

16 December 2003

General Policy Project  
Department of conservation  
PO Box 10-420  
Wellington

## **New Zealand Ecological Society Submission on Draft Conservation General Policy**

### **General Comments:**

#### **1. *Hierarchy of discretion accorded the Department***

Three levels of operational discretion are provided for in the draft policy statements viz. “will”, “should” and “may” with the latter two often associated with the term “where appropriate”. We submit that

- The balance of discretion leans too extensively to the “should” and “may” categories, a consequence of which will be to place unreasonable discretion, and thus lack of public accountability, in the hands of local Area or Conservancy staff.
- Such extensive discretion will serve to further enshrine, perhaps even exacerbate, the present perceived national inconsistency in the application of conservation policy e.g. as illustrated in regional conservation management strategies.

#### **2. *Differing discretionary emphases affecting conservation of natural resources***

In section 4, policies intended to direct conservation management of natural resources are given differing emphases according to their specific area of application. For example

- The discretionary option of “should” is applied to all policies affecting conservation management of geological features, landforms, soils and natural landscapes (section 4.1), ecosystem health (section 4.2) and maintaining and restoring terrestrial and freshwater ecosystems, habitats and species (section 4.3).
- Similar levels of discretion do not apply to the application of policies affecting the conservation of marine indigenous diversity (section 4.4). All draft policies for marine protected areas (section 4.4.1) and five of 10 draft policies affecting marine species (section 4.4.2) afford Departmental staff no discretion...things “will” be done.

We are not aware of any legislative support for the Department to implement its general conservation policy in a way that emphasises one natural environment, ecosystem, community, or suite of species over others.

3. ***Ambiguity of content of conservation management strategies***  
Conservation management strategies have been established (by legislation) to be the principal planning and communication documents covering the Department's existing and intended activities on public lands it administers. They are (or should be) the Department's public front window. Present versions of each conservancy's strategy are notable for their varying content and their varying operational emphases. By placing CMSs within this general policy framework (section 12), there is an opportunity to address inconsistency of content and emphasis and at the same time ensure they reflect the consistent application of general policy. We note, however,
- There is no stated requirement under section 12 draft policies for CMSs either to reflect or to be subservient in their content to draft general policy.
  - Content and emphasis relating to key natural, historic or cultural features is discretionary (e.g. sections 12a, c, e)

These above points are indicative of the draft general policies not containing a clear, logical and consistent hierarchy of discretionary emphasis. The present emphases appear not to be related to any of the conservation legislation that dictates the Department's operations.....indeed, the guiding conservation legislation seems not provide the Department with any discretion at all. Whereas operational discretion may be profoundly influenced by directives and resources provided by the Government of the day, policies arising from the legislation cannot seek to redefine the intention of Parliament.

Our **recommendation** is that the discretionary emphasis within each and every draft policy statement be subjected to review in order to

- Ensure consistency of outcome with the guiding conservation legislation
- Ensure the policy emphasis across all aspects of the Department's operations is the same
- Limit the likelihood of policies being applied inconsistently in guiding documents (conservation management strategies, conservation management plans) and by operational staff (at area and conservancy offices).

### **Specific Comments:**

#### ***Section 3 – Public participation in conservation management***

The draft policies indicate that the Department continues to be luke-warm about seriously engaging the people of New Zealand in conservation of their natural resources. Further, the draft policies (e.g. 3f, 3g) continue to emphasise the Department's "controlling" position and its apparent unwillingness to develop true partnerships beyond those required under Treaty of Waitangi obligations. After 16 years no "community extension service" has evolved within DoC to give effect to its occasional exhortations about public participation in conservation management.

#### **Suggestion:**

- Insertion, as the initial policy statement in this section, a statement of overriding intent to indicate that public participation in all forms of conservation management WILL be encouraged (and not restricted to those determined by statute (3a)).
- Modification to 3d to “Partnerships with groups and individuals will be developed whenever practical or whenever local support is forthcoming”
- Change emphasis in 3e from “should” to “will”, and 3g from “may” to “will”

#### ***Section 4 – Conservation of natural resources***

As highlighted in the general comments there is inconsistency of emphasis in policy statements between the various sub-sections within this section. Clearly this needs review.

##### **Suggestion:**

- Review and establish consistency of policy discretion afforded within different groupings of natural resources

What is also apparent in policy (a) in most sub-sections is the discretion afforded the Department with regard to knowing the state of the natural resources of the country. If a basic inventory is merely an activity that the Department “should” do, then it follows that maintaining ongoing and up-to-date knowledge of the state of our natural resources is also a discretionary activity. This is surely a contradiction with the requirements of the Conservation Act.

##### **Suggestion:**

- Change 4.1(a) from “.....should be appropriately identified.....” to “...will be identified.....”
- Change 4.2(a) from “.....should be avoided or otherwise minimised where practicable” to “.....will be avoided.”
- Change 4.3.1(a) from “.....should be identified using the best information” to “.....will be identified and their status monitored to maintain an up-to-date inventory”
- Change 4.3.2(a) from “.....should be identified....” to “.....will be identified....”
- Change 4.3.2(b) from “.....priority should be given to....” to “....priority will be given to...”
- Change 4.3.4(a) from “.....should be managed to ensure.....” to “.....will be managed to ensure...”
- Change 4.3.5(a) from “.....should be re-established where practicable.” to “will be re-established .... “

There is potential conflict between draft policies given in sub-sections 4.3.4. and 4.3.5 with regard to the relative balance of priority afforded indigenous fish and sport fish

##### **Suggestion:**

- Review 4.3.4(b) and 4.3.5(c) so as to ensure there is clear priority of policy and also of resulting management action.

