
REPORT AND DISCUSSION PAPER

Published by the
NEW ZEALAND CONSERVATION AUTHORITY
TE POU ATAWHAI TAIAO O AOTEAROA

P O Box 10-420
WELLINGTON
New Zealand

1997

ISBN 0-9583301-6-6

Formally approved and adopted by the New Zealand Conservation Authority on 17 August 2023

INTRODUCTION

This is the full version of the New Zealand Conservation Authority's *Interim Report and Discussion Paper*. A shorter summary version is also available, from:

-- the NZCA, P O Box 10-420, Wellington, or
-- your local office of the Department of Conservation.

These two papers are the results thus far of an ongoing process of discussion and debate on the issue of Maori customary use of native plants and animals. The NZCA has addressed the issue through the activities of a Working Group, and the intensive debate arising from its first discussion paper in 1994. Other processes and developments have also focussed attention on the use and management of New Zealand's indigenous natural heritage, including the WAI 262 claim to the Waitangi Tribunal, controversy over access to and disposal of dead stranded whales, and the recent Court decision on Maori fishing rights.

Like the 1994 paper, this *Interim Report and Discussion Paper* is neither a policy nor a proposal for policy. It is not a statement of any fixed or final position of the NZCA on this issue. It does not claim to be the complete answer, or any absolute definition of Maori customary use.

It is an *Interim Report,* an update on the NZCA's investigation thus far. It is also a *Discussion Paper,* traversing some of the various aspects of the issue and the practical meaning of Maori customary use in the late 1990s, and exploring the cultural and historical background to gain a better understanding of New Zealanders' beliefs, values and expectations of indigenous wildlife and plants.

There is a wide spectrum of values and concerns, and a wide variety of information in this *Interim Report and Discussion Paper.* Where there are differing or conflicting ideas or arguments on a particular matter, each is given space.

The paper does arrive at some interim recommendations on specific points, where the evidence of the NZCA's investigations suggests a clear and practically achievable way ahead. These interim recommendations are put forward in the hope that they may assist in making progress, and provide a useful resource for the ongoing debate.

Some Key Issues:

-- the fact that New Zealand's indigenous flora and fauna are severely diminished and in continuing decline;
-- the principles of the Treaty of Waitangi which, under law, must be given effect in conservation policy and management;
-- balancing the Treaty's guarantees of rangatiratanga and kawanatanga, to recognise and provide for the respective rights and duties of iwi Maori and the Crown;
-- the provisions of international agreements, in particular the Convention on Biological Diversity;
-- New Zealand's existing legal provisions for access to natural resources;
-- the WAI 262 claim to the Waitangi Tribunal;
-- the Department of Conservation's management and decision-making systems;
-- the Fish and Game Council's management of introduced sportsfish and gamebirds and their habitats;
-- New Zealanders' different traditions, values and beliefs, and concepts of the relationships between humans and the natural world;
-- the cultural significance to Maori of customary uses of native plants, animals and other traditional materials;
-- the concept of sustainability;
-- research requirements for conservation;
-- recognising and benefiting from different kinds of knowledge;
-- protecting Maori intellectual and cultural property rights;
-- access and ownership;
-- funding and administration.

There is alot of common ground. There is wide support for the conservation of New Zealand's indigenous wild plants and animals -- both Maori and non-Maori want future generations to be able still to enjoy this heritage. There is agreement that some plants and some materials from dead animals may be used. There is strong opposition to poaching and any uncontrolled harvesting which causes damage to vulnerable populations and habitats. And many New Zealanders are strongly determined to take an active part in conservation, to have their say, and to have their views and priorities taken into account.

The NZCA offers this *Interim Report and Discussion Paper* as a contribution to the ongoing discussion.

Ecological terms and Maori words used are listed in the Glossary on page 169. The Treaty of Waitangi -- the English and Maori texts, and the Kawharu literal translation of the Maori text -- is given at page 177.

1 BACKGROUND

1.1 The NZCA

The New Zealand Conservation Authority (NZCA) is an independent statutory body of twelve members, drawn from diverse backgrounds, representing the long-term public interest in conservation. The NZCA is separate from the Department of Conservation (DOC), reporting directly to the Minister of Conservation. The NZCA gives advice to the Minister and to DOC on conservation issues of national importance, and has various statutory responsibilities including:

-- the approval of Conservation Management Strategies (CMSs) for each region;
-- considering National Park Policy and Management Plans and proposals for new National Parks; and
-- contributing to a range of strategic planning and policy processes.

In all its work the NZCA is required under section 4 of the Conservation Act to give effect to the principles of the Treaty of Waitangi.

The NZCA works under the Conservation Act, National Parks Act, Wildlife Act and other statutes and has the responsibility to uphold those statutes and their general intent.

1.2 The Issue

In the late 1980s and early 1990s New Zealanders became aware of the issue of Maori customary use of native plants and wildlife through a series of controversial cases. The national Sesquicentennial was an occasion for the construction of several large waka, requiring large totara and other timbers. Chatham Islanders made a request for toroa as traditional ceremonial food for the islands' bicentenary celebrations. In Northland there were several well-publicised cases of poaching of kereru, where the Maori defendants argued for their traditional rights to harvest the birds.

The controversy and tension sparked by these specific cases indicated that something needed to be done, to try to understand and perhaps to resolve some of the difficulties. DOC was constrained by its official statutory role; its duty is to uphold the protection legislation, to manage wildlife and native plants on conservation lands, and to consider and approve any applications for their use. After lengthy discussions, the Minister, Hon. Denis Marshall, asked the NZCA to undertake an investigation of the issue.

The NZCA established a Working Group to deal with this task. The membership of the Working Group has changed as the NZCA membership has changed. The Group is chaired by John Klaricich (Ngapuhi); over time the other members have included Tumu Te Heu Heu (Ngati Tuwharetoa), Dr Margaret Mutu (Ngati Kahu), Sir Tipene O'Regan (Ngai Tahu), Gordon Ell (Forest & Bird), Craig Potton (Federated Mountain Clubs), Jim Guthrie (NZCA Chairman), Edward Ellison (Ngai Tahu) and Annette Lees (public appointee).

The NZCA staff have also been closely involved with the project. Ronda Cooper researched and wrote this *Interim Report and Discussion Paper* through a process of ongoing consultation with the Working Group. Gwenda Harris, Sarah Wilson, Fleur Denley, Ursula Passl and Tony Robinson were also involved in the public consultation processes and other assistance.

1.3 The 1994 Discussion Paper

After conferring with a wide range of people and with DOC staff both in Head Office Policy Divisions and out in the Regional Conservancies, the Working Group produced a Discussion Paper. This was intended as a starting point -- a catalyst to encourage debate on the issue. The Paper looked at:

-- the need for a national policy on Maori customary uses of natural resources;

-- policy objectives and process objectives to work towards achieving this;

-- the rights and duties of the Crown and iwi Maori respectively under the Treaty of Waitangi, and the idea that some constraints or limitations of those rights may be necessary to ensure survival for some species;

-- the range of different statutes presently applying to Maori customary use of native plants and animal species, the relation of that legislation to the Treaty of Waitangi and the applicability of section 4 of the Conservation Act, which requires that DOC gives effect to the principles of the Treaty in all its work and activities;

-- the specific provisions of the Wildlife Act 1953 which establishes absolute protection for most native species, identifies the few species which may be killed or hunted under certain conditions, and sets out the requirements for DOC to authorise the holding of feathers, bones and other parts of dead creatures;

-- a number of guiding principles which the NZCA acknowledged as fundamental, including:

- sustainability of any harvest;
- careful monitoring;
- local-level decision-making;
- respect for matauranga Maori or traditional environmental knowledge;
- information-sharing between Maori and Scientificconservation management expertise;
- scientific research priorities;
- the wider ecosystem context and inter-relationships between species;
- the existence of spiritual dimensions;
- restoration and enhancement; and
- the distinction between genuine traditional cultural uses and unlawful poaching;

-- a possible framework for decision-making was mooted, for iwi or hapu to manage lawful customary use of species and materials within their rohe, within an agreed partnership framework with DOC and the Conservation Board, and with input and advice from scientific and conservation organisations; and

-- a number of administrative and funding implications were raised and the wider working partnership between Maori and DOC across a range of other issues.

1.4 Consultation and Discussion

With the agreement of Hon. Denis Marshall, then Minister of Conservation, the Paper was released as a bilingual document in May 1994.

It was distributed widely to Maori, to conservation NGOs, to government and scientific agencies, and to interested individuals. A series of consultation meetings and hui were held through the second half of 1994 and early 1995, some called by the NZCA, some by Conservation Boards, and some by NGOs. The principal meetings and hui were:

- Mihiroa Marae, Pakipaki, Hawkes Bay, 1 September 1994;
- Te Runanga o Te Rarawa, Kaitaia, 4 November 1994;
- Otakou Marae, Otago Peninsula, 9 November 1994;
- Kirikiriroa Marae, Hamilton, 23 November 1994;
- Takapuwahia Marae, Porirua, 25 November 1994;
- Motatau Marae, Motatau, Northland, 25 November 1994;
- Tahuna Marae, Waiuku, Manukau, 30 November 1994;
- Omaka Marae, Blenheim, 2 February 1995;
- Ngahina Marae, Ruatoki, Bay of Plenty, 27 February 1995;
- St Johns Hall, Blenheim, 2 March 1995;
- Te Awhina Marae, Motueka, 15 March 1995;
- Cathedral Centre, Nelson, 15 March 1995; and
- Chatham Islands meetings 22 - 26 March 1995.

There were presentations and discussions on Maori customary use at regular NZCA meetings, including a special forum for NGO representatives at the February 1995 meeting in Wellington. There was debate in university seminars, and students from environmental, science, Maori studies and law courses undertook projects, short theses or essays on the topic. There was media attention, with newspaper articles and features in Maori journals such as *Mana* magazine, items on TV and radio news including Radio NZ's *Mana News*, and discussions on talkback. The NGOs focused on the issue in their journals and newsletters.

The deadlines for written responses were extended into mid-1995; eventually the NZCA received over 380 written submissions. The major concerns and opinions expressed in this feedback are summarised in Section 2.2 below.

The NZCA commissioned an independent analysis of the feedback from Works Environmental Management, a national consultancy. Their brief was to summarise the written submissions and the reports of consultation hui and meetings, to identify significant issues, patterns and trends, and to determine the extent and strength of support or opposition for customary use. Their

report was presented to the NZCA in September 1995. Copies of either the full report or the introductory summary sections were sent to all respondents; copies of the full report were made available for public information in DOC offices.

1.5 This Second Discussion Document

This second document moves on from the 1994 paper, acknowledging that it achieved what it was intended to do: to stimulate debate, put forward some of the crucial issues, and encourage an exploration of the topic. This second document is based in the experience of debating the 1994 paper around the country, and weighing its concepts and kaupapa together with the views and priorities of the various respondents. It is not -- despite the demands of some respondents in 1994 and 1995 -- a re-working or correction of that first paper.

Like the 1994 paper, this second document is neither a policy nor a policy proposal. It is a report on the NZCA's investigation thus far, presenting what the NZCA has learned about Maori customary use at the end of the 20th century. It considers various aspects of the issue, the priorities, ideals and values involved, and some possible ways of dealing constructively with some of them.

In some instances this document does make recommendations on specific points. Recommendations are only made where the NZCA believes there is a clear and practicably achievable resolution to the particular aspect or issue. In other instances the evidence from the last two years' debate, and the larger political and social contexts, suggest that making recommendations would be naive or reckless, or would encourage increased divisiveness, and so the NZCA can only traverse the particular issue and advise further dialogue and consultation.

1.6 The Boundaries of this Initiative

The NZCA acknowledges that its initiative with Maori customary use is only one relatively small facet of several much larger scenarios. The most important of these wider contexts are:

-- the continuing decline of indigenous biodiversity in these islands, and the need to put more resources into conservation of species and habitats;

-- the efforts of Maori and non-Maori to understand what the Treaty of Waitangi means and how it can usefully contribute to developing New Zealand society and identity;

-- the debate within Maoridom as to the meaning and practical implementation of rangatiratanga; and

-- the work of the Crown as Treaty partner with iwi to give effect to its responsibilities under the Treaty.

The NZCA acknowledges that many of the issues comprising these wider contexts are neither within the scope of this initiative nor within the NZCA's powers to resolve or influence. For example, many statutory issues are the preserve of the Minister and his or her Cabinet colleagues to consider and decide. Claims under the Treaty of Waitangi are heard by the Waitangi Tribunal, and negotiations for claim settlements are undertaken by the claimants and the Crown.

Many other issues are advanced by the courts, with key decisions -- such as the 1995 Kaikoura whalewatching decision in the Court of Appeal -- building a continually evolving interpretation of Treaty rights, obligations and principles. The NZCA's work with Conservation Management Strategies has shown that the principles of the Treaty -- and their application within the CMS -- will always be open to change and extension as the courts, the Tribunal or government might develop new interpretations or definitions.

The NZCA's initiative and this document will necessarily take some consideration of these broader contexts. However the primary focus is the customary use of native birds, plants and other traditional materials by Maori.

While the wider issues are important and are addressed as relevant, this document is not intended to address the full spectrum of contemporary conservation management and policy. It is not an assessment of science's work with native species and ecosystems. It is not a study of the endangered status of native wildlife. Its principal concern is Maori traditional uses of native species and materials.

This initiative addresses issues of customary use of the wildlife and plant materials the management of which is the responsibility of DOC under the Conservation Act and other statutes listed in the First Schedule to that Act. Minerals, pounamu, water, geothermal resources and marine resources are managed under different statutes and are not included in the NZCA’s considerations.

An appreciation of the limitations to this initiative -- and of the full range of influences and contexts that may affect Maori customary use -- is only realistic.

2 THE DEBATE THROUGH 1994 AND 1995

2.1 THE RESPONSES

The NZCA received 383 written submissions responding to its 1994 Discussion Paper. The hui and meetings, attended by approximately 515 people, were a further source of feedback. However in the analysis of submissions prepared by Works Environmental Management, statistical data from the hui was not included and therefore the following charts include no input from most of the Maori submittors. The range and proportion of respondent groups making written submissions is shown in Chart One:

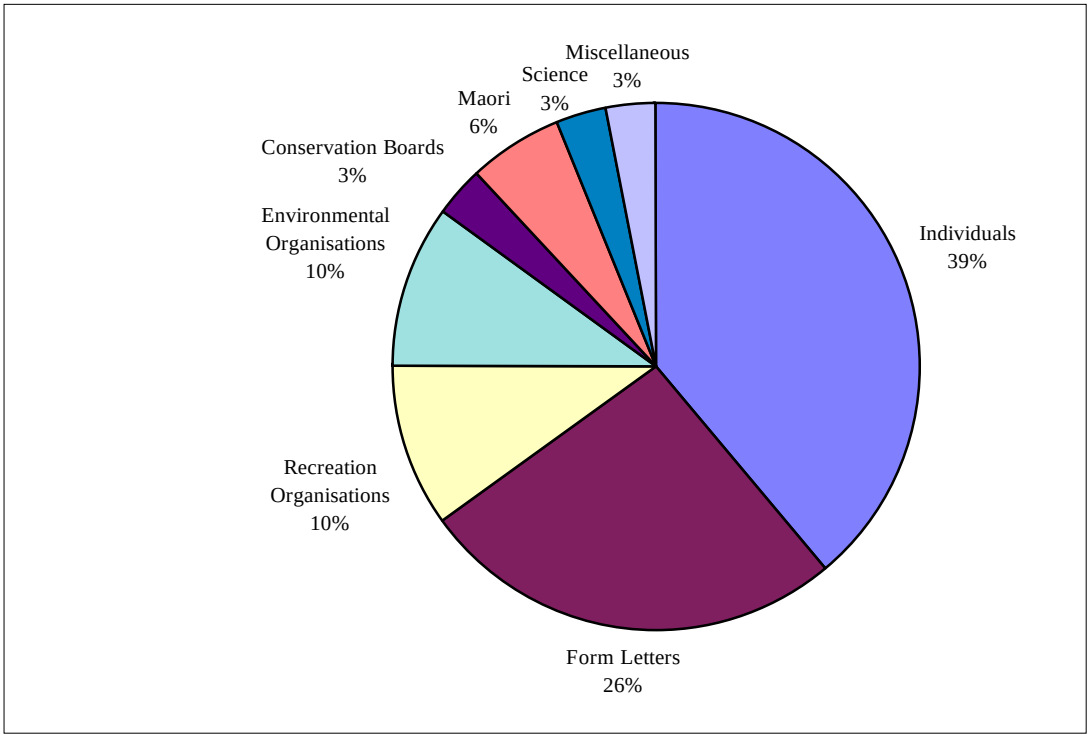

CHART 1: RESPONDENT GROUPS - WRITTEN SUBMISSIONS ONLY

There were very few written responses from Maori (6%). As the NZCA had expected, Maori mostly conveyed their views verbally at meetings and hui. The most significant proportions of written feedback came from the NGO groups (46%), although these groups expressed strong feelings that they had been excluded from the process and had not been given adequate opportunities for their views to be heard. A relatively high proportion of the written submissions were identical form letters organised by the NGOs (26%).

