



Federated Mountain Clubs of NZ (Inc)

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Land and Water Management Team
Ministry for the Environment
PO Box 10362
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Dear Sir

Submission on the proposed National Policy Statement on Indigenous Biodiversity

Federated Mountain Clubs represents 16,0000 people in over 80 clubs and schools around New Zealand who are actively involved in back country recreation with a particular focus on mountainous areas.

Overall view of the proposal

We are having difficulty in seeing any benefit from this National Policy Statement (NPS). It is 15 years too late. It also seems to be a smokescreen in that it appears that government is 'doing something' when, in fact, the government is stripping funding and support for more effective activities such as DoC providing information and advocacy to councils and in purchases through the Nature Heritage Fund.

Introducing it now just gets those councils who take these matters seriously to re-do plans (at some expense) to get much the same outcome. Those going through the motions won't have decent plans and a more targeted approach, involving engagement with particular councils, would be better. In terms of improving landowner relations, which, presumably, policy 8 is aimed at, re-opening the process of identifying areas doesn't seem helpful unless markedly new areas and criteria are to be used.

Finally a vague and general NPS is unlikely to be helpful in implementation. The Resource Management Act is already very complex in how it works with the Act, Regional Policy Statements, Regional Plans and District Plans. There are a lot of general provisions and considerations in all of these. With the increasing domination of legal interpretation the NPS runs the risk of further removing practice from normal people and actual environmental outcomes. And the price of no gain could be handing greater dominance of the process to the bands of expensive lawyers, experts and commissioners that make a living from it.

The Section 32 Analysis

The alternatives section in the section 32 analysis is appallingly bad. It dismisses funding as an option as being too expensive, without any recognition as to the choices involved. Funding to purchase areas and rationalise land use is the one of the most effective actions that can be taken. Given that the government is funding plastic wakas and offshore boat races the assertion that there is no money is a little too easy to make.

The text in the Section 32 analysis on the option of additional guidance hides more than it reveals. The Department of Conservation was active in the past at providing detailed information to councils and in advocating for biodiversity values. This has been cut back. The effect of this cut has been debilitating. Detail and useful information is a critical gap that is not filled by this policy. It also fails to mention the work funded by the Ministry on biodiversity work by councils over the last 10 years (including the work reported in Biowhat). Here it was found that good practice in one council was good way of lifting performance in others. This, no doubt, reflected the small size of New Zealand and the way we learn from example.

The final irony with the Section 32 analysis is that the NPS has statements requiring others to seriously look at options while the government's own analysis is superficial and slated to the preferred option.

What we want

We feel that the proposal as it now stands should be dropped. An alternative NPS that actually achieves something could then be developed.

More important than an NPS would be government actually engaging in the RMA process and government actively seeking protection of key areas using mechanisms such as additional funding for the Nature Heritage Fund.

Comment on the detail

Part 1: Objective and Policies of the proposed National Policy Statement on Indigenous Biodiversity

It is difficult to be against the main items of objective. However, as worded the objective doesn't really add anything to the current wording of the legislation, especially sections 5, 6, and 7 of the Act.

Application

The exclusion of the coastal marine area makes little sense, and even seems to confuse the complier of schedule 2 as shingle beaches and shell barrier beaches would both largely be below mean high water springs.

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

It is not clear how it affects freshwater ecosystems. Application is to 'land' owned by any person. It should be made clear that this applies also to rivers and lakes.

Finally private land often includes freshwater and, less commonly, parts of the coastal marine area.

Definitions

Some of the definitions add little. Other such as 'habitat' are not clear. Habitat should include areas of exotic plants that are used by rare indigenous species.

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

The wording of this policy is not very clear. It seems to equate 'significant' to 'important' and do little else. It also raises the bar - "important" is usually at the upper end of the definition of "significant".

We see little point in this and cannot see why defining significance in this way is necessary. The dictionary definition is quite adequate.

Instead of debates over 'significance' we will find the argument being over 'importance'.

This policy is unnecessary and should be deleted.

Policy 2: Criteria for identifying significant indigenous vegetation and the significant habitat of indigenous fauna

This is a confused policy. It doesn't list criteria, rather it lists some types of habitat. Most of the areas identified would already be regarded as being significant when consents are considered and when RMA plans are being developed.

We are puzzled why the LENZ and the 20% cut-off is expressed the way it is. It would seem to us that central government would better placed to identify habitats to this criteria than each council acting independently. Government obviously feels the information to meet the criteria is sitting on a shelf somewhere. Why not identify the areas directly. As it the NPS will require councils to each get Landcare Research to provide detailed maps of the LENZ level IV Land Environments. Council will then need to map vegetation in each of these throughout their own district and any other that has the same level IV environment to see if the 20% cutoff is met. Remapping remaining vegetation within one district will also affect the importance of it others for those environments with vegetation near the 20% cutoff.

It would seem to us that use of a national survey would make sense here. As it is central government is reducing funding for this sort of work to DoC and then, by regulatory methods, imposing the cost of this work on councils where it is likely to cost more to do because of the cross boundary issues.

