognised in policy literature, combining the structural logic (the assumptions and linkages in policy design) and the potential political architecture (the structures, processes and constructs). Using environmental and policy effectiveness together provides a relatively simple, albeit qualitative, method of assessment. Different criteria and different interpretations of "environment," effectiveness, and what constitutes

effective policy obviously might give different results. Nevertheless, the approach used here employs criteria that are widely validated. Furthermore, it is one that, in my opinion, is useful for assessing environmental policy proposals by policy practitioners as well as researchers.

The categories of operating conditions used in the framework to examine influences on environmental policy effectiveness are applied both individually and collectively in many analyses of public policy.

The categories of complexity and events have been a useful way to understand how extra-governmental factors affected the case studies. Context and events have a substantial influence on public policy and how a governing system responds. Using conflict potential, and levels of scientific knowledge and visibility, is a useful simple way to assess complexity. Of the two dimensions of complexity, that of conflict potential proved more significant as an influence on the case studies than levels of knowledge and visibility. It may be that the idea that high levels of scientific knowledge and visibility leads to consensus is too rational, as studies of climate change debates have pointed out.[692] The value of the knowledge/visibility dimension, however, is as a tool of analysis, rather than as a definitive indicator of greater or lesser complexity.

The three other categories, institutions, agency, and ideas (the cognitive features), serve as heuristic ordering devices for the key intra-government features that condition the political choices made in the process of policy development. The analytical framework might have differentiated further the different stages of policy development, or might have employed the concept of power more formally. In terms of policy stages, however, this research is focused most on the developmental and decision-making stage rather than agenda setting, legitimation, and implementation stages. And power and its exercise are inherent in all of the features that influence how public policy is produced, because in the end policy is a political act.

In summary, the analytical framework employed in this research takes well known drivers of public policy, combines them into the most obvious groupings of intra and extra- government influences, and then assesses them in terms of their effect on environmental policy effectiveness. It has proved a useful approach to the empirical work of the study in that it draws out patterns of influence within the 'black box' of Executive policy development and decision-making. It could be applied to other areas of environmental policy in New Zealand, notably the prominent one of climate change policy, and the overall framework for environmental management, the Resource Management Act. Further comparative studies employing a consistent form of analysis as used here, would further extend

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[692] Verweij, "Clumsy Solutions for a Complex World: The Case of Climate Change."

knowledge of how an executive system approaches environmental policy. Furthermore, it could well help achieve greater environmental policy effectiveness.

8.7 Overall conclusions

I have endeavoured through this research to contribute to knowledge of jurisdiction-based environmental policy-making by elaborating on New Zealand's situation. In so doing, my purpose has been to throw light on what happens within the so-called "black box" of Executive government environmental policy-making.

Do intra-government factors help explain New Zealand's slow development of environmental policy and its variable effectiveness? The answer, not surprisingly, is yes. After all, the Executive is the engine house of public policy. This research contributes a clearer understanding of how and why this is so.

It is a result of the interaction between the preferences and abilities of individuals and groups, ideas, values and interpretations, and institutional settings. All are conditioned by external context and events. In the case studies, the role of individuals (in terms of will and skill) and ideas (in terms of values and priorities) were prominent.

The main finding of the research, though, is that there are four key intra-government variables involved as primary determinants of environmental policy effectiveness in New Zealand. They are:

a) The level of government commitment to environmental values relative to other values;

b) The environmental commitment and 'will and skill' of ministers holding environmental portfolios;

c) The 'will and skill' of officials within the environmental departments, notably their ability to provide leadership;

d) The extent to which environmental departments are organised and equipped to play a lead role in the development of environmental policy (with regard to internal resources, and departmental capacities to engage with government institutional rules around policy development).

More importantly, these four variables are interdependent. Together they combine the influence of individuals in a, b and c with the institutional influence of d and part-institutional influence that applies in c. Environmental policy is not just the result of agency nor structurally determined, but the result of their interaction: agency can enable structural change that facilitates environmental

organisations to take a leadership role, but where institutions do not allow or facilitate this to happen, agency can be constrained or ineffective even where there is government commitment.

Implicit in this finding also is that, in New Zealand at least, environmental government departments play a more significant part in policy development than some literature suggests. Institutional interdependence assumes more importance because of the unitary form of government and comparatively fewer policy veto points, hence greater reliance on departmental capacity. But, compared with the other three influencing features active within government, the institutional variable is less significant than some advocates for departmentalism might expect.

These findings offer a basis for thinking about how environmental government departments may enhance environmental policy effectiveness. More specifically, I suggest they can do so by:

- Ensuring there is a priority placed on environmental imperatives in policy design;
- Concentrating effort by reorganising and aligning operating procedures internally to focus on the issue at hand;
- Forming close alliances with supportive departments and drawing in opposing departments;
- Organising to shape and lead the policy process within the machinery of government.

Whether these suggestions, which involve institutional arrangements, are actioned is largely a matter of agency, and the cognitive bases on which agency is exercised. It underlines the essential interdependence of agency and institutions for environmental policy effectiveness, but without agency they would remain empty recommendations.

What are implications of these findings? The first is that those who work within departments should be explicit about what they are trying to achieve in environmental terms. As J.Q. Wilson's study of the bureaucracy notes, clarity of objectives is a key component of organisational performance.[693] New Zealand's two main environmental departments already each have an environmental role as their primary imperative. Their statutory roles are explicit about the "principled priority" of biophysical conditions and the human dimensions that affect and are affected by them. Those roles, however, have been interpreted in different ways from time to time, either as a result of internal management priorities, or in response to stakeholder pressure and/or government political priorities. Without clarity of environmental objectives, the other three organisational characteristics that contribute to environmental policy effectiveness become meaningless.