In addition to the written responses the NZCA considered the notes recording the discussions at the major meetings and hui around the country. Few Maori came to the public meetings. Few non-Maori or representatives from the NGO groups attended the hui held on marae.

There were some groups from which no feedback was received, most notably:

-- District and Regional Councils, responsible for the management of large tracts of land, much of which has significant wildlife and natural values;

-- forestry and agricultural interests, eg Federated Farmers; and

-- DOC, its Regional Conservancies, and individual staff members; DOC stated that it would not be appropriate for any comment to be made or any position taken while the NZCA is exploring the issue, and that it will provide advice directly to the Minister at a later stage in the process.

2.1.1 Approval and Opposition:

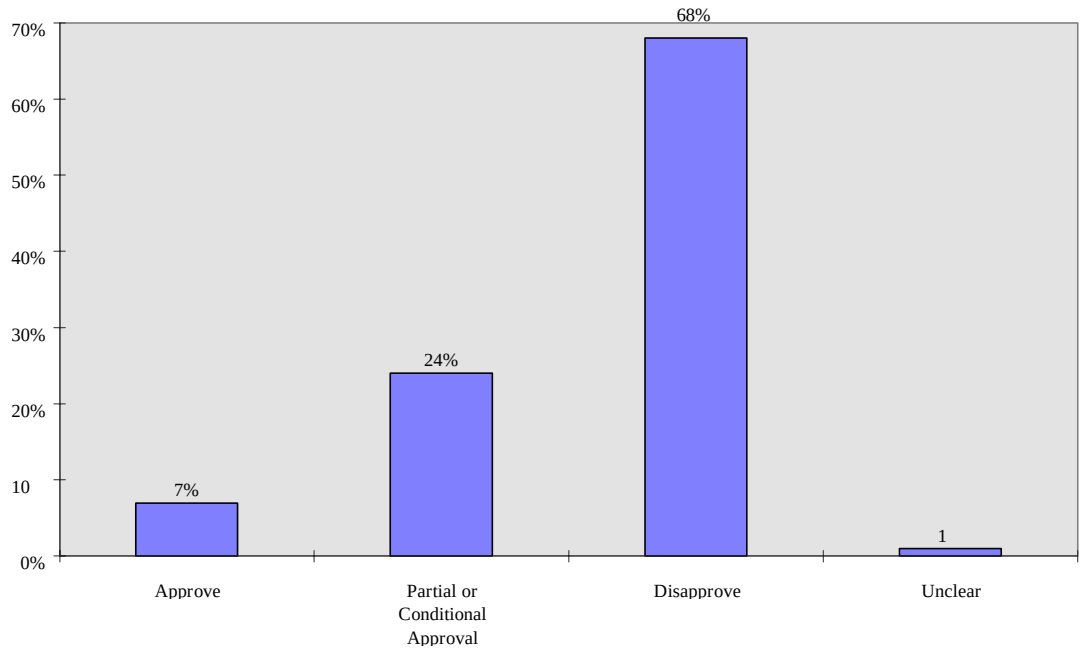

CHART 2: APPROVALS -- WRITTEN SUBMISSIONS ONLY

As Chart 2 shows, the majority of written submissions (68%) were opposed to Maori customary use of protected species and to any change in the conservation legislation. Many of the respondents opposing customary use were clearly unfamiliar with the actual 1994 Discussion Paper, instead basing their submissions on articles in the media and NGO journals. Some assumed that the NZCA's initiative was a full-scale policy, or that it proposed a system of Maori control over wildlife management which might have no constraints, monitoring or safeguards, and no opportunities for conservation groups to participate.

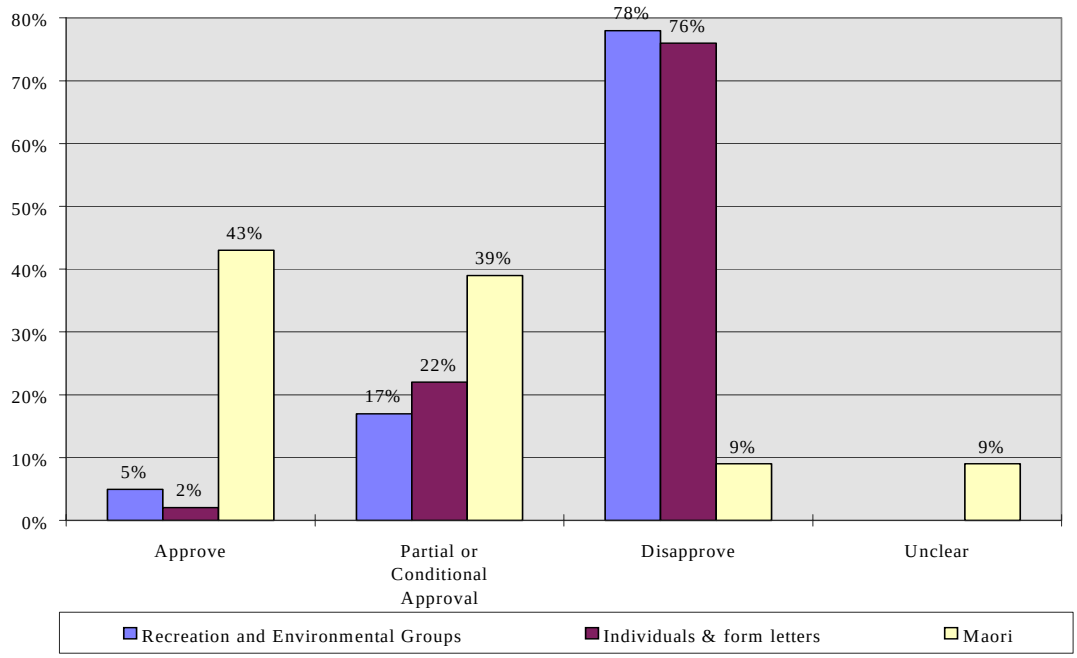

CHART 3: RESPONDENT GROUPS' APPROVALS -- WRITTEN SUBMISSIONS ONLY

Chart 3 gives more detail on the response patterns of the different groups making written submissions. Over 80% of Maori respondents gave full or conditional approval to traditional customary use of protected species; 78% of non-Maori were opposed.

At the hui and meetings the great majority of Maori speakers were in favour of customary use. The relatively few non-Maori speakers at the hui and meetings expressed opposition to harvesting birds and concern for protection of rare and endangered species.

2.1.2 Polarised Positions and Common Ground:

These polarisations reflect fundamental differences of philosophy and belief which became very obvious as the consultation process advanced. The essential difference is between an ethic of absolute preservation -- most strongly and consistently advocated by the environmental and recreation NGOs and their members -- and an ethic of sustainability, which was the basis of most Maori responses with the underlying concept of kaitiakitanga. These different systems of belief are discussed in detail in Section 4 below.

Importantly though the feedback also showed broad areas of common ground, especially regarding plant materials and the available materials -- feathers and bone -- from animals which have been accidentally killed (refer 5.4.1, 5.4.4 below). Respondents who might in some ways be very different discuss similar goals and visions for the future, and express similar love for and identification with New Zealand's wild species and natural places. The NZCA believes that this common ground offers a positive starting point for moving forward on this issue.

The first point of commonality is an essential commitment to conservation at the most fundamental levels -- an acute consciousness of the diminished, vulnerable state of New Zealand's natural taonga, and a demand that nothing more is lost or damaged. This concern was most often based in a deep personal affinity with New Zealand's natural landscapes and the unique plants and creatures that give us our identity in the world. Many respondents gave moving expression to the spiritual dimensions of experience in the natural world. Their commitment to conservation was often expressed through a concern for the quality of experience for future generations -- a determination that our grandchildren and their grandchildren will still be able to enjoy the natural landscapes and the birds, animals and plants that are these islands' unique heritage.

Secondly, as part of this commitment to the future, there was strong opposition from both Maori and non-Maori to uncontrolled, unauthorised harvesting or illegal poaching of native species -- of plant materials as well as birds. Maori respondents noted that much of this activity is done by outsiders, individuals who are not part of the local communities. Maori were concerned that such illegal and non-traditional taking must be kept distinct from other kinds of uses.

The third area of commonality is commitment to participation. Both Maori and non-Maori are absolutely determined to have involvement in whatever process is in place for conservation management. All respondent groups insist on their right to have their views heard, their knowledge taken into account, their contribution accommodated, their rights respected, and their long-term aspirations given an opportunity. The intensity and passion of many responses - the strength of feeling from all sectors - was clearly a factor in this demand for participation.

2.2 CONCERNS AND PRIORITIES

The principal concerns, priorities, ideals, ideas, proposals and doubts raised through the feedback process are briefly summarised below. This is not intended to be a full analysis of every detail from every submission and statement. It is a survey of those key points and concepts which the NZCA considers fundamental to advancing the issue. For a more comprehensive report of the feedback please refer to the Summary prepared by Works Environmental Management Consultants.[1]

2.2.1 A Scale of Values

The responses showed a scale of rarity, values and concern. Native birds and especially threatened bird species are at one end of the spectrum; for many people, hunting and eating native birds is violently offensive, and total protection is the only acceptable regime. Some of these respondents included large trees such as totara and kauri as equally rare and precious and so also requiring full protection. Some people objected to killing native birds and animals under any circumstances.

In the middle of the spectrum are feathers from accidentally killed birds used in weaving and whalebone from stranded whales used for carving.

At the other end of the scale are the more commonly available plants including pingao, harakeke, kiekie and rongoa plants. There was general agreement from both Maori and Non-Maori respondents that these species should be cultivated in special plantations for Maori customary use.

2.2.2 Rongoa Plants

There was strong concern from Maori respondents for the protection of adequate resources of traditional medicinal plants, and for local Maori communities to have access to these resources. Many Maori speakers spoke of rongoa resources and other plant materials being lost or damaged by forestry or council projects, or by the ravages of possums. Speakers at hui in Hawkes Bay, the Bay of Plenty, Northland, Manukau and Otago outlined instances where valuable plant materials had been removed or damaged. Even seemingly humble natural resources, if affected or lost altogether, can be significant -- for example, the special muds used for dyeing piupiu, formerly available from a stream in the Hutt Valley, were cleared out in the construction work for a new urban development. The local marae must now use artificial chemical dyes.

2.2.3 Icon Species

The responses from Non-Maori and particularly from the NGOs showed a strong focus on a relatively small number of icon species which were concurrently the focus of public controversy. Most common was the kereru, with respondents focusing on its decline, its vulnerability to poaching, and the imperative for protection. Other icon species commonly cited included toroa, kuaka, titi and totara. These respondents made no comments relating to the importance to Maori of a wide diversity of other species.

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[1] Geden and Ryan, 1995

2.2.4 The Worst-Case Scenario

Many submissions opposed to Maori customary use focused on the worst-case scenario, assuming that harvesting would inevitably lead to disaster. These respondents commonly cited the extinction of the moa and other birds before the arrival of Europeans, as support for their assertions that Maori customary use would not and could never be sustainable. Many of these respondents believed that if Maori were given access to any wild species there would be no constraints and no accountability. These submissions typically used strongly emotive vocabulary -- particularly the word "slaughter". A number of non-Maori respondents stated that Maori couldn't be trusted and that Maori lack the skills, knowledge, sophistication and commitment for modern conservation management.

2.2.5 Statutory Controls

Perhaps as a part of this focus on the potential for loss, many of the non-Maori submissions emphasised the need for strong controls, insisting on continuing Crown authority over conservation management and access to protected traditional species. Legislation for species protection is for these respondents the only way to provide reliable guarantees and ensure security for species at risk. Management by DOC was upheld as the only system in which these respondents had faith, and the only way to achieve accountability, transparency and professionalism.

2.2.6 Maori Participation in Management

Many Maori respondents also insisted on the security of binding statutory guarantees as the only way to ensure their participation and recognition of their rights. Many of these respondents expressed distrust of government systems and cynicism about delegations of Crown authority to Maori under the existing legislation -- concessions which, it was commonly felt, would not be reliable and would not reflect mana.

Many Maori respondents expressed strong dissatisfaction with the provisions for representation, consultation and involvement in the present conservation management systems. The specified number of places for Maori on the NZCA and Conservation Boards, and the limited numbers of Maori employed by DOC, were cited as ongoing difficulties.

Some non-Maori respondents however believed that the current systems are working well and providing Maori with adequate opportunities for participation and access to traditional resources.

Some Maori also commented on the ways in which Maori should be involved in conservation, insisting that a genuine partnership requires full participation from the outset of any initiative. Maori must be involved in determining the whole kaupapa or project, not merely brought in once objectives and frameworks have already been established and conditions and constraints already imposed.

2.2.7 A Local Focus

There was widespread and strong support from Maori respondents for a devolution of conservation management down to local community levels -- to the hapu level rather than the broader iwi or runanga levels. It was felt that hapu had a stronger capacity for direct involvement, and closer knowledge of and commitment to the resource or area. One consistent

message from Maori was that the imposition of management systems or restrictions by outside agencies would have less support, and less likelihood of success, than systems and controls developed and sanctioned by local decision-makers.

There was also support for management based at local levels on the basis that New Zealand's flora and fauna are extremely variable from region to region. Some respondents argued that this ecological diversity demands considerable flexibility -- within broad national guidelines -- and local differences in policy and management.

Non-Maori respondents were concerned however that local-level management of customary use could lead to a proliferation of committees and representation that would prove extremely expensive and unwieldy. These respondents felt that the large number of iwi and hapu in some regions would make a customary use process unworkable. Some non-Maori respondents also objected to what they perceived as one hapu or group making decisions for all New Zealanders.

There were also objections from non-Maori respondents to locally-focused decision-making on the grounds that many native species are threatened or rare nationally while still maintaining good numbers in some localities. It was felt that decisions must take the national -- and international -- situation into account. Attention was drawn to the difficulties with migratory seabirds and wading birds, and the complexity of assessing their population dynamics and robustness over global flyways crossing several countries and ecosystems.

The international dimension was also significant to some non-Maori respondents in the sense of New Zealand's responsibility to protect global biodiversity. One submission emphasised the uniqueness and the extraordinary importance globally of these islands' Gondwana heritage -- species and ecosystems unlike anything anywhere else in the world.

2.2.8 Traditional Knowledge

Maori respondents upheld the extensive body of matauranga Maori passed down through the generations. Much of this knowledge is locally or regionally distinctive and is based on an understanding of seasonal cycles. Many iwi have prepared Resource Management Policy statements setting out appropriate kawa and protocols for the management of natural resources in their rohe, and were concerned that Crown agencies should acknowledge and work more closely with these.

Some respondents acknowledged that in some areas traditional knowledge is itself now at risk, or has already been lost with the passing of older generations. For some non-Maori respondents this underlined their sense that Maori would not be capable of good conservation management; for Maori it was an imperative to educate the younger generation to ensure the retention and viability of matauranga Maori.

Some non-Maori submissions expressed the belief that traditional Maori knowledge is not "real" science, or that such knowledge is now hopelessly out-of-date and could not have kept up with the changes to the landscape and ecology since 1840.

There was some support from both Maori and other respondents for traditional hunting and harvesting methods and techniques. There was concern, mostly from non-Maori writers, at the heavier impacts on bird populations of modern weapons and technology. Maori concern was at the damage caused to plant resources -- harakeke, kiekie and rongoa species in particular -- by inappropriate harvesting techniques and inexperienced people.