Once something is included in the plan as significant habitat what then? What management will be expected – protection or positive management of the things important to the species? The NPS is silent on this and we would have expected something on this. Habitat of threatened species includes a large bit of New Zealand. The threatened species lists include many species with wide ranges and often dispersed use of areas.

As an example of the shortcoming, blue penguins often nest under houses and other buildings. Safe nesting sites are important and, with sympathetic owners, often houses provide this better than surrounding areas. The main threat is from dogs and other predators. The effect of the NPS would seem to tie the owners hand if they ever need a consent without tackling the more serious threat from neighbouring dogs.

Policy 3: Including criteria in regional policy statements

This section looks very much like passing the buck for a lack of national criteria onto regional councils. It adds little as councils must already justify rules and identification of areas when developing plans. The criteria are argued over, either in the plan itself or in the section 32 report justifying the rules.

Policy 4: Identifying areas and habitats in district plans

This is one area where the policy may change things. Those councils that have shied away from mapping sites will be compelled to repeat the process.

Often data information are lacking for this to be done properly. The government would be better funding DoC to increase its survey and advocacy work. All this policy does is require the process, it does not require those councils that lack the will (or the resources) to do this properly.

Policy 5: Managing effects to achieve no net loss

This policy sets the target of no net loss for councils and then restates the Act in avoid, remedy and mitigate and then adds an 'offset' provision.

The reason there are things that could be done easily elsewhere to offset a project is because of a failure elsewhere to manage environmental effects. The basic requirement in the RMA is for people to take responsibility for environmental effects and to avoid, remedy and mitigate these. They are not doing this is so there is scope for easy offsets. The Act and its implementation hasn't worked for managing the effects of existing land use and for permitted activities. Added to this is a lack of funding of conservation and poor protection activity.

While there is some pragmatic appeal to enabling offsets to deal with some of this shortcoming the end result is we have “feel good” offsetting which masks our complete inability to address the underlying issues. The criteria allows other protection activity, which should be taken elsewhere anyway, to be used to justify trashing a significant habitat of species with a pet project.

Put simply, the offset for trashing some habitat of a threatened species is to spend money in pest control (which is now under-funded by government). Another example would be off-setting reducing nutrient runoff into a stream to compensate for trashing a length of stream. However the nutrient runoff is supposedly something those operating on the land in question should already be managing under the basic requirement in the RMA to avoid, remedy and mitigate. The reason they are not doing this is because effectively the Act and its implementation hasn't worked for managing the effects of existing land use and for permitted activities.

There is some indication in Schedule 2 that the offsets are expected to be long term and secure. This is essential. We are not convinced, however, that the offsets will be adequately enforced (and question whether some could even be enforceable), especially where ownership of the project changes.

Policy 6: Supporting maintenance and enhancement of biodiversity

This is basically guidance material. It has little impact in a policy statement. Some of it isn't even legally effective. Item (h) points decision makers to consider non-RMA action. The RMA has a general requirement to consider alternatives already. What the RMA cannot do is require action under other statutes. This renders the section to being a repeat of what is already in the Act.

Policy 7: Tangata Whenua

There is pretty limited scope for this policy to be implemented as such activity presumably requires landowner/occupier acquiescence and it must comply with other law, such as the Wildlife Act and the Fisheries Act. It's main effect is to repeat the current requirement many councils have for applicants to consult with iwi.

Policy 8: Consultation

The proposed wording of this policy adds little to the Act and nothing to current practice. Consultation is already in the legislation. This formalises pre-notification consultation and effectively adds another submission round to the process. Given the concerns government seems to have about the drawn out nature of the formal process this merely makes the process longer.

This will evolve into the Act having two formal consultation rounds on plans and plan changes and merely lengthen the process. Informal discussion will still be needed and will end up being inserted before the first formal discussion.

Schedule 1

We have looked at the list of naturally uncommon ecosystems. It doesn't seem to be very comprehensive and the justification of it is lacking. One could almost be excused for thinking many items (such as screes, boulder fields, leached terraces, cliffs, rock stacks) on the list are selected to bulk the list out rather than to protect biodiversity. Many aren't at risk from development as the sites are of low value for other activity. How does this relate to the LENZ criteria? Does it mean that all of these types are significant?

It is noticeable that it doesn't mention any lowland forest type. These are the forests most likely to be adversely affected by activities that are regulated by the RMA. They are also very rare – for example there is only a tiny remnant of original lowland forest in Wellington City (the bulk in Wellington now is regrowth with a different species composition than the original forest). On the West Coast, forest on the more fertile soils (often matai) is only a tiny remnant. In areas like the Rangataiki Plane and the Manawatu it is even rarer. We note that 'cloud forest' gets a mention but most is in the conservation estate so doesn't really seem to be threatened to the same extent

Similarly there is no mention of lowland tussock/indigenous grassland. There is virtually none of this on the Canterbury Plains.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Phil Glasson', written in a cursive style.

Phil Glasson
Secretary

emailed to: biodiversity@mfe.govt.nz 2/5/2011