Although many of DoC’s standard operating procedures insist upon the monitoring or measurement of management outcomes, this practise is not enshrined in any of the policy groupings with but one exception (4.3.2(f)). Its absence as a guiding policy is an important omission – all the more so when measurement/monitoring of

management outcome has yet to become a culturally ingrained aspect of DoC's *modus operandi*.

**Suggestion:**

- Change 4.3.2(f) from “.....should be monitored. In particular, the effectiveness.....should be evaluated” to “ ....will be monitored to measure the effectiveness of control methods, their impacts on non-target species, and their ecosystem-wide benefits and impacts”
- Insert within the policy lists for sub-sections 4.2, 4.3.1, 4.3.3, 4.3.4, and 4.3.5 a policy statement to indicate that the outcomes of management activity are required to be measured or monitored to identify the efficacy of that management at species and community levels

Management and protection of near-shore marine resources, be they areas or species, is mostly conducted without recognition of possible terrestrial influences. Draft policy 4.4.1(e) is an important recognition of these ecological connections but seems to have been expressed in apologetic terms. It should be strengthened so as to promote the “mountains to sea” concept

**Suggestion:**

- Change 4.4.1(e) from “.....will be considered to enable a more comprehensive....” to “....will be sought to expand the mountains to sea....”

***Section 6 – Protected area network***

Are the differing levels of discretion in 6(a) and 6(b) appropriate ?

***Section 7 – Conservation beyond public conservation lands and waters***

The Department appears strangely ambivalent about its role as a public advocate for the conservation and protection of indigenous biodiversity. By some, it is perceived as a reluctant public advocate and reticent about leading or inspiring conservation action and contributing meaningfully to conservation education. Policies outlined in this section continue to convey that unwillingness to become, overtly, the nation's conservation champion. Perhaps this is intentional...a political directive even. On the other hand, if it is not, and there remains discretion for the Department to set its own agenda in this regard, the suite of policies in this section could be strengthened. That strengthening could come about by an overall change in emphasis from the discretionary (and the accompanying non-specific terms like “appropriate action”) to that which implies or demands commitment (including using the word “will”).

***Section 11 – Knowledge and information needs***

This section treats the subject of research in the narrow confines of that serving to underpin conservation management. It even accords a priority of “encouragement” to such research (e.g. 11(a), 11 ( c), 11(g)). There is plenty of research conducted on the natural and physical world that is intrinsically interesting, advances understanding of our world, is appropriately undertaken on public conservation land, but which hasn't the slightest application or relevance to conservation management. It is of no lesser “value” because of it and as such does not deserve such overt discrimination against. There are plenty of safeguards covered by draft policies in this section to “protect” the land and other uses of that land against “intrusive” research. On the other hand, it is reasonable for the Department to highlight, as in 11(a), that it wishes to encourage management-benefiting research.

**Suggestion:**

- Insertion of an initial policy statement (a new 11(a)) to the effect that “Research on any aspect of the natural or physical world, or on topics of cultural or historic content, is a permitted activity in public conservation lands, waters and resources administered under conservation legislation and will be encouraged subject to it meeting requirements of other policies pertaining to research outlined below”
- Change 11c by deleting “should seek to better support management and”
- Amend 11(g) (iii) to read “ Research and educational activities .....

The draft policies in this section indicate, rightly or wrongly, that the Department seeks a high level of “control” over any research conducted on public conservation land, with that “control” extending to how the knowledge is managed (11(d)), the nature of the intellectual property acquired from that research (11(d), 11(f)(iv)) and the distribution of the knowledge (11(h). The emphasis given to “collaborative arrangements” (11(a), 11(b) can also be viewed in this regard given that the Department has scant research funds and capacity. The general policy, since it is meant to give expression to the conservation-related laws the Department is asked to administer, would seem to best reflect general intent rather than lower-level desires that may arise from local discussions.

It is also a debatable point how far the Department’s proprietary rights extend simply by virtue of it having been given an administering role over public lands. These days, intellectual property is a tradable commodity even if that property is obtained from the expenditure of public money (e.g. research funded by PGSF). By insisting for control over availability of knowledge derived from research on public land, DoC may be placing itself, unwittingly, in a vulnerable legal position (worth seeking legal advice on ?). It may be better to remove such claims from the general policy statements but instead advocate for the knowledge to be placed in the public domain (which is what all science publication achieves).

**Suggestion:**

- Delete from 11(a), “.....and supported by collaborative arrangements where appropriate”
- Delete from 11(b), “...Collaborative research relationships with tangata whenua will be encouraged and supported where appropriate”
- Delete from 11(d), “....and the management of any knowledge and intellectual property to be gained”

Draft policy 11(i) is a curiously quasi-legalistic statement the relevance of which easily eludes the non-DoC observer and may also cause many DoC employees to scratch their heads seeking understanding. If this is intended to be a statement that ensures monitoring /measurement of responses to ALL management activities undertaken on DoC-administered land, akin to 4.3.2(f) (already referred to above) then “excellent”! If this is also intended to convey that such activities have to be conducted using standard procedures, then “excellent” again ! However, the addition of “...undertaken at appropriate levels, guided by approved systems, conservation management strategies and relevant management plans and regional and local strategies” is as bewildering as it seems unnecessary.

**Suggestion:**

- Review what is intended by 11(i) and rewrite to achieve greater clarity and direction.

**Relationship between General Conservation Policy and National Parks Policy**

Most of the points made in our submission of draft general policy apply equally to the draft policies established for National Parks. We have chosen not to prepare a separate submission for each draft policy document. Instead, we request that, where the same policies apply, our submission be applied to both draft policy documents.

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President

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