2.2.9 Intellectual Property Rights

Many Maori respondents were seriously concerned at the alienation and exploitation for commercial gain of traditional knowledge and traditional species. There were many angry references to GATT and international trading agreements. There was widespread criticism of the appropriation and patenting of indigenous natural materials and traditional medicinal knowledge by foreign pharmaceutical corporations.

Many Maori respondents and some non-Maori referred to the current claim to the Waitangi Tribunal for Indigenous Flora and Fauna, WAI 262. Some respondents felt that the issue of Maori customary use of native species should not be addressed until this claim has been heard and the Tribunal's findings have been considered by government. This claim will be considered by the Tribunal in 1997.

Only a few references were made to the proposals to revise New Zealand's copyright and patents legislation, which were being developed in 1994 and early 1995 by the Ministry of Commerce in association with Te Puni Kokiri.

2.2.10 Science and Management

Many submissions emphasised the importance of basing all decisions about customary use and conservation management in reliable scientific data. There was widespread concern that more research needs to be done to provide baseline information about species and ecosystems, their robustness or precariousness, and the other factors impacting upon them such as predators, habitat loss and competition.

Many people insisted that customary use should only be allowed under the most scrupulous scientific monitoring. Some submissions discussed various mechanisms and techniques for establishing and testing harvest levels. Some insisted that the Precautionary Principle must apply, and that sustainability must:

-- take into account the full complex of inter-relationships between species within the overall ecosystem;
-- assess both the local populations and discrete habitats and the larger national and international picture; and
-- address the possible impacts on recruitment relationships between neighbouring populations.

Many Maori respondents were highly critical of contemporarymanagement of land and natural resources. There was strong concern about:

-- the decline and destruction of ecosystems and resources;
-- the impacts of exotic pests and weeds and the methods employed to combat them;
-- the pollution and degradation of natural sites and mahinga kai;

-- adequate protection for wahi tapu;
-- the artificial boundaries drawn between land, coast and sea, and between different government agencies and councils;
-- the confusion and complexity of legislation; and
-- perceived inconsistencies in scientificmanagement and research, with some species being given high priority while others, often those important to Maori, receive little or no attention (for example, rongoa plants, or native freshwater fish species).

2.2.11 Significance

Most respondents both non-Maori and Maori spoke of the importance of native species to their identity, culture and sense of values. The issues and priorities raised here are discussed in detail in Part 4 below.

2.2.12 The Treaty of Waitangi

The Treaty was central to most of the responses from both Maori and non-Maori. Many Maori asserted that under Article II of the Treaty customary use rights are guaranteed, and that their ancestors never ceded rights to harvest and utilise traditional taonga. To these respondents the question is a matter of rangatiratanga -- not so much whether or not species are available for harvest, but who has the authority to make those decisions. These respondents insisted that existing legislation such as the Wildlife Act, National Parks Act and Marine Mammals Act is in contravention of Article II of the Treaty and thus invalid; one submission urged "the review of the Wildlife Act to align with Te Tiriti"[2]. Some Maori speakers argued that the issue of customary use should be deferred until Waitangi Tribunal claims had been heard and resolved.

Many non-Maori respondents however believed that Maori claims under Article II have no valid legal standing or justification. Some NGO submissions argued that Maori customary use "equated to a ceding of sovereignty to iwi of the control of all native plants and animals", and insisted that traditional use is "contrary to New Zealand law and to the Treaty".[3] These submissions' interpretation of the Treaty was that it guarantees authority, control and decision-making for natural taonga to the Crown under Article I.

Some non-Maori respondents felt that Maori are seeking unwarranted special treatment as a private interest group, and claiming more than their entitlement as New Zealand citizens. There were references to Article III's provision of equal citizenship. There were assertions that customary use would be culturally divisive by discriminating aginst non-Maori, and that there should be one law for all New Zealanders. Some of these submissions expressed a sense of impatience, asserting that the Treaty is over 150 years old and that Maori need to move into the modern world.

[2] Ngati Wai Trust Board submission
[3] Forest & Bird National Office submission

2.2.13 International Obligations

A number of non-Maori respondents referred to the international agreements to which New Zealand is committed, in particular the Convention on Biological Diversity. The obligation under the Convention to protect biodiversity was upheld as an imperative for total preservation of species. (Refer 3.6 below).

2.2.14 Definition and Understanding

Several non-Maori respondents sought clarification of what is actually meant by Maori customary use. It was noted that the 1994 Paper did not put forward a precise definition of customary use, of the species and quantities sought, or the possible impacts and changes in management that might be required for particular species. It was suggested that greater clarity at this specific level would disarm or invalidate much of the criticism and opposition to the NZCA's initiative. Some Maori statements however insist that only Maori are able to establish such definitions, and have the right to do so.

It was also recommended that there should be a clear definition of sustainability. It was very clear from the majority of written submissions that there is considerable confusion, inconsistency and very limited knowledge across a wide spectrum of issues -- Maori relationships with the natural world, contemporary ecological realities, legal and statutory provisions, and the values and traditions of Western society.

2.2.15 Non-Maori Requirements

A number of respondents asserted that native species were equally taonga to non-Maori as to Maori, and should be made available to all aspiring users.

Maori respondents also expressed concern at non-Maori demand for materials, such as taking specimens for academic research or museum displays. There was particular concern at requirements for commercial uses -- such as bone for carvings, or seed and propagating materials for plant nurseries and collections.

2.2.16 Substitution of Other Materials

Many non-Maori submissions argued that Maori craftspeople should replace traditional native materials with other things -- macrocarpa for carving, feathers from exotic gamebirds for weaving, and domestic fowls for traditional foods. Some people suggested using Tegel chicken flavoured with miro berries as a substitute for kereru.

Some Maori speakers also referred to the necessity for such substitutions -- in particular feathers for weaving -- as evidence of the inadequacy of present access and allocation systems.

2.2.17 Land Status

A number of non-Maori respondents made distinctions between different categories of land for access for customary use. Many insisted that National Parks and Reserves, and other high-quality areas, should be off limits to any use. Others argued that harvesting should only be allowed outside the conservation estate, on private lands or Maori lands.

There was some confusion regarding the actual provisions of the statutes and their application to plant or animal species and lands of different status.

2.2.18 Administration and Funding

Both Maori and non-Maori respondents commented on the requirements for administration and funding. Maori were concerned that adequate resourcing must be allocated for consultation, management and distribution processes, and for restoration and pest control. There was cynicism about Crown assumptions of Maori contributions of time, expertise and practical work. Many Maori speakers referred to the heavy load of projects across a range of issues -- health, education, housing, social, vocational -- which seek consultation, input and commitment from marae and iwi. Maori insisted that their contributions must be appropriately valued and their costs covered.

Non-Maori respondents were also concerned at the levels of funding that might be required. These submissions noted the current constraints on the overall funding available for conservation, and objected strongly to resources being diverted from other conservation priorities, especially programmes for endangered species. The potential for extensive administrative structures, and the necessary research into population levels and robustness, were seen as prohibitively expensive. Some submissions also insisted that the New Zealand taxpayer should not be expected to fund a system that benefits only one section of society.

There was concern that any system for customary use or Maori participation in conservation must be scrupulously transparent and accountable. A number of non-Maori respondents and NGOs insisted on a full public decision-making process, and on guaranteed input for their groups. There was some Maori opposition to what was perceived as interference by NGOs in a Maori traditional matter.

Some non-Maori respondents suggested that one way to deal with the resourcing implications might be to develop a user-pays system with licence fees -- similar perhaps to the current licensing system for sports fish and game.

2.2.19 The Discussion Paper and Process

Many respondents had strong criticisms of perceived deficiencies in the 1994 Discussion Paper and the process of gathering feedback. Clearly some groups' expectations were not satisfied, their views not given prominence, their value systems not endorsed.

Although the NZCA stated clearly in the introductory sections to the 1994 Paper that it was "not a final statement of policy or intent", and that the NZCA had "reached neither a firm concensus nor any fixed conclusions about these issues", many non-Maori respondents believed that the Paper had the formal status of policy or a policy proposal, that the Paper and the NZCA were biased in favour of Maori, and that the NZCA had already made a decision to allow Maori harvesting. Many of these criticisms complained that only one system had been discussed; many asserted that the Paper should have promoted the existing DOC-controlled systems. These respondents worried that the Paper would create unrealistic expectations amongst Maori. They felt that the Paper should have included scientific data on the vulnerability and degraded status of native species as reasons why customary use should not be allowed.

There were similar fears about the process of consultation, with accusations that non-Maori were being excluded from the process, that only "closed" Maori hui were being held, and that town-hall meetings should have been held for the general public. Maori also had criticisms of the consultation process, noting that there should have been more hui with a more comprehensive regional coverage, that Maori should have been involved earlier in the process before the Paper was printed, and that there should have been more time.

The Paper's production as a bi-lingual document caused some problems for non-Maori respondents. Many expressed their belief that the Maori text was different from the English, and that therefore Maori were being given a different message.

Many non-Maori and particularly NGO responses criticised the NZCA for undertaking this initiative at all. These respondents believed that the NZCA, with the word "conservation" in its title, as defined in the Conservation Act (refer 3.1.1), should as its primary objective work to uphold the protection and preservation of native species. These people believed that the initiative on customary use was in conflict with conservation, and that the NZCA should not even be considering such concepts. Others however acknowledged the importance and positive potentials of working to find better ways for Maori to participate in conservation.

The NZCA records that its initiative in conducting this debate was at the request of the Minister of Conservation, who sought an investigation of the issue of Maori customary use and an exploration of the views and concerns of the New Zealand public.

3.1 THE LEGISLATION

3.1.1 Legislation and Purpose:

There are a range of different laws which apply to Maori customary use of native plants and animal species. The first of these is the Conservation Act 1987, which serves as an "umbrella" under which the other Acts listed in its First Schedule are also administered by DOC. Acts in the First Schedule with particular relevance for Maori customary use include the Wildlife Act 1953, the Marine Mammals Protection Act 1978, the National Parks Act 1980 and the Reserves Act 1977.

The different Acts work in two basic ways. The Wildlife and Marine Mammals Protection Acts establish protection for native wildlife and marine mammals wherever those creatures might be found. However native plants are only legally protected when they are growing on conservation lands. The Conservation, National Parks and Reserves Acts establish different provisions governing access to native species on lands of different status, and set out criteria based on the different purposes for which access might be sought.

Generally these statutes are established with the overall intent of protecting natural resources and species. In the past, conservation was often accommodated within a wider suite of management objectives. Until the mid-1980s, the administration of natural areas, forests and other resources usually attempted to balance a range of purposes -- including utilitarian multiple use regimes, forestry, mining and pastoral uses, recreational uses and tourism priorities -- with the protection of natural places and species. Maori commentators however note that the legislation and administrative systems of earlier times were developed without reference to the Treaty of Waitangi and without participation or consultation with iwi (refer 3.1.2 below).

In the mid-1980s, those government agencies with land and resource management responsibilities were restructured, and the more utilitarian functions were separated out and allocated to new agencies such as the Forestry Corporation or Landcorp. The sections of the various agencies with specific responsibilities for protection and conservation were brought together under the Conservation Act in the newly created Department of Conservation. The conservation focus was now to be clear, direct and unambiguous, without the competing approaches and requirements of other management priorities.

In section 2 of the Conservation Act, the following definitions are made:

-- "conservation" means 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 the options of future generations;

-- "nature conservation" means the preservation and protection of the natural resources of New Zealand, having regard to their intrinsic values and having special regard to indigenous flora and fauna, natural ecosystems and landscape;

-- "preservation", in relation to a resource, means the maintenance, so far as is practicable, of its intrinsic values; and

-- "protection", in relation to a resource, means its maintenance, so far as is practicable, in its current state, but includes:
(a) its restoration to some former state, and
(b) its augmentation, enhancement or expansion.

For comment on the definitions and concept of "intrinsic values" refer to section 4.3.6 below.

Many of the submissions received from non-Maori and NGOs in response to the NZCA's 1994 Discussion Paper gave strong emphasis to the principles of absolute preservation of species and ecosystems and total protection of intrinsic natural values, as the basis and primary intent of the Conservation Act and other statutes: "Support for current legislation: Preservation as the primary principle of management..."[4] For many respondents, the idea of any non-scientific use of native species and materials was seen as incompatible with this over-riding conservation ethic.

3.1.2 The Treaty and the Legislation:

The injunction of Section 4 of the Conservation Act -- that it "shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi" -- is unique in New Zealand law. It establishes a stronger obligation than other recent legislation:

-- the Resource Management Act (Section 8) requires decision-makers to "take into account the principles of the Treaty of Waitangi";

-- Section 9 of the State-Owned Enterprises Act 1986 establishes that nothing in that Act shall permit the Crown to act in a manner inconsistent with the principles of the Treaty;

-- the Foreshore and Seabed Endowment Revesting Act 1991 and the Harbour Boards Dry Land Endowment Revesting Act 1991 each contain a clause which requires persons exercising powers or functions under those Acts "to have regard to the principles of the Treaty of Waitangi."; and

-- the Historic Places Act 1993 requires under Section 4(2)(c) that all persons exercising functions and powers under it "shall recognise... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga."

[4] Federated Mountain Clubs (FMC) submission

Some of the NGO respondents to the NZCA's 1994 Paper, upholding a strict preservation ethic as the essential purpose of the conservation legislation, argued that Section 4 "is in direct conflict with the purpose of the Conservation Act... Section 4 must go."[5] FMC members were encouraged to lobby for the removal of Section 4 from the Conservation Act, which it was asserted "would be a major positive gain for conservation."[6]

It is only in recent years that the Treaty has been incorporated into legislation as it is in the Conservation Act and the Resource Management Act 1991. Earlier Acts are founded on the essential principle of Crown control or kawanatanga. Some Maori respondents and commentators consider that the 1953 Wildlife Act, 1980 National Parks Act and 1977 Reserves Act are invalid because they contravene the Treaty of Waitangi and deny the kaitiakitanga of tangata whenua (refer 2.2.12, 3.3.3 and 4.1.3). There was, some Maori feel, either no involvement or only token acknowledgement of tangata whenua and their interests and concerns in the drafting and debate processes for the earlier Acts. Therefore they question the validity of that legislation.

Section 4 and its implementation in the daily work of DOC have been described as "a recognition of Crown obligations under the Treaty... a framework that recognises the rights and interests of tangata whenua."[7] The significance of Section 4 in the development of CMSs and other DOC policy statements -- such as the Visitor Strategy or the Historic Resources Strategy -- is noted, although it is also observed that:

> The success of any environmental and conservation policies, however, depends on Maori involvement at the developmental stage, and ... departmental responsiveness to tangata whenua aspirations in the implementation stage. Problems have arisen with inadequate resourcing of Maori; ineffective departmental ... consultation strategies; and a lack of comprehension of Maori aspirations.[8]

With two draft CMSs prepared under the Conservation Act -- Tongariro/Taupo and Northland -- claims have been lodged with the Waitangi Tribunal, challenging the Department's implementation of Section 4 and asserting that the draft CMSs:

-- detrimentally affect taonga and other interests of great significance to the iwi;

-- override the right of the iwi to exercise tino rangatiratanga over the land and natural resources within their rohe;

-- prevent the iwi from exercising the rights and obligations of kaitiaki over the land and natural resources within their rohe; and

-- fail to give any real or practical recognition of the Treaty of Waitangi.

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[5] FMC Newsletter November 1994
[6] FMC Newsletter November 1994
[7] Te Puni Kokiri p 13
[8] Te Puni Kokiri p 13

A Working Party including representatives of Ngati Tuwharetoa, DOC and Crown legal advisers has been established to work through the claim against the Tongariro/Taupo CMS. The two claims against the Northland CMS will be considered in the context of the outcomes of that Working Party process.

The significance of Section 4 for the various Acts listed on the First Schedule to the Conservation Act has been an area of considerable debate. In the NZCA's 1994 Discussion Paper, the following general rule was advanced:

> ... even where there is no formal reference to the Treaty in the prevailing legislation, it must still be recognised as a fundamental underlying part of the fabric of all New Zealand legislation. The formal statutory applicability or otherwise of a requirement to give effect to... Treaty principles... should not be allowed to constrain the development of a practical partnership framework.