A second implication is that concentration of effort means that operating according to existing internal structures or procedures may not suffice when dealing with emergent issues and new policy.

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[693] Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It.*

Rather, it involves being prepared to adopt new operating methods, and quickly, given New Zealand's propensity for environmental policy delay. It also means ensuring that adequate resources in terms of personnel capability, seniority, and budgets are found. It means, finally, being willing to confront current policy approaches and departmental ideologies, whether they hold sway internally or within other departments, especially if these features constrain environmental effectiveness or policy effectiveness.

A third implication is that bureaucratic political agility is required to work to advantage within the rules of engagement. It is not just about presenting logical policy options, although these are a necessary component. Environmental departments don't have the same amount of power as the three central agencies (DPMC, Treasury or the SSC), or as ministers have. But they can exercise influence through policy development leadership, either through actively seeking a formal leadership role (as happened in the biodiversity strategy and, eventually, in oceans policy) and/or more importantly by skill in persuasion, bargaining, and bureaucratic politics (as DoC and MfE displayed with the biodiversity strategy, eventually, and with ocean policy in 2003). Furthermore, the case studies showed there is strength in numbers and more was achieved environmentally where both departments worked in unison, with their ministers, and where they brought other departments to an environmental point of view. This is not necessarily an argument for types of policy integration achieved through groupings of departments with different purposes. There is a case to be made that inter-departmental cooperation results in learning to appreciate and accept others' perspectives and priorities and endeavouring to accommodate them. But this approach has also been shown to run the risk of reverse integration, where other priorities end up overriding any environmental ones. Various departments invariably advocate for their own sectors, either explicitly through legislation or departmental mandate (as are, for example, the Ministry of Primary Industries; the Ministry of Business, Innovation and Employment; and DoC). Furthermore, they act politically in pursuit of their primary institutional objectives, as shown in the case studies, be those objectives environmental, social, or economic. This is not party political behaviour. But it is institutional political behaviour, drawing on sectoral institutional frameworks or organisational purpose that predisposes them to pursue specific policy objectives. Institutionalised politics play out through the rules of engagement. To deny or downplay these characteristics under a rubric of neutrality or rational policy development is, I suggest, naïve. It detracts from overall policy effectiveness by weakening the process of persuasion and bargaining and/or perpetuating the power of some ideas and neutralising others.

While environmental government departments are part of the focus of this research, another has been the wider intra-government effects on environmental policy. The results of this research

confirm that, while there is a concentration of power in New Zealand's Executive, when it comes to developing public policy that concentration is constrained by the three year electoral term. An implication from this is that if ministers or governments, or departments, desire to introduce or change environmental policies in New Zealand quickly, they need to ensure the requisite alignment of agency, ideology and institutional support within those three years, or else seek to stabilise assumptions to reduce conflict potential so that in time new or changed policies can occur. Stabilising assumptions should reduce conflict potential, but delay can sometimes result in conscious or unconscious policy shifts, as demonstrated in freshwater policy. From a departmental perspective, the cards might appear to lie where they fall as far as government priorities, ideologies and capabilities of their ministers are concerned. However, even here, departments can enhance potential environmental effectiveness through information and advocacy and by exposing ministers to new ideas, so influencing their preferences. These actions are a form of politics that most government departments employ or are involved in, with evidence especially strong in the biodiversity strategy and the oceans policy examples.

The framework used in this study provides a basis for further exploration of links between environmental effectiveness, policy effectiveness, and the factors within government and outside that promote or limit both. Further research investigating just how strong the influence of agency and cognitive features is in New Zealand's environmental policy would be beneficial within and across all government departments. Explanations for why and how agency emerges or fluctuates within departments is fragmentary: is it simply highlighted because there are institutional weaknesses? Is it because the small size of the New Zealand policy system means that individuals and belief systems have greater prominence?

Further research from an organisational perspective on other case studies of environmental policy development would also be useful. Few recent studies in New Zealand have investigated in detail environmental policy development in this particular way. Studies of individual policies tend to focus on either environmental effectiveness and/or policy effectiveness and treat many organisational components cursorily. This research has identified four key organisational characteristics that contribute to potential environmental policy effectiveness, but just as policies are ever-evolving (policy is never finished), so too is the body of knowledge about features that help New Zealand environmental government agencies to contribute to the development of more environmentally effective policy.

Another use for the framework is by policy analysts. In this regard, the idea of environmental policy effectiveness seems especially pertinent in that it provides criteria to assess both environmental

effectiveness (in terms of the level of priority afforded to environmental objectives and integration within the environmental policy domain and/or across government policies generally), and policy effectiveness (in terms of the structural logic of tools matched to objectives, and political architecture in terms of support generated). In my experience in government these ideas and their application are often lost to sight, despite having wide currency in the literature and schools of environmental public policy.

Finally, the motivation for this research was to expand knowledge and improve understanding of how environmental policy is formed within government in New Zealand. For those outside the machinery of government it can often be a mystery or a frustration. The same is said by many within government. Both perspectives often do not grasp the full sweep of internal and external drivers. This research, while focusing on the intra-government features, has also endeavoured to consider wider influences. Having said this, a basic premise of the research is that central government and its workings are fundamental to the development of environmental policy. By shining light into the black box of Executive government, I hope this study helps make what goes on less opaque for those who sit outside, and helps those inside to make the world a greener place.

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