Some submissions in response to that Discussion Paper argued that Section 4 did not extend to the First Schedule Acts. However the courts have determined that Section 4 does in fact have relevance for the associated legislation. The Court of Appeal in *Ngai Tahu Maori Trust Board v. Director-General of Conservation* (the Kaikoura Whalewatching case) found that:

> Statutory provisions for giving effect to the principles of the Treaty of Waitangi in matters of interpretation and administration should not be narrowly construed. We accept that Section 4 of the Conservation Act requires the Marine Mammals Protection Act (one of the statutes listed in the First Schedule)... to be interpreted and administered to give effect to the principles, at least to the extent that the provisions of the Marine Mammals Act and Regulations are not clearly inconsistent with the principles.[9]

3.1.3 The Wildlife Act:

The Wildlife Act provides "almost absolute protection for 'wildlife', ie. any animal living in a wild state"[10] except for species, in particular harvested fish species, which are covered by other legislation:

> The definition of "animal" is legal rather than scientific. It includes most wild mammals (but not rabbits, hares or marine mammals), all wild birds, all reptiles and native frogs, and several dozen invertebrates (all giant wetas, all large land snails, some weevils and other beetles, a grasshopper and the cave spider).
>
> The Act has recently been amended to include a few species of... fish and invertebrates that were previously protected under fisheries regulations... The vast majority of invertebrates are... excluded... [11]

[9] Court of Appeal, Judgement of Cooke P, 22 September 1995
[10] Bosselmann & Taylor p 114
[11] Ministry for the Environment p 137

To simplify the listing of a great number of protected species, the Wildlife Act lists, in its various Schedules, those species which are NOT protected. The only native bird that currently has no protection at all is the karoro.

However "the protection afforded to wildlife in New Zealand is limited by a number of human interests such as hunting and farming."[12] Section 5 of the Act provides for the Second Schedule, which lists Partially Protected Wildlife -- hakoakoa, tauhou, kawau, kahu and the exotic little owl, if causing any injury or damage to land or property, may be killed on that land by the land-owner or occupier. This provision is for the protection of pastoral and horticultural interests. Section 54 makes further provisions along these lines, enabling the Director-General to authorise the hunting or killing of any animals or birds, whether absolutely protected or not, even in a wildlife refuge, if it is proven that they are responsible for injury or damage to any person, land, stock or property.

Section 6 of the Wildlife Act provides for the Third Schedule, which lists species that may be hunted or killed at the discretion of the Minister of Conservation. Provision is made for setting conditions for harvest for those species. Any absolutely protected species intended for general accessibility for traditional harvest would need to be listed on the Third Schedule. Species may be added or deleted from the Schedule through an Order-in-Council under Section 8(1) of the Act; there is no requirement for public consultation on such additions or amendments to the Schedules.

Section 53 of the Act provides for the Director-General to authorise the take of protected species, for any purpose approved by him or her. Such purposes can include cultural and traditional uses. This Section is used to authorise the holding of feathers, bones and other parts of dead wildlife (refer 5.4.4 below), as well as providing for approval to catch alive or kill birds and other creatures. The Director-General can impose conditions and requirements as appropriate, for example specifying who may take wildlife, the methods to be used, the times when wildlife may be taken, the exact areas from where it may be taken, and requirements for monitoring and reporting of the numbers taken.

The catching and keeping of live specimens and eggs is also provided for under Section 53. There are regular requests for native birds and animals for scientific research and educational programmes. In practice, permits are usually issued for taking live specimens only for scientific management and captive breeding programmes, although authorisation may be given for any purpose approved by the Director-General.

In its 1994 Discussion Paper the NZCA noted an essential difference between the relatively wide general access to the species listed under the Third Schedule, and the specificity and precision possible when providing for access to wildlife under Section 53. It suggested that:

> ...Section 53 offers both greater flexibility and greater discrimination, with the legal capacity for specific small-scale uses of different species, approved for particular

[12] Bosselmann & Taylor p 114

people or groups of people, for particular reasons or purposes, limited as appropriate to a short timeframe or localised to a defined area.

A number of non-Maori and NGO submissions in response to the 1994 Paper strongly opposed this possible reading of the capacities of Section 53, arguing that the over-riding principle and intent of the Wildlife Act is the complete protection and preservation of wildlife, and that Section 53 was only intended to provide for access by scientists for research and management purposes.

Section 55 of the Wildlife Act provides for specimens -- "the dead bodies of any species of absolutely or partially protected wildlife or of any game" -- to be kept in public museums. Requirements are established such as the keeping and inspection of a register of specimens held, and the retrieval by DOC of unauthorised specimens. The authority to hold specimens may be general or restricted to a particular species or a single creature. The authority to hold the bodies of protected birds "that have died from natural causes or been accidentally killed" can also be extended to ornithologists, subject to unspecified conditions. This Section is designed specifically to cater for the needs of scientific research and public displays. The need for resolution of the legal situation applying to the holding and ownership by Maori of dead wildlife and their feathers and bone, and the taonga into which these natural materials may be incorporated, is discussed in 5.4.4 below.

3.1.4 The Marine Mammals Protection Act:

This legislation provides for the protection of all marine mammals -- all whales, dolphins and porpoises, and all seals including elephant seals, leopard seals and sea lions -- from being injured, killed or molested around New Zealand's coasts and out to 200 nautical miles offshore. It also provides for the establishment of Marine Mammal Sanctuaries for the protection of areas where marine mammals are commonly found. This Act was only the second of its kind in the world, following the USA legislation for marine mammals (refer 3.6.8: the International Whaling Commission).

Section 4(1)(b) of the Act requires any person taking any marine marine mammal, alive or dead, or any part of any marine mammal, to have a permit. "Taking" is defined under Section 2 to include "to take, catch, kill... or possess... to flense, render down, or separate any part from a carcass." The approval of permits is granted under Section 6 and, for any applications to take bone or teeth from dead stranded whales, is delegated to Regional Conservancies. The public consultation requirements specified under Section 5(5) for applications to take marine mammals are specifically waived for the taking of whalebone from dead whales.

Section 4(5)(a) allows "any person who finds or collects bones, teeth, ivory or ambergris that have already separated naturally from a marine mammal" to take those materials with the condition that DOC is informed. Section 18(2) provides for the disposal of dead marine mammals, and requires that such disposal be done "after consultation with the occupier of the place where the marine mammal is found." DOC notes that there are potentially significant health issues involved in the consumption of meat from stranded whales; the stranding may have been associated with sickness or decline, there may be dangerous parasites infesting the body, and the animal may also have suffered extreme stress during stranding.

The Act makes no reference to Maori customary use of whales and seals, whalebone and teeth, or to the Treaty of Waitangi (refer however 3.1.2, Court of Appeal finding that the Marine Mammals Protection Act should be interpreted and administered in accordance with Section 4 of the Conservation Act). The only purposes mentioned in Sections 5 and 7, which establish the conditions and criteria for taking marine mammals, are for the public exhibition of the animals in zoos or aquariums, or for scientific research.

3.1.5 The Conservation Act:

The principal statute which both establishes DOC and empowers it to carry out the conservation of New Zealand's natural and historic resources, the Conservation Act includes specific provisions for Maori customary use of plants on or from conservation areas. Under Section 30(2) the Director-General may authorise any person to take any plant intended to be used for traditional Maori purposes. In Section 2 of the Act "plant" is defined as "any member of the plant kingdom" which may include both native and exotic species, and the full range of plants from the majestic totara through to the humblest fungus.

The other parts of Sections 30 and 31 establish other criteria for the harvesting of plant materials from conservation areas. Harvesting is required to be in accordance with the CMS or CMP for the particular area, or with a lease or licence granted before 1987. Pragmatic human priorities are here as with the Wildlife Act the basis for various identified exceptions to the general protection -- plants may be moved or removed as necessary for the extraction of shingle, sand or gravel, for the construction and maintenance of roads, accessways or recreational facilities, for mining or water impoundment works, and for conservation management and scientific research.

Section 38 of the Conservation Act provides for hunting of introduced and game species to be allowed on conservation lands under permits issued by the Director-General -- in practice this is delegated to Conservancies and Field Centres. Hunting may only be allowed if it is in accordance with management plans, and having regard to public safety. A hunting permit may be either unconditional or have conditions, and an administration fee may be charged. Section 38 defines the activities and situations which constitute an offence if conducted without an official permit. However this section does not specify the reasons or purposes for which approved hunting might be undertaken, except to require that it must conform to the relevant management plan.

The most commonly hunted animals are pigs and deer, as well as goats, thar, chamois and wallabies. Many Maori as well as non-Maori hunt pigs regularly, especially in remote regions, often for pragmatic reasons of providing food. Pig-hunting is a strong tradition in Polynesian cultures. Few Maori hunt deer or alpine species such as thar -- deer-hunting is however an important traditional feature of European cultures (refer 4.2.3 below).

The 1996 Conservation Amendment Act established some new provisions and conditions for the issue of concessions, permits, licenses and leases for various kinds of activity on conservation lands. The Reserves and National Parks Acts were simultaneously amended to conform with these new provisions. Some of the changes affect the issuing of permits to

collect plant or animal or soil samples for both non-commercial and commercial purposes. These kinds of activities can include research, plant breeding, nursery work, and bioprospecting; Maori customary uses are not specifically mentioned.

Criteria to be taken into account before permits can be issued by DOC can include:

-- the nature and potential effects of the collecting activity;
-- proposed actions to avoid, remedy or mitigate those effects;
-- submissions from any public advertising of the request, if such advertising is considered necessary depending on the potential effects;
-- the duration of the proposed activity;
-- the proposed sites for the collecting and the status of those places;
-- the provisions of any CMS or CMP;
-- a rent, fee or royalty (which may be waived or reviewed);
-- maximum sample sizes;
-- permitted species and excluded species; and
-- consultation with tangata whenua for commercial collection applications.

3.1.6 Conservation Management Strategies:

The Conservation Act provides for the preparation, approval and review of CMSs and CMPs, and each of these regional strategies and plans may make provision for appropriate Maori access to traditionally important resources in that region. Each regional CMS will be slightly different, reflecting the concerns and priorities of that area as expressed through extensive public consultation processes -- including hui and dialogue with tangata whenua. It should be noted however that two draft CMSs -- Northland and Tongariro/Taupo -- have been the subject of claims to the Waitangi Tribunal (see 3.1.2 above).

Provisions have been made for Maori customary use of native species in the CMSs so far approved by the NZCA. The Hawkes Bay CMS establishes under its section 3.6.4 a series of Objectives, including purposes for which species and materials might be permitted to be taken, and a series of Implementation provisions, including:

-- criteria and conditions;
-- the protection of threatened or locally uncommon species;
-- the protection of species in ecological areas and nature reserves (the most ecologically sensitive categories of lands);
-- the encouragement of alternative sources on private lands; and
-- the roles of DOC staff and the Conservancy Cultural Materials Committee.

The Wellington CMS acknowledges under its Section 12 the interest of "educational organisations, weaving groups and herbal medicine groups operating from a Maori perspective" in using natural resources managed by DOC. The CMS discusses the kaupapa of working with tangata whenua to develop management policies in consultation with them. Under Section 14.3: *Marine Mammals,* the CMS establishes "a co-operative working relationship with tangata whenua on the distribution for cultural purposes of whale bone and teeth". Under Section 14.4: *Taking Plants and Animals,* the CMS outlines the principle of

working with tangata whenua to establish levels of demand, to ensure that use is sustainable, and develop mutually agreed protocols.

The Auckland CMS approaches the issue of Maori customary use by focussing on the various categories of flora and fauna -- native birds, other animal species, native plants, and marine mammals. Each section provides for "the interests of iwi" and for the administration of permitting procedures as applicable, including taonga and cultural materials, according to "approved Departmental guidelines/procedures." Under its *Treaty of Waitangi* section the CMS establishes general principles of working closely with iwi, and:

> Explor(ing) with tangata whenua means by which customary Maori conservation practices (such as rahui) may be used and supported to achieve conservation goals. (Section 26.1.4, p 220)

3.1.7 The National Parks Act:

Some respondents to the NZCA's 1994 Discussion Paper expressed the belief that National Parks are areas set completely aside from human interference, natural treasures that are "so beautiful, unique or scientifically important that their preservation is in the national interest" (Section 4(1)) and are therefore "preserved as far as possible in their natural state" (Section 4(2)(a)). However the National Parks Act has been described as, like the Conservation Act, "a multi-purpose statute, providing for both preservation/protection and human utility."[13] Section 4 of the Act sets out the following purposes:

> (Parks are to be preserved) in perpetuity as national parks, for their intrinsic worth and for the benefit, use and enjoyment of the public (Section 4(1))
>
> Subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of native plants and animals or for the welfare in general of the parks, the public shall have freedom of entry and access to the parks (Section 4(2)(e)).

The 1983 General Policy for National Parks notes that:

> Clearly the intention of the legislation is that policies should be directed to ensuring an appropriate balance between the preservation of areas that are integral to New Zealand's heritage, and provision for optimum public access to and enjoyment of areas that lend themselves to... use.[14]

[13] Bosselmann & Taylor p 115
[14] *General Policy for National Parks* p 6

Under Section 5 of the Act the taking of indigenous plants and animals is prohibited "without the prior written consent of the Minister". Any such uses approved by the Minister must be in accordance with the Management Plan for the particular Park. The purposes for which plants and animals might be taken are not specified in the legislation.

The 1983 General Policy for National Parks provides specifically for Maori customary use:

> Traditional uses of indigenous plants or animals by the Maori people for food or cultural purposes will be provided for in the management plan where such plants or animals are not protected under other legislation and demands are not excessive.[15]

The General Policy also provides in Policies 8.6 and 8.7 for the "collection of specimens of indigenous plants and animals and soil, geological and other specimens... for approved scientific research and educational purposes". Conditions may be imposed, and the collection of rare, vulnerable or endangered species is allowed with the proviso that "independent scientific advice will be sought".

Policy 11.5 covers customary freshwater fishing, although it does not specify by whom:

> Where land is taken into a park and where there is an established tradition of fishing for eels and whitebait, such use may be authorised where there is provision in the management plan and where the resource is sustainable.

Regarding any use or taking of indigenous species and materials from National Parks, the General Policy draws a distinction between National Parks and other kinds of conservation lands, and outlines the fundamental priorities of:

> ...protection of natural resources and maintaining ecological integrity... Emphasis will be placed on researching and understanding natural processes and minimising interference with these processes. Protection will be offered in ways appropriate for the type, significance and sensitivity of resources... In contemplating any use or development of national park lands there is a primary responsibility to ensure natural values are not unnecessarily compromised and to minimise disturbance of the natural environment and ecosystems.[16]

Although the National Parks Act and the General Policy do not make specific reference to the Treaty of Waitangi, the General Policy does require the particular involvement of tangata whenua in National Parks management and proposals:

> Interested individuals and organisations will where appropriate be approached directly for their views on specific proposals. In particular consultative procedures with local Maori groups which have historical or spiritual ties to land in national parks will be

[15] *General Policy for National Parks* p 21
[16] *General Policy for National Parks* p 20

> fostered, and the views of such groups will be fully considered in formulating management policies.[17]

3.1.8 The Reserves Act:

The Reserves Act establishes Nature Reserves and other kinds of Reserves for the purpose of "ensuring, as far as possible, the survival of all indigenous species of flora and fauna" (Section 3(1)(b)). However it is noted that as with other legislation this protection:

> ...is again limited by human interests (in the form of the provision... for the benefit and enjoyment of the public (Section 3(1)(a)), demonstrating that nature reserves in New Zealand 'exist as much for the benefit of humans as for the benefit of their natural inhabitants and features.'[18]

Under Section 46 of the Reserves Act provision is made for the Minister to grant to Maori the right to take or kill birds within Scenic Reserves only, where that reserve used to be Maori land, and subject to the provisions of the Wildlife Act and Regulations. Sections 49 and 50 provide for the taking of plants, animals, rock minerals or soil samples, for educational and scientific purposes, subject to such conditions as may be appropriate and to the Wildlife Act and other regulations.

3.1.9 The Native Plants Protection Act

A statute which is nowadays rarely used, the 1934 Native Plants Protection Act established protection for indigenous plants, including seaweeds and freshwater weeds, fungi, lichens, liverworts and mosses. The Act made it an offence to take any protected native plant growing on Crown lands or public reserves; however plants could be taken from private land with the consent of the owner or occupier. Under Section 4(2) exception was provided for:

> the taking, in reasonable quantities, of any protected native plants required or intended for medicinal purposes or for purposes of *bona fide* scientific research or nature study in schools or elsewhere or for propagation in private or school gardens.

These exceptions were subject to the proviso that taking of native plants should not "deplete the species of that plant in any one habitat".

Under Section 6 there is provision for the Minister to issue permits for taking protected native plants for scientific or any other approved purpose, subject to such conditions or "limitations as to locality" as may be necessary.

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[17] *General Policy for National Parks* p 8

[18] Bosselmann & Taylor p 115, quoting D. E. Fisher, 1987, "The New Environmental Management Regime in New Zealand", *Environmental Planning Law Journal*, 4:33-88

3.2 CURRENT DEPARTMENTAL PROCEDURES

3.2.1 Regional Decision-Making

Each regional Conservancy office of DOC has the responsibility, under delegated authority of the Director-General to the Regional Conservator, to manage lawful Maori customary use of available materials in the region. This consists of establishing criteria and procedures, considering applications from Maori, approving or declining those applications, and facilitating the allocation or provision of materials.

Each Conservancy has, in the absence of national DOC policy and procedure on this issue, and within the overall frameworks of the legislation, developed its own processes for dealing with Maori customary use. The management review of the Department being initiated in the second half of 1996 may lead to some changes in these and other processes.

A summary of the range of different procedures and systems currently in operation in Conservancies follows.

3.2.2 Advisory Committees

Five Conservancies -- Northland, Hawkes Bay, Nelson/Marlborough, West Coast and Southland -- manage applications for materials for customary use through a committee system. Otago Conservancy is currently in the process of developing a model for such a system which would involve all those with an interest in cultural materials including Otago Kai Tahu runanga, weaving and other artisan groups, the Museum and the Department.

The regional committees comprise representatives of the tangata whenua with a comprehensive knowledge of traditional tikanga and of cultural and artistic matters. In Northland a non-Maori member is also included, appointed to the committee from the Conservation Board.

The committees are only advisory; the Department has the statutory approval role. Applications from Maori for cultural materials are received by DOC and forwarded to the committees for their consideration. The committees' recommendation is then given back to the Regional Conservator for his or her consideration and decision. In some regions there has been concern from Maori that the committee's advice is not always followed by the Department, and applications endorsed by the committee are not supported. The NZCA was told at hui in 1994 that this has caused some tensions in Northland.

The committees consider applications for the full range of available materials. In Northland and Southland they also advise on applications from non-Maori for indigenous materials, such as requests for seeds and cuttings for horticultural, botanical and scientific purposes. In Southland the committee's advice is sought on the significance of the sites from which non-Maori applicants seek to gather materials and whether or not the site is a wahi tapu. On the West Coast the Combined Runanga Committee meets regularly with DOC to work through a wide range of issues of which customary use is only one dimension of the practical partnership.

The committees work to established kaupapa, with clear criteria and priorities for the allocation of what are often very scarce resources. In Northland, Te Pataka o Taitokerau Komiti held a hui in 1993 to work through appropriate systems and structures. In Hawkes Bay comprehensive procedures are in place; applications must satisfy criteria including:

-- the cultural importance of the project for which materials are sought;
-- the experience and skills of the artists or craftspeople who will be using the materials;
-- the techniques to be followed -- although traditional techniques are preferred, culturally appropriate contemporary techniques will be considered;
-- the projects must be marae or iwi based and have the endorsement of the relevant marae, iwi or runanga;
-- tangata whenua have special rights or claims to taonga from their own rohe;
-- the use of alternative materials or materials from other sites on private lands must be considered;
-- no commercial or financial gain is permitted;
-- priority is given to the repair of existing taonga before the construction of new items;
-- preference is given to projects with a teaching dimension; and
-- tangata whenua from whose rohe the materials are sought must be notified to ensure appropriate cultural protocol.

Representation of all iwi, runanga or hapu in the Conservancy region is an important factor in the success of committee processes.

3.2.3 Referral to Iwi

Three Conservancies -- Tongariro/Taupo, East Coast and Canterbury -- refer applications for materials for cultural uses directly to the relevant iwi, runanga, Trust, hapu or whanau for their recommendation and advice. This system has for these Conservancies the benefits of simplicity and perhaps more importantly of a degree of recognition of the mana of tangata whenua through their having an active role and partnership in the process with the Department.

As with the committee systems outlined above, clear criteria and procedures are established for the consideration of applications. Criteria include:

-- the iwi and hapu affiliations and whakapapa connections of the applicant;
-- the significance, impact and credibility of the proposed project;
-- the intended purpose or occasion of the project, and the intended custodians of the completed taonga;
-- the applicant's knowledge and expertise;
-- preservation of the mauri of the taonga;
-- scientific and ecological criteria to protect the viability of the resource and habitat;
-- the site or location from which the materials are sought;
-- the possibility of using substitute materials; and
-- recognition of the kaitiakitanga of tangata whenua.

3.2.4 Management by the Conservancy

In the remaining Conservancies -- Auckland, Waikato, Bay of Plenty, Wanganui and Wellington -- applications for materials for cultural use are managed by DOC staff, usually the regional Kaupapa Atawhai Manager. In Auckland the Maori members of the Conservation Board have assisted with the assessment of applications, but there and in Wanganui the number of applications is not high and thus the establishment of a formal committee structure is not deemed necessary.

Criteria and procedures are similar to those Conservancies with committees or iwi referral systems. In Waikato, Bay of Plenty and Wellington the Kaupapa Atawhai Manager discusses applications with the relevant iwi or hapu. There is often negotiation as alternative sources are identified for the materials sought -- for example, a request for kiekie for the rebuilding of a burnt church was resolved when a source of kiekie was found on Maori-owned land and the trustees agreed to its being provided. The Kaupapa Atawhai Managers also discuss with applicants the potentials with alternative materials -- emu feathers for korowai, or exotic timbers for carving which can be tanalised for outdoor use.

Comprehensive criteria have been established by the Kaupapa Atawhai Managers and Conservancies. These include formal application processes and criteria similar to those outlined above, and the consideration of such factors as:

-- the protection and rehabilitation of the site or source of the materials from damage or disruption in the extraction/harvesting process;
-- the replacement of the resource for future generations, with Waikato Conservancy requiring the establishment of 10 totara seedlings for every tree harvested;
-- a cost recovery component to the Department for administration and supervision;
-- the time constraints involved in the recovery of whalebone from stranded whales, requiring good communication and liaison between the iwi and the Department in order to respond appropriately in such emergency situations.

3.2.5 Materials and Resources Currently Sought by Maori

The following materials and resources were cited by Conservancies as being sought for cultural uses. These requests may not necessarily have been met; in many cases the materials sought are either not present in the Conservancy region or are so rare that allocations are not possible at this point in time.

Northland: kiwi and kukupa/kereru feathers, timber (kauri), plants, whalebone and flesh;
Auckland: feathers, whalebone;
Waikato: totara, kiekie, harakeke, rongoa, whalebone;
Bay of Plenty: totara, whales, pikopiko, kiekie, feathers, titi;
Tongariro/Taupo: totara, rongoa, kiwi feathers;
East Coast: rongoa, totara, raranga materials including kiekie, whalebone, feathers;
Hawkes Bay: timber (rimu, kahikatea), rongoa, whalebone, feathers, whitebait (out of season);
Wanganui: totara, pingao, raupo, kiekie, kiwi feathers;
Wellington: totara, feathers, whalebone, rongoa;
Nelson/Marlborough: totara, feathers, whalebone, rongoa, kiekie, pingao;

Canterbury: whalebone, feathers;
The Chatham Islands: whalebone, toroa;
West Coast: whalebone, feathers, kiekie, pingao, kawakawa, totara, kuta;
Otago: totara, matai, harakeke, pingao, whalebone, feathers;
Southland: totara, feathers, plants, dyes (plants and muds), seals, bird feathers and bone, stranded whales and bone.

At the hui in 1994 the NZCA received specific requests from iwi for access to species for customary use. At the hui at Te Runanga o Te Rarawa at Kaitaia on 4 November 1994, a resolution was unanimously passed:

> That Te Rarawa be given authority, after working out a process of control with the Department of Conservation, for a cultural take of kukupa.

Te Rarawa explained that any take would need to be for a specific purpose for kaumatua and kuia. All applications would be carefully scrutinised by Te Rarawa. There was discussion of a system where the iwi would approve genuine requests and issue licences to their own people to go into the forests in their rohe to get kukupa. There was discussion of the special significance of certain foods for the old people before death, for spiritual strength and mana.

At the hui at Motatau Marae, Northland, on 25 November 1994, a request was tabled from Te Runanga o Te Aupouri for customary harvest of kuaka, under the following conditions:

-- only during the last two weeks of February and the first two weeks of March;
-- that it be done according to ancestral laws;
-- that guns are not used;
-- that the Runanga kaumatua shall determine what is right and correct for the taking of this food.

3.2.6 Practical Necessities

The Department reported various systems in place at Conservancy and Field Centre levels to deal with the practical management of cultural use. These include:

-- the provision of freezers for storage of accidentally killed birds (Nelson/Marlborough Conservancy noted that special freezers are important so that dead birds are not kept in the same fridges as food);
-- the provision (on the West Coast) of a Conservancy Cultural Materials Bank for the storage of available materials;
-- the maintenance of inventories of the resources and feathers currently held by the Conservancy against which applicants can check their requirements;
-- the referral of requests which cannot be satisfied either to other regional Conservancies which might have the resources available, or to private sources of the materials sought;
-- a system of wait-listing applications until the resources might become available; and
-- Conservancy staff involvement in discussions about tangata whenua requirements, in the harvesting, extraction and rehabilitation processes, and in the crafting or construction processes -- for example the participation of staff from the

Nelson/Marlborough Conservancy in the construction of the new wharenui at Whakatu Marae.

3.2.7 Diversity and Consistency

To summarise, a range of systems is in operation around the country, but through the various procedures established by Conservancies and tangata whenua regionally, there is considerable consistency. The diversity reflects the priorities and experience over the years of each region; the consistencies reflect the general concern for the conservation of scarce resources and for fairness and accountability in the process.

Although the NZCA heard of some Maori frustrations -- notably with the principle of kawanatanga which limits Maori input to an advisory capacity, and with specific instances where applications have been declined even after endorsement by a Conservancy committee -- in other places the systems have the support of tangata whenua. The key factors are:

-- consultation and dialogue with kaumatua or appropriate Maori representatives;
-- tangata whenua participation in the development and definition of criteria and procedures;
-- acknowledgement of the mana and interests of iwi and hapu;
-- observation of tikanga Maori as well as the protection of conservation values; and
-- the context of the wider relationships between the Conservancy and tangata whenua.

3.2.8 The Head Office Role

While in the past DOC's Head Office played a more significant role in considering applications for materials and distributing feathers directly to Maori craftspeople, this has now largely been devolved to Conservancy levels. Some materials are from time to time still sent through Head Office -- for example, the wings and breast-feathers of fisheries by-catch toroa, sent on from the Museum of New Zealand after scientific data has been taken. Head Office then advises Conservancies of such available materials. However where the origin of such feathers or materials is known, the Museum also distributes them directly to Conservancies.

Head Office has a role with regard to policy development and provided draft guidelines to Conservancies in 1989. These form the basis for the criteria and conditions, and the overall consistency of approach, in the current Conservancy procedures outlined above. Head Office is also responsible for working through particular issues and legislative amendments, such as the changes to the Wildlife Act provisions for museums and individuals to hold stuffed specimens -- these amendments are currently going through the drafting process.

Head Office also has an important liaison role with the Museum of New Zealand, the major metropolitan museums, smaller regional and local museums, and other research insititutions. Under Section 55 of the Wildlife Act (refer 3.1.3 above) general permits are granted for such institutions to hold specimens and materials. This is usually for research purposes, for taking measurements and collecting other data, and occasionally for display specimens. The Museum of New Zealand does its own curatorial conservation work repairing artefacts and taonga held in its collections, some of which restoration requires totara, feathers and other materials. This involves close liaison with and participation of tangata whenua; items are restored using materials sourced from the rohe of that taonga.

3.2.9 Freshwater Fisheries

There are specific provisions for management of customary fisheries which are slightly different from the management of access to other species.

A range of management regimes applies across a spectrum of different kinds of use, control and protection, ranging from commercial fishing, through recreational and customary fishing, to the conservation of fish resources and their habitats.

The Waitangi Fisheries Commission manages the customary allocation provided by the Crown to coastal and marine resources. DOC manages all harvesting of whitebait, comprising six species of native fish including the common inanga and several rare galaxiid species. The Ministry of Fisheries manages all coastal fisheries and all harvesting of eels, both commercial and non-commercial. DOC has responsibility for some aspects of the eel resource -- advocating for the protection of eel habitats, regulating fish passage on waterways, and dealing with access to land administered under various statutes.

The eel and whitebait fisheries are the only regulated freshwater fisheries -- all other native fish such as lampreys and koura can be taken for non-commercial human consumption. However under the Conservation, National Parks and Reserves Acts DOC manages access to lands alongside waterways and deals with fishing concessions. DOC also works with Regional Councils and the Fish and Game Councils to ensure that wetlands and riparian systems afford viable habitats for all freshwater fish species.

The Conservation Act has specific provisions providing for Maori fishing rights -- section 26ZH, which separates Maori fishing rights from the general regulations and requirements governing other freshwater fishing. In its protection of Maori rights to freshwater fishing, Section 26ZH is reinforced by the more general provisions of Section 4 and by an extensive body of case law.

DOC therefore has a clear obligation to protect freshwater indigenous fisheries and Maori traditional uses of these resources. These are non-commercial uses, and harvesting must be conducted according to tikanga Maori, although this does not constrain the use of modern materials and equipment. The harvesting must comply with both the conservation ethos of the Act and the traditional ethos of tikanga and kaitiakitanga. Where there is doubt, harvesters claiming customary rights must be able to establish their right to the use, through whakapapa

or authorisation from the relevant runanga or iwi authority, and demonstrate that appropriate tikanga has been followed.

Recently DOC has developed a protocol with local Maori on the West Coast, which establishes a kaupapa for the exercise of the Maori fishing right for whitebait, and for the long-term protection of the whitebait resource. The protocol has been developed with the full participation of local kaumatua.

3.3 THE TREATY OF WAITANGI

3.3.1 National Foundations

The Treaty of Waitangi is obviously central to any consideration of Maori customary use of native species and Maori involvement in conservation management. The Treaty, and the 1835 Declaration of Independence, are the founding documents of the nation, the starting points on which New Zealand government and laws are based:

> ...the Treaty of Waitangi, signed in 1840 by a Crown representative and over 500 chiefs... ceded to Britain the sovereignty of New Zealand and gave the Crown an exclusive right of pre-emption of such lands as the Maori people wished to sell. In return, the Maori were guaranteed full rights of ownership of their lands, forests, fisheries and other prized possessions. The treaty also promised them the rights and privileges of British subjects, together with assurances of Crown protection.[19]

Many scholars and commentators, both Maori and non-Maori, have developed our understanding of the Treaty over the years. The work and findings of the Waitangi Tribunal and the courts have contributed to a growing body of interpretation and guidance for people and official agencies dealing with the Treaty and its application in the modern world.

The English and Maori versions of the Treaty are attached as section 9 below.

3.3.2 A Developing Social Contract

The meanings of the Treaty for conservation are continually evolving and expanding as the courts and the Tribunal work through specific claims and cases:

> (The Treaty) was not intended to merely fossilise a status quo, but to provide a direction for future growth and development. The broad and general nature of its words indicates that it was not intended as a finite contract but as the foundation for a developing social contract... the Treaty is capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles.[20]

The NZCA, in its work with CMSs, CMPs and National Parks issues, recognises the changing nature of our reading of the Treaty:

> ...affirm(ing) the obvious fact that Treaty jurisprudence is developing (and) that it will continue to develop through the lifetime of the CMS, as will the understanding of what the Department's duty is and what actions are needed to discharge that duty.[21]

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[19] Orange p 1
[20] Waitangi Tribunal Motunui Report 1983
[21] Jim Guthrie, NZCA Chairman, letter to Conservation Board Chairpersons, 9 October 1995

The CMSs acknowledge this ongoing evolution of application and understanding of the Treaty. The Nelson/Marlborough Draft CMS includes an Appendix giving a summary of Treaty principles as they were understood to be at the point in time when the CMS was prepared. The CMS emphasises that DOC "will continue to discharge its Section 4 obligations through time as the Treaty principles are restated by the courts and other competent authorities."[22] The Auckland CMS notes that:

> ...The Department's undertaking is predicated on the principle that the Treaty is an evolving contract and its meaning and direction with respect to individual places or issues, is (sic) to be worked out in a relationship of trust and action. The paramount undertaking is to act in good faith towards one another...[23]

3.3.3 Tino Rangatiratanga

Many Maori insist that under Article II of the Treaty customary use rights for native species are guaranteed. They insist that their ancestors never ceded rights to harvest and utilise traditional taonga:

> The Treaty of Waitangi, Article II details very clearly the responsibilities of the Crown towards protecting the assets of Maori... Biodiversity is very clearly encompassed in Article II...[24]

To many Maori respondents to the NZCA's 1994 Paper, and other commentators, the question is simply a matter of tino rangatiratanga or self-determination -- the right to make your own decisions for your own people. The issue "is not so much about whether or not harvest should be permitted, but about who has the right to decide."[25]

Many Maori respondents and commentators insist that the Treaty guarantees iwi Maori adequate participation in the processes of conservation management and decision-making. Control of natural taonga by means of the statutes and the administrative arrangements of a Crown agency such as DOC are seen as unacceptable, and in breach of the Treaty -- the kawanatanga or governance of Article I over-riding and negating the tino rangatiratanga guaranteed under Article II.

Tino rangatiratanga, a key term in the Treaty, has been a point of considerable discussion by the Waitangi Tribunal over the years:

> Rangatiratanga denotes mana, wehi and ihi. The right to have interests and to make decisions, in terms of the river... (the iwi) have the right to decide what is right for them and the river. Rangatiratanga is a birthright.[26]

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[22] Notes to the Proposed Amendments to the October 1994 Draft of the Nelson/Marlborough CMS, referred to Nelson and Marlborough Boards June 1995)
[23] Auckland CMS pp 217-18
[24] Mead p 5
[25] Kirikiri & Nugent, p 57.
[26] Cordry Huata, Ngati Pahauwera, quoted in Waitangi Tribunal Mohaka River Report 1992

> It is a dynamic not static concept, emphasising the reciprocity between the human, material and non-material worlds. In pragmatic terms, it means the wise administration of all the assets possessed by a group for that group's benefit: in a word, trusteeship. And it was this trusteeship that was to be given protection [in the Treaty], a trusteeship in whatever form the Maori deemed relevant.[27]
>
> "Te tino rangatiratanga o o ratou taonga" tells of the exclusive control of tribal taonga for the benefit of the tribe including those living and those yet to be born. There are three main elements embodied in the guarantee of rangatiratanga. The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically and spiritually. The second is that the exercise of authority must recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly, the exercise of authority was not only over property, but of persons within the kinship group and their access to tribal resources.[28]

3.3.4 Kawanatanga

Many non-Maori respondents to the NZCA's 1994 Paper expressed very different views of the Treaty and its relevance for contemporary conservation management. Many of these respondents upheld the principle of kawanatanga or the Crown's right to govern, and insisted on complete Crown control of conservation management and absolute protection of all native species.

There were assertions that Maori claims under Article II and rangatiratanga have no valid legal standing or justification. One major NGO submission argued that giving Maori decision-making for customary use "equated to a ceding of sovereignty to iwi of the control of all native plants and animals" and insisted that traditional use is "contrary to New Zealand law and to the Treaty."[29]

Many respondents' interpretation of the Treaty was that it guarantees authority, control and decision-making for natural taonga to the Crown under Article I. Another group of NGO submissions referred to an internal DOC memo, quoted in the Federated Mountain Clubs' Journal, which asserted that "the take of protected species is a sovereignty (Article I) issue."[30]

Many non-Maori respondents felt that Maori are seeking, under Treaty arguments, unwarranted special treatment as a private interest group, and claiming more than their entitlement as New Zealand citizens (refer 3.3.10). There were references to the provisions in Article III of the Treaty for equal citizenship, and assertions that there should be one law for all New Zealanders. Some respondents felt that the Treaty, and any possible arrangements for customary use that might be made according to its provisions, would discriminate against non-Maori and be culturally divisive. Some of these submissions expressed a sense of impatience,

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[27] Waitangi Tribunal Ngawha Report 1993, quoting the New Zealand Maori Council, 1983, *Kaupapa: Te Wahanga Tuatahi*

[28] Waitangi Tribunal Muriwhenua Report 1988

[29] Forest &Bird National Office submission

[30] *FMC News,* November 1994

asserting that the Treaty is over 150 years old and that Maori need to move into the modern world.

3.3.5 A Balance Between Rangatiratanga and Kawanatanga

In its 1994 Discussion Paper the NZCA based its consideration of the issues on the following principles:

> -- mahinga kai are taonga under Article II of the Treaty; so too are the environments in which they are sustained;
>
> -- the Crown has a right and a duty under Article I of the Treaty to preserve indigenous species in the interests of the nation;
>
> -- this Crown right is restrained but not blocked by Article II; the Crown must ensure that iwi Maori's Article II rights to the taonga are allowed, even if limited; and
>
> -- iwi Maori are bound to accept that steps will be taken under Article I to preserve species, constraining their Article II rights; some rights of iwi Maori with regard to species have, however, been taken and transferred to others eg. Fish and Game Councils.

The NZCA suggested that the resolution of customary use issues would require a mechanism that recognised the respective rights and duties of both iwi Maori and the Crown, and achieved a balance between tino rangatiratanga and kawanatanga.

The findings of the Waitangi Tribunal on various claims, and other commentators on Treaty issues, have developed similar concepts of balance between the two sets of rights and responsibilities:

> In... the Motunui report, the Waitangi Tribunal characterised the essential exchange of promises recorded in the Treaty as 'an exchange of gifts... the gift of the right to make laws, and the promise to do so as to accord the Maori interest an appropriate priority'.
>
> In the Manukau report kawanatanga was defined as 'the authority to make laws for the good order and security of the country, but subject to an undertaking to protect particular Maori interests'.
>
> ...In the Muriwhenua report... the Tribunal's starting point was that the position which had prevailed until the present time - complete Crown control - was inappropriate and... not in accordance with kawanatanga. Kawanatanga was a limited, not an absolute right, qualified by rangatiratanga (just as rangatiratanga was restricted by the Crown's kawanatanga)...

> One proper exercise of kawanatanga is to make laws of general applicability with the objective of conservation control... But the right to legislate thus is not unfettered, and its exercise will be contrary to the Treaty if inadequate account is taken of rangatiratanga.[31]
>
> The cession of sovereignty or kawanatanga gives power to the Crown to legislate for all matters relating to 'peace and good order', and that includes the right to make laws for conservation control. Resource protection is in the interests of all persons. Those laws may need to apply to all persons alike. The right so given is not an authority to disregard or diminish the principles in Article the Second, or the authority of the tribes to exercise a control. Sovereignty is limited by the rights reserved in Article the Second.[32]

The need for laws to protect increasingly scarce natural resources, species and habitat ecosystems, and ecosystem processes, is inarguable. However the implications of the Treaty for resource management and conservation law are equally unable to be avoided. The Waitangi Tribunal's approach acknowledges that both conservation and rangatiratanga must be accommodated:

> Neither kawanatanga nor rangatiratanga are absolute rights. They qualify and restrict one another: the Crown's kawanatanga is restricted by the tribes' rangatiratanga, and vice versa. Thus the Treaty, if it is ever implemented fully, must operate as a consititutional fetter on parliamentary sovereignty.
>
> Sometimes, however, kawanatanga can override rangatiratanga... one area in which the Crown's kawanatanga can override tribal rangatiratanga is that of conservation. Laws binding on all for the purpose of conservation are not contrary to the Treaty.
>
> However, before such a limitation is within the terms of the Treaty (and is in that sense 'consititutional') it must be 'absolutely necessary' for conservation, and it must be shown that controls over those who lack Treaty rights have been applied first. Only if regulation of non-Treaty interests has proved insufficient can rangatiratanga be overridden in the interests of conservation.[33]

3.3.6 The Principles of the Treaty

Over the years the courts and the Waitangi Tribunal have established a number of general principles for the Treaty and its application in contemporary contexts. A brief outline of those points relevant to Maori customary use and Maori involvement in conservation management follows. This is by no means an exhaustive or final statement of what the Treaty and its principles might comprise in the later 20th century; as noted above, our understanding of these matters is continually evolving.

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[31] Boast pp 4-5
[32] Waitangi Tribunal Muriwhenua Report, 1988
[33] Boast p 58

The common use in the statutes of the term "the principles of the Treaty of Waitangi" has led to various efforts to define and delineate what those principles might be:

> ...the principles are the underlying mutual obligations and responsibilities which the Treaty places on the parties. They reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty.[34]

The Court of Appeal has also determined that "the principles" include the wording of the Treaty itself:

> ...there really is no difficulty or contradiction, that the 'principles' of the Treaty are in fact coextensive with the language or the provisions of the Treaty.[35]

The same legal case developed an understanding of the essential or "core" principles of the Treaty. Five Judges unanimously held that the Treaty created an enduring relationship between the Crown and iwi Maori, a relationship of a fiduciary nature akin to a partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards the other. The Privy Council described the relationship between the Treaty parties as one "founded on reasonableness, mutual cooperation and trust."[36]

Other key principles include the requirement to be fully informed when making decisions, which is usually achieved through consultation between the Crown and Maori:

> ...On matters which might impinge on a tribe's rangatiratanga consultation will be necessary. Environmental matters, especially as they may affect Maori access to traditional food resources -- mahinga kai -- also require consultation with the Maori people concerned... The degree of consultation required in any given instance may... vary depending on the extent of consultation necessary for the Crown to make an informed decision.[37]

3.3.7 Active Protection of the Maori Interest

The need for the Maori interest to be actively protected by the Crown is an issue identified by both the Waitangi Tribunal and the courts:

> (the Treaty) obliges the Crown not only to recognise the Maori interests specified in the Treaty but actively to protect them... omission to provide that protection is as much a breach of the Treaty as a positive act that removes those rights.[38]

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[34] Waitangi Tribunal Muriwhenua Report 1988
[35] Boast p 28, referring to Somers J, *Maori Council v. Attorney General*, (1987) 1 NZLR 641, 693
[36] *Broadcasting Assets*, (1994) 1 NZLR 513, 519
[37] Waitangi Tribunal Ngai Tahu Report 1992
[38] Waitangi Tribunal Manukau Report 1985

> ...the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable.[39]
>
> The word 'guarantees' (in Article II of the Treaty) has been given particular emphasis by both the Waitangi Tribunal and the Court of Appeal as denoting that the Crown's obligations are active, rather than passive.[40]
>
> ...Treaty principles extend to requiring active and positive steps to redress past breaches.[41]

The Court of Appeal's 1995 findings on the Kaikoura Whalewatching case further developed our understanding of the principle of active protection. DOC showed that it had fulfilled its duty to consult with the iwi -- Ngai Tahu -- but the court found that:

> ...it is difficult to find... any indication of the value to Ngai Tahu of the right to be consulted. Some psychological benefit may be hinted at, but there is an absence and even a repudiation of any suggestion that Ngai Tahu's representations could materially affect the decision...
>
> Such issues are not to be approached narrowly... the Crown is not right in trying to limit (the Treaty) principles to consultation. Since the lands case, *New Zealand Maori Council v. Attorney General*... it has been established that the principles require active protection of Maori interests. To restrict this to consultation would be hollow... a reasonable Treaty partner would not restrict consideration of Ngai Tahu's interests to mere matters of procedure.[42]

Another principle of active protection concerns the environment itself. The Treaty guarantees impose an obligation on the Crown to protect the taonga or resource from degradation, damage or destruction, and to safeguard environmental quality generally:

> New Zealand has a heritage of indigenous species, in forests and wetlands, sea coasts and fisheries, held to be guaranteed as taonga by the... Treaty of Waitangi. To remain taonga their prime requirement must be to exist... extinction is irreversible.[43]
>
> A right to a share in the (natural taonga) is of little benefit if the (resource) has been depleted by pollution and bad management in the past. Alternatively, it can be maintained that Crown policies which have led to environmental degradation of the Waikato River (dammed, polluted and re-channelled as it is...) or reduced flows in the Wanganui are in themselves breaches of the Treaty.[44]

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[39] Cooke P, *Maori Council v. Attorney General* (1987) 1 NZLR 641
[40] Boast p 7
[41] Cooke P, *Broadcasting Assets,* (1992) 2 NZLR 576, 583
[42] Court of Appeal, Judgement of Cooke P, 22 September 1995
[43] Morton 1995 p 3
[44] Boast p 26

3.3.8 Tikanga Maori

Of particular significance to the question of Maori customary use is the principle established in several Waitangi Tribunal reports of the need to provide for the management of resources and other taonga according to Maori cultural and traditional practice or tikanga:

> The protection of (a taonga) must accord with the Maori perception of (that taonga). It must be recognised that those disruptions of (taonga) that offend cultural or spiritual values... (are) as offensive as a physical disruption that reduces the quantity or quality of the (resource). The guarantee of undisturbed possession or of rangatiratanga means that there must be a regard for the cultural values of the possessor.[45]

> Maori people (are) to be protected not only in the possession of their (taonga), but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences.[46]

> The Maori text (of the Treaty) guaranteed a tribal control of Maori matters. That includes the right to regulate the access of tribal members to tribal resources... It is the right of tribes to determine their own membership, to licence their own members and to deny tribal... rights (to taonga) to those of its members who do not observe its rules. It is the right of tribes to permit persons outside the tribal group to enjoy any part of the tribal... resource, whether generally or for any particular purpose or occasion.[47]

Crucial to this recognition of the validity and necessity of tikanga Maori is the principle that "taonga" include both tangible and intangible dimensions (refer 4.1.2 and 4.1.3 below):

> ..."taonga" is not limited to property and possessions. Ancient sayings include the haka... as a "taonga" presented to visitors. "Taonga" may even include thoughts.[48]

> A river may be a taonga as a valuable resource. Its 'mauri' or 'life-force' is another taonga...

> It is difficult to over-estimate the importance of the Waikato River to the Tainui tribes. It is a symbol of the tribe's existence. The river is deeply embedded in tribal and individual consciousness... The river has its own spirit. It is addressed in prayer and oratory as having a mauri of its own. The spirits of ancestors are said to mingle and move with its currents...[49]

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[45] Waitangi Tribunal Manukau Report, 1985
[46] Waitangi Tribunal Motunui Report, 1983
[47] Waitangi Tribunal Muriwhenua Report, 1988
[48] Waitangi Tribunal Orakei Report, 1987
[49] Waitangi Tribunal Manukau Report, 1985

The case successfully brought by the Huakina Development Trust against the Waikato Water Board also consolidated the principle of the significance of intangible and spiritual aspects. The Trust insisted that:

> the granting of a right to a local farmer to discharge cowshed effluent into a tributary of the Waikato offended against the cultural and spiritual traditions of the Tainui people with respect to water. Huakina argued that 'according to Maori tradition... water has a mauri (spiritual life force). The mauri is the force that ensures... that all species it accommodates will have continual life. The mauri cannot be intercepted or desecrated... When the mauri is harmed, so too is the spirit of the tangata whenua.'[50]

In a 1988 case concerning river-flow levels of the Whanganui River, evidence was presented explaining the river's status as a taonga:

> ...the Whanganui River is a taonga... As such the river is many things, both present and past, both physical and metaphysical, both real and unreal, at once a precious possession and a source of sustenance, a means of communication with the Gods, the Tipuna, the Kaitiaki and the Taniwha... Every part of the river and its environs is sacred to the Whanganui Maori -- they are part of the river and the river is part of them. The water which moves in the river and its tributaries is not just water but also the blood of the ancestors.[51]

3.3.9 Community Interests

Another important concept is the principle of meeting the needs of both Maori and the wider community in a process of negotiation, sharing and compromise, as exemplified by the pragmatism of the Waitangi Tribunal's findings on the Motunui, Muriwhenua, Mangonui, Manukau and Orakei claims. This principle includes a rejection of the concept of absolute exclusivity of use of the resource or taonga, working instead towards a process of "consultation and negotiation with the hapu concerned... (as) consistent with Maori customs and values":[52]

> ...an exclusive user was not urged... that which was principally sought was the control of the (taonga) so that the 'mana Maori' or authority in respect of them might be seen to vest in the local hapu... It was pointed out that several large tracts of Maori land have been set apart as Maori reservations for scenic and other purposes, but save to the extent that it has become necessary to control an abuse, the general public has not been denied access by the Maori persons appointed as trustees for the control of them... It is not inconsistent with the Treaty of Waitangi that the Crown and Maori people should agree upon a measure of compromise and change...[53]

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[50] Roberts et al p 13
[51] G Habib submission to Rangitikei-Wanganui Catchment Board and Regional Water Board, 20 September 1988, quoted in Boast, p 15
[52] Waitangi Tribunal Motunui Report, 1983
[53] Waitangi Tribunal Motunui Report, 1983

> It is consistent with the Treaty that the Crown and the tribes should consult and assist one another in devising arrangements for a tribal control of its Treaty (resource) interests, that they should aid one another in enforcing them, and that the tribes should furnish the Crown with all proper returns.[54]

The Court of Appeal findings on the Kaikoura Whalewatching case also noted that while the right of development of indigenous rights is increasingly recognised in international jurisprudence, "any such right is not necessarily exclusive of other persons or other interests."[55]

3.3.10 The Maori Interest

Another important principle is that the Maori interest is:

> ...more than that of a minority section of the general public, more than just a particular interest in particular (taonga), but less than that of exclusive ownership. It is in the nature of an interest in partnership the precise terms of which have yet to be worked out. In the mean time any legal owner should... acknowledge particular fiduciary responsibilities to the local tribes, and the general public, as distinct entities.[56]
>
> The iwi are in a different position in substance and on the merits from other (parties). Subject to the overriding conservation considerations... (the iwi) are entitled to a reasonable degree of preference.[57]

In the 1992 *Proposed Guidelines for Local Authority Consultation with Tangata Whenua*, the Parliamentary Commissioner for the Environment also commented on the status of tangata whenua:

> ...tangata whenua are not 'just another interest group' but have special status by virtue of their long-standing prior inhabitance of the area, the Treaty of Waitangi, and the principles of the Treaty, and as provided for in the Resource Management Act and other legislation...
>
> Tangata whenua find that they are often treated by decision-makers as just another minority group... They are indeed as individuals part of the general community with equal rights as citizens under Article III of the Treaty, but in addition members of a tribe as a group have particular rights guaranteed by Article II of the Treaty, for the area where they are traditional tangata whenua.
>
> A common misunderstanding exists in the general community that Maori demanding their rights under the Treaty are somehow seeking special privileges they are not entitled to. The distinction must be made between *individual* Maori, who have

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[54] Waitangi Tribunal Muriwhenua Report, 1988
[55] Court of Appeal, Judgement of Cooke P, 22 September 1995
[56] Waitangi Tribunal Manukau Report, 1985
[57] Court of Appeal, Judgement of Cooke P, 22 September 1995

> guaranteed to them under Article III *equal rights* as citizens, regardless of race; and Maori *tribes,* which have guaranteed to them under Article II the right to retain (and have restored to them if taken without consent) tribal resources and taonga, and the right to manage them according to their cultural preferences. This tribal right is not by virtue of race... These are 'home country' rights, not to be confused with the rights of a minority culture.[58]

3.3.11 Urban Maori

In recent years there has been increasing recognition of the situation of many Maori people now living in urban centres, away from their original tribal base. Some urban Maori no longer retain particular links back to their whakapapa lands and traditions; some, after several generations in the city, no longer even know their specific origins. There has been considerable debate concerning the extent of urban Maori peoples' rights and claims to resources, such as fisheries, and the most appropriate ways of accommodating and providing for those rights when the Crown negotiates claim settlements with iwi. In April 1996 the judgement of Lord Cooke of Thorndon in the Court of Appeal, on a suite of cases concerning Maori fishing allocations, considered *inter alia* the definition and application of the word "iwi" finding that:

> ...special consideration is obviously required to be given to the position of the numerous urban Maori who have no established connection with a specific tribe...

and that the Waitangi Fisheries Commission has a statutory duty to ensure "that any scheme or legislation proposed by the Commission includes equitable and separately administered provision for urban Maori."[59]

In July 1996 a Hui called by the Commission at Pipitea Marae in Wellington debated issues of equity and representation, and agreed on key principles for the development of a model for fisheries assets allocation. The hui endorsed the principle of working with iwi representatives, and agreed:

> that allocation should be to Iwi but benefits should flow to all Maori. In other words, there should be provision for benefits to go to urban Maori who might not identify with any Iwi, though how this should be achieved is one of the issues still to be resolved.[60]

However there was concern from iwi fisheries negotiators, and three groups -- the Treaty Tribes Coalition, Te Runanga o Ngati Porou and the Tainui Maori Trust Board -- sought further legal clarification:

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[58] PCE pp 20-21
[59] Court of Appeal, Judgement of Lord Cooke of Thorndon, 30 April 1996
[60] Hui-a-Tau: Te Reo o Te Tini a Tangaroa, Newsletter of the Treaty of Waitangi Fisheries Commission, July 1996, p 1

> The decision of the Court of Appeal has been appealed to the Privy Council. The Treaty Tribes Coalition wants the Privy Council to clarify whether the Appeal Court decision allows urban groups to claim ownership of fisheries... In the meantime, Urban Authorities are calling for the appointment of a Commissioner on the Treaty of Waitangi Fisheries Commission to represent urban Maori.[61]

The Privy Council decision was to quash the decision of the Court of Appeal, and to refer questions of the meaning of the term "iwi" and the allocation of assets back to the High Court.[62]

There has also been debate about the extent to which tribal authority is relevant for many contemporary Maori, and the difficulties of ensuring recognition and compliance of tribally-based systems and sanctions amongst a widely-scattered and fragmented Maori population.

3.3.12 Freshwater Fisheries

In 1995 Te Ohu Kai Moana, the Waitangi Fisheries Commission, convened a Hui-a-Iwi to consider issues of customary rights and non-commercial freshwater fisheries. A Working Party was established "to develop an Iwi freshwater fisheries kaupapa... and define the extent and nature of Iwi fishing rights as guaranteed under Article II of the Treaty of Waitangi, including Iwi pre-Treaty customary rights."[63] The Working Party has set out the following summary of the nature and extent of the Treaty-guaranteed right to freshwater fisheries, noting that this right parallels Iwi rights to other natural resources guaranteed by Article II:

> Iwi, hapu and whanau rights are as ancient as time itself and developed from time immemorial and they continue into the present - *Te Kore ki te Ao Marama*.
>
> Whakapapa is the vehicle by which these rights are transmitted from *tipuna ki nga uri*, and this is *Take* or *Taonga Tuku Iho.*
>
> The Treaty of Waitangi did not purport to transfer any property rights - it merely confirmed those rights already in existence.
>
> Rights and mana acquired by whakapapa can never be extinguished by Pakeha law, even though the physical exercising of the right, at the present time, may be "legally" impossible.
>
> Rights of occupation, *ahi ka roa,* never grow *matao,* even if long absences from whanau lands occurred, provided there are whanau members in occupation or resorting to customary use...

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[61] Te Puni Kokiri Newsletter No. 35, August 1996
[62] *Tangaroa,* Te Ohu Kai Moana Newsletter, February 1997
[63] Te Ohu Kai Moana p i

Claims against the Crown in relation to breaches of the Treaty reflect the struggle of the Iwi and Hapu to have these rights actively protected so that their benefits may be enjoyed by the right holders and their descendants.

With these rights go certain obligations particularly to the sustainability of the resource itself.[64]

[64] Te Ohu Kai Moana p 3

3.4 WAI 262

3.4.1 The Claim

In 1991 a group representing several iwi lodged a claim with the Waitangi Tribunal -- now commonly known as WAI 262 under the Tribunal's numbering system for identifying claims. It is often referred to as the "flora and fauna claim". Its specific concerns are the:

> protection, control, conservation, management, treatment, propagation, sale, dispersal, utilisation, and restriction on the use and transmission of the knowledge of New Zealand's indigenous flora and fauna and the genetic resource contained therein.[65]

While several particularly significant species are cited specifically, WAI 262 is comprehensively inclusive:

> The claim is... massive in its scope and includes grievances regarding the commercialisation, patenting, export, management and control of native plants and native animals. The claim includes all the genetic resources of Aotearoa including all indigenous plants, animals, algae, fungi, lichens, bacteria and other organisms, and the knowledge of Maori associated with them.[66]

The claim is based on the Treaty's guarantee of tino rangatiratanga. The claimants argue that the Crown breached the provisions of the Treaty by not recognising and providing for the rights of iwi Maori to exercise tino rangatiratanga over indigenous species. It is claimed that:

> te tino rangatiratanga o te iwi Maori was and is an absolute authority which incorporated and incorporates the right to determine intellectual property rights in the knowledge and use of indigenous flora and fauna, in the preservation of biodiversity, and in the ongoing development of a philosophy of eco-ethnic ethics.[67]

Some of the potential implications of this claim for the conservation and management of New Zealand's indigenous species and ecosystems have been outlined as follows:

> ...there are four general rights claimed to have been prejudicially affected by the Crown's denial of tino rangatiratanga, all of which have a direct impact on the way in which the biodiversity of this country has been managed in the past and how it might perhaps be better managed in the future. They are:
>
> 1. The right to development -- through repeated Crown denial of the existence of Maori intellectual property rights;
> 2. The right to conserve, preserve and protect species -- through the Crown... assuming this function unto itself;

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[65] WAI 262 Statement of Claim
[66] Contemporary press statement quoted in Parsons p 1
[67] WAI 262 claim

3. The right to the use and dispersal of species -- through the Crown taking full control of domestic and export trade of indigenous species; and
4. The right to cultural and spiritual concepts associated with indigenous flora and fauna -- through the Crown not enabling Maori to express their spiritual and cultural practices viz a viz indigenous flora and fauna.

> Whichever way you look at it this claim is about the management of our biodiversity... Is a joint management arrangement between the Government and Maori a real possibility? ...the claimants are arguing for real and meaningful Maori involvement in the management of indigenous flora and fauna -- as kaitiaki, alongside others -- the Crown, CRIs, universities, Research Centres, and so on.[68]

3.4.2 Management and Ownership

Other commentators have drawn attention to the important distinctions between management rights and actual ownership:

> ...many claims (to the Tribunal) transcend questions of resource ownership, extending to the restoration of tribal mana in the context of resource management. Indeed it is management rights, rights of tribal input into decisions affecting the environment and resources, which have so far claimed most of the attention of the Waitangi Tribunal. In a number of the principal reports... ownership questions were not in issue at all... A right to 'use' and even to 'control' does not necessarily have to amount to ownership... Tribal participation in management -- either in isolation or in association with other authorities -- is one method of giving effect to the obligations to protect rangatiratanga which falls short of a transfer of ownership.[69]

> ...the Maori people desire their status as kaitiaki to be fully recognised... this is not the same as ownership...[70]

Under the present legislation, ownership of all indigenous wildlife is vested in the Crown (Section 57 of the Wildlife Act). Other statutes and international agreements work on the fundamental principle that natural species and materials are owned by the Crown on behalf of all citizens:

> The Resource Management Act... assumes ownership by the State of all the country's natural resources. The Plant Varieties Act assumes it is the responsibility of the State to regulate plant genetic resources... At an international level, the Biological Diversity Convention assumes responsibility by States to define and regulate genetic resources...

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[68] Kirikiri, pp 9-10
[69] Boast pp 8-9
[70] Nganeko Minhinnick, Ngati Te Ata, quoted in Boast p 10

> The General Agreement on Tariffs and Trade (GATT) assumes it is within the responsibility of the State to allow commodification of biodiversity... and allow for free trade in these 'commodities'.[71]

The Tribunal has granted urgency to the progressing of WAI 262 and hearings for this claim will commence in mid-1997.

3.4.3 Other Tribunal Claims

A large proportion of other claims to the Tribunal over the years have also been concerned with matters of resource management and conservation, and with the degradation, compromise and loss of natural taonga as a result of non-Maori practices and priorities (refer 2.2.10 above and 3.7 below). Some of the claims focusing on issues of environmental quality and management include:

-- Motunui-Waitara, where Te Atiawa brought a claim against the discharging of sewage and untreated industrial waste from the petro-chemical plant and the meat works into the mouth of the Motunui River and thus directly into the sea, polluting traditional fishing grounds;

-- Kaituna, where Ngati Pikiao brought a claim against the Rotorua City Council's plan to discharge treated sewage into the Kaituna River;

-- Manukau, where the Tainui people brought a claim concerning the particularly severe pollution of the Manukau Harbour with sewage and industrial wastes, which affected seafood resources;

-- Mangonui, where the appropriate treatment of sewage was again the issue; and

-- the Ngai Tahu land claim, which focuses on mahinga kai and natural resources issues.

The three current claims against two draft CMSs are discussed at 3.1.5 above.

The concern through these and other Tribunal claims for the quality and ongoing protection of the natural environment is a practical expression of kaitiakitanga through contemporary official processes (refer 4.1.3 below). Kaitiakitanga adapts continually, working through modern legal and procedural frameworks to secure improved management of natural taonga. Many of the concerns raised by iwi in claims to the Tribunal have brought significant conservation benefits for all New Zealanders.

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[71] Mead pp 5-6

3.5 INTELLECTUAL, CULTURAL AND GENETIC PROPERTY RIGHTS

3.5.1 Protecting Knowledge and Rights

In the feedback received from Maori in response to the NZCA's 1994 Paper, there was widespread and strongly voiced concern about the appropriate protection of intellectual, cultural and genetic property rights in indigenous plants and animal species.

Many Maori respondents are seriously concerned at the way traditional knowledge about native species, and those species themselves, especially rongoa plants, are open to exploitation for commercial gain. The profit-making purpose is seen by some as inconsistent with tikanga Maori -- in some contemporary rongoa clinics a koha system applies. Other respondents were concerned for the securing of an appropriate return to tangata whenua for the use by others of their traditional knowledge and traditional materials:

> ...the benefit from the commercialisation of indigenous knowledge seldom accrues to the original discoverers. Several of New Zealand's native plants have been subjected to modern research for decades. One example is the koromiko species, and little if any benefit has been returned to Maori. In future, research that is based on the traditional knowledge about the benefits of a particular plant or animal, should be acknowledged and rewarded.[72]

Many of the Maori participants at hui and meetings in 1994 and 1995 made angry references to GATT -- the General Agreement on Tariffs and Trade -- and other international trading agreements. There was strong criticism of what was commonly perceived as the appropriation and patenting of indigenous natural materials and traditional medicinal knowledge by foreign pharmaceutical corporations.

A further important dimension is the spiritual and tapu nature of much traditional knowledge, and its links with whakapapa, which make its protection even more significant. To consider just one example of the sensitivity of customary knowledge:

> "Weaving is more than just a product of manual skills. From the simple rourou food basket to the prestigious kahu kiwi, weaving is endowed with the very essence of the spiritual values of Maori people."
>
> Part of this is the connection with the past, found in the traditional weaving patterns that are handed down from generation to generation within a tribe, and regarded as tribal property, as tapu or protected knowledge. And many of the patterns themselves represent Maori spiritual values... Like anything else, weaving and weavers have mauri, which must be protected and treated with respect. Otherwise the activity loses its vigour and dies. Weaving is a traditional activity, passed down from the ancestors. That is why it has mana and tapu; that is why it demands respect.[73]

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[72] Te Puni Kokiri p 11
[73] Patterson, p 4, quoting Erenora Puketapu-Hetet

3.5.2 The Potentials of Biodiversity

There is increasing pressure on the world's natural resources from researchers and bioprospectors seeking to maximise the potentials for human and economic benefit:

> The director of the New York Botanical Garden's Institute of Economic Botany notes that only 1,100 of the earth's 265,000 species of plants have been thoroughly studied by scientists, but as many as 40,000 may have medicinal or undiscovered nutritional value for humans. Many are already used by tribal healers...[74]

> Using indigenous knowledge to identify plants and their uses can save researchers considerable time and money. This knowledge can lead researchers to more quickly identify chemically useful compounds which they then patent. Sometimes these compounds might find ready pharmaceutical or industrial application; but more usually the chemical companies, having secured ownership rights, bide their time as new technologies are developed, particularly in the field of genetic engineering, until their 'discoveries' can be profitably exploited. Indigenous contributions in identifying useful species... are usually overlooked, and the state, having claimed ownership of all flora and fauna... can assign commercial rights to companies in exchange for royalties. Indigenous people and their communities therefore receive no financial compensation for their original contribution.[75]

Compared to the collecting work of such early explorer-botanists as Joseph Banks and Daniel Solander, modern bioprospecting is an activity driven as much by commercial and utilitarian objectives as by scientific endeavour:

> Historically, nations freely exchanged plant genetic resources which were considered the 'common heritage' of humankind. The growth of technologies which use and raise the commercial value of genetic resources combined with the loss of biological diversity worldwide, has led to narrowing of the free exchange principle... The contributions of public and private sector institutions in industrialised countries tend to be considered patentable innovation while the role of indigenous and local communities in developing and conserving land or traditional healers' knowledge of medicinal plants is given no value.[76]

3.5.3 New Zealand Provisions

In New Zealand DOC considers applications and grants approval for such bioprospecting activities, with regard to indigenous fauna protected under the Wildlife Act, and material from flora and fauna on conservation lands under the Conservation Act (refer 3.1.5 above). In response to increasing concerns, and taking into account the absence of specific government policy on access to New Zealand's genetic resources and the pending hearing of the WAI 262

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[74] Linden p 55
[75] Fourmile p 3
[76] UN Environmental Programme, submissions to the Convention on Biological Diversity, UNEP/CBD/IC/2/14

claim, DOC determined in June 1995 not to provide any further permits for either commercial or non-commercial bioprospecting projects.

The Department sought to ensure that only "authentic non-bioprospecting research or... education purposes" are provided for, and sought to minimise "opportunities for fraudulently obtained research material" to be used for commercial ends.[77]

There was some uncertainty over the wider policy on access to indigenous genetic resources through 1994 and 1995 with the review at that time by the Ministry of Commerce, working in association with Te Puni Kokiri, of New Zealand's legislation for patents and copyrights. The Ministry released discussion papers and, with Te Puni Kokiri's facilitation, held hui and meetings to hear the views of tangata whenua and scientists about the legislation reform. Te Puni Kokiri also developed a model for the reform process which identified and sought to safeguard the Maori interest in intellectual, cultural and genetic property. The Ministry is currently working closely with Maori on these issues and a further series of consultation hui is envisaged for late 1996 and early 1997.

In 1995 a Private Members' Bill was introduced to Parliament by Tau Henare, MP for Northern Maori. The Bill deals principally with the protection and appropriate return to iwi of cultural property, antiquities and crafted taonga, rather than with natural wild species and resources, although the crafted taonga -- korowai, carvings, other artefacts taken overseas or into collections -- may of course incorporate materials from native species. The Bill is currently before the Select Committee.

3.5.4 Different Kinds of Knowledge

There are important differences between the Western concept of intellectual property and indigenous peoples' traditional knowledge bases (refer 4.1.4 and 5.3.1 below). The protection of intellectual and industrial property -- such as inventions, trade marks or industrial designs -- and copyrighting of artistic works are mechanisms which are not always particularly appropriate for dealing with indigenous knowledge and interests. Issues of concern include:

-- the difference between individual and collective or community ownership and rights;
-- the need to take into account the conveying and accumulation of knowledge over many generations through history;
-- the difference between new knowledge and innovations, and traditional handed-down knowledge; and
-- the appropriate protection of spiritual dimensions.

[77] DOC Internal Memo 12 June 1995: Issue of Permits to Collect Flora/Fauna

3.5.5 The Mataatua Declaration

One response from tangata whenua to all these issues is the 1993 Mataatua Declaration:

> ...a year after the Earth Summit, the nine Iwi of Mataatua, led by... Ngati Awa, convened the First International Conference on Cultural and Intellectual Property Rights of Indigenous Peoples. Maori, together with indigenous delegates from 14 countries, as well as non-indigenous advisors and professionals with an interest in this field, met and considered a wide range of relevant issues, including biodiversity.
>
> The resultant document, the Mataatua Declaration, was subsequently tabled in the United Nations (Working Group on Indigenous Peoples), and ratified by over 150 indigenous representatives from 60 UN member states. The Mataatua Declaration has also been ratified by the Iwi of Maori Congress.
>
> The Mataatua Declaration is now widely quoted and discussed globally. It is not as well known here in New Zealand and so far government has not formally acknowledged its existence...[78]

The Mataatua Declaration establishes a number of important principles for the general protection and use of traditional and contemporary knowledge:

> ...Indigenous Peoples of the world have the right to self-determination, and in exercising that right must be recognised as the exclusive owners of their cultural and intellectual property (Preamble)
>
> ...Indigenous Peoples should define for themselves their own intellectual and cultural property (Recommendation 1.1)
>
> ...Indigenous Peoples should develop and maintain their traditional practices and sanctions for the protection, preservation and revitalisation of their traditional intellectual and cultural properties (Recommendation 1.6)
>
> ...States, National and International Agencies must recognise that indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge (Recommendation 2.1)... (and also) the right to create new knowledge based on cultural traditions (Recommendation 2.2)
>
> Indigenous flora and fauna is inextricably bound to the territories of indigenous communities and any property right claims must recognise their traditional guardianship (Recommendation 2.6)

[78] Mead p 4

> ...the first beneficiaries of indigenous knowledge (cultural and intellectual property rights) must be the direct indigenous descendants of such knowledge (Preamble)... (and) commercialisation of any traditional plants and medicines of Indigenous Peoples must be managed by the Indigenous Peoples who have inherited such knowledge (Recommendation 2.7)
>
> ...Indigenous Peoples should develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge (Recommendation 1.3) (and)... monitor the commercialism or otherwise of indigenous cultural properties in the public domain (Recommendation 1.8(a))...
>
> Companies, institutions both governmental and private must not undertake experiments or commercialisation of any biogenetic resources without the consent of the appropriate indigenous peoples (Recommendation 2.9)

Other international indigenous peoples' forums have developed similar statements of principle in order to protect against exploitation by outsiders of natural resources and traditional knowledge:

> Statements to this effect have been issued by organisations such as COICA (the Coordinating Body for the Indigenous Peoples' Organisations of the Amazon Basin) and at a number of regional meetings which have taken place in Bolivia, East Malaysia and Fiji... In Australia delegates at a conference in the Daintree issued the Julayinbul Statement on Indigenous Intellectual Property Rights which asserts indigenous intellectual property rights as common law rights... In relation to the environment, it was declared that:
>
> > Indigenous Peoples and Nations share a unique spiritual and cultural relationship with Mother Earth which recognises the inter-dependence of the total environment and is governed by natural laws which determine our perceptions of intellectual property. Inherent in these laws and integral to that relationship is the right of Indigenous Peoples and Nations to continue to live within and protect, care for, and control the use of that environment and of their knowledge.[79]

Other recent international agreements include sections ensuring recognition of indigenous peoples' cultural and intellectual property rights, and requiring protection of those rights and of indigenous peoples' exercise of traditional knowledge and practices (refer 3.6).

[79] Fourmile pp 4-5

3.6 INTERNATIONAL AGREEMENTS

3.6.1 Introductory Comments

The NZCA includes the following brief survey of some relevant international agreements and conventions, and their provisions or recommendations on the protection and use of natural resources, as useful context for considering the New Zealand situation. There is increasing concern around the world to protect wild natural resources and to ensure that any use is sustainable; there is also concern to ensure the recognition and participation of indigenous peoples in conservation decision-making and management.

The NZCA notes that some of the international agreements discussed below have not been formally ratified by the New Zealand government. The NZCA also notes that some of the principles and objectives outlined in international forums derive from and address conservation issues in Third World countries; although there are many fundamental issues in common, the New Zealand situation can also in some ways be very different from Third World circumstances.

3.6.2 The Convention on Biological Diversity

In 1992 the United Nations Conference on Environment and Development (UNCED) was held in Rio de Janeiro. Commonly known as the Earth Summit, this huge multi-national forum "brought together more heads of government than any meeting in history."[80] The Earth Summit drew extensive public attention and some political controversy, and produced a crucially important agreement -- the Convention on Biological Diversity:

> The international community had accepted that environmental protection had to go hand in hand with social and economic development. It recognised that the well-being of humanity depends on the well-being of nature. The Biodiversity Convention... aims to manage global biodiversity in a sustainable manner.[81]

The Convention was signed by New Zealand, and more than 150 other countries. It has since been formally ratified by the New Zealand government which makes it legally binding on the government. The Convention is subject, however, to the national legislation of each signatory nation. For New Zealand, it has been noted that:

> ...it would be impossible to place this in a New Zealand context without referring to the Treaty of Waitangi and the Government's obligations under the Treaty.[82]

[80] Keating p v
[81] Te Puni Kokiri p 8
[82] Te Puni Kokiri p 9

The Convention has three fundamental objectives:

-- the conservation of biological diversity;

-- the sustainable use of biological resources; and

-- the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

Many of the NGO respondents to the NZCA's 1994 Paper expressed the strong belief that the Convention's objectives and its requirements of New Zealand conservation management were equivalent to total protection and preservation of all indigenous species and natural resources. However the associated requirements of the three objectives raise wider questions:

> All three objectives together create a framework for biodiversity and one may not be practised without appropriate consideration of the other objectives. In particular, sustainable use consistently presents itself throughout the Convention... as a 'prerequisite for biodiversity conservation.'[83]

Under Article 6 the Convention requires nations to "prepare or adapt national strategies, plans or programmes" for biodiversity. In New Zealand this process is under way with the development of the New Zealand Biodiversity Strategy. DOC is the main co-ordinating agency for this process; iwi Maori and stakeholder groups including NGOs and industry are to participate in the preparation of the Strategy. Hui and other consultation meetings will be held through 1997 to ensure that all those with an interest in this country's natural biodiversity have input into the final Strategy.

Article 7 of the Convention deals with Identification and Monitoring, and establishes priorities for research and information-sharing (refer 5.2 below). Article 7 requires countries to identify components of biodiversity, processes and activities which are important for conservation and sustainable use. Factors to be regarded include:

-- diversity and distinctiveness;
-- threatened status and representativeness;
-- scientific importance;
-- social and cultural importance; and
-- medicinal, agricultural and economic values.

Article 8 of the Convention provides for In Situ Conservation, or the conservation of species in their natural habitats. This includes the establishment of protection mechanisms such as protected lands or reserves, and the rehabilitation and restoration of degraded ecosystems. In the process of developing New Zealand's Biodiversity Strategy, emphasis has been placed on the conservation of indigenous species (refer 3.7.1 below). It has been argued that New Zealand's first responsibility should be to protect the species and ecosystems that occur

[83] Te Puni Kokiri p 9

naturally nowhere else in the world, as the strongest contribution that this country can make to conservation of biodiversity at the global level.

Article 9 of the Convention deals with Ex Situ Conservation, or the conservation of species away from their original habitats. In many cases this is necessary because the original natural area either no longer exists or has been so severely modified or degraded that it can not support the wild creatures or plants which used to live there:

> ...effective recovery of many threatened species includes both in situ and ex situ conservation measures. There is an emphasis on rehabilitation and restoration of degraded ecosystems, as this is beneficial to the diversity of ecosystems and promotes the recovery of threatened species.[84]

Access to Genetic Resources is provided for under Article 15, which recognises the sovereign rights of nations over their natural resources and their authority to determine what access will be had to them. It also provides for the fair and equitable sharing of the benefits from commercial and other uses of natural resources, and of the results of research.

The Convention is of particular significance for questions of Maori customary use of native species and Maori participation in conservation because it:

> emphasises that humans are part of the environment. It does this by consistently recognising the world views of many traditional cultures and recognising that it is important that they have access to biological resources. The Convention acknowledges, recognises and places value on the knowledge of indigenous peoples on biodiversity.[85]

One part of the Convention which is increasingly commonly referred to by Maori commentators is Subsection (j) of Article 8, which requires governments to:

> respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities, embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices, and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

Other sections of the Convention of particular significance include:

-- Article 10(c): Sustainable Use of Components of Biological Diversity, which provides for the protection and encouragement of customary use of biological resources in accordance with traditional cultural practices that are compatible with sustainable use requirements; and

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[84] Te Puni Kokiri p 11
[85] Te Puni Kokiri p 9

-- Article 18(4): Technical and Scientific Co-operation, which requires governments to encourage and develop methods of co-operation for the development and use of technologies including indigenous and traditional technologies.

3.6.3 Agenda 21

A number of other international agreements, statements and conventions include provisions which are relevant to the issue of Maori customary use in the New Zealand context. These include the Final Conference Document for the UNCED Earth Summit, or "Agenda 21", which is not legally binding in the same way as the Convention but provides a moral and ethical framework.

Chapter 26 of Agenda 21 acknowledges that:

> indigenous people have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment

and recommends that countries:

> adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices.

Chapter 15 of Agenda 21 recommends that nations:

> recognise and foster the traditional methods and the knowledge of indigenous people and their communities... and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge.

As well as giving priority to recognition and respect for traditional environmental knowledge and practices (refer 4.1.4 and 5.3.1 below), Agenda 21 encourages governments:

> to establish arrangements to strengthen the active participation of indigenous peoples and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes... (and) to involve indigenous people and their communities at the national and local levels in resource management and conservation strategies (Chapter 26)

3.6.4 The Rio Declaration

The Rio Declaration on Environment and Development was another outcome of the UNCED Earth Summit. Like Agenda 21 the Rio Declaration is not legally binding but establishes strong principles for nations to take into account. It adopts an ethic of sustainable management of natural resources:

> **Principle 1:**
> Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.
>
> **Principle 3:**
> The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
>
> **Principle 22**:
> Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

3.6.5 CITES

The Convention on International Trade in Endangered Species of Wild Flora and Fauna -- commonly known as CITES -- provides strict protection measures against trading in endangered or threatened species and products derived from them:

> Of prime concern are species targetted by international collectors (such as parrots, rare reptiles, corals, turtle shells, elephant ivory, rare animal skins) and those targetted by the Asian folk medicine market (such as tigers and rhinoceroses).[86]

CITES also includes provisions for the sustainable use of wildlife. In 1992 a resolution was adopted:

> which recognised the potential benefits deriving from the sustainable use of certain species to both the conservation of the species and the economic well-being of rural communities... [87]

Recent controversial issues which have been dealt with within the CITES framework include questions of sustainable hunting of elephants in Africa:

> Within the CITES forum there is an emerging polarity in the conservation ideologies... the 1992 meeting of parties to CITES adopted a resolution which recognises that commercial trade may be beneficial to the conservation of species and ecosystems, as

[86] Ministry for the Environment p 132
[87] Bridgewater p 10

> well as the development of local peoples, when it is carried out at levels which are not detrimental to the survival of the species in question.[88]

However the situation in many Third World countries is fundamentally different from New Zealand. For many peoples living at subsistence level, without the benefits of modern consumer society, the sustainable use of local wildlife is a matter of basic survival for the community. In New Zealand a wide diversity of foods and resources are available to provide for people's physical needs, and traditional uses of native species are important for other kinds of reasons (refer 4.1.8 and 5.1 below).

3.6.6 IUCN Declarations

The International Union for the Conservation of Nature and Natural Resources -- IUCN -- has also made contributions to the international advancement of these issues. The 1990 General Assembly of IUCN in Perth declared that:

> ethical, wise and sustainable use of some wildlife can provide an alternative or supplementary means of productive land-use, and can be consistent with and encourage conservation, where such use is in accordance with adequate safeguards. (Resolution 24)

The IUCN has established a Specialist Group on the Sustainable Use of Wild Species, and a programme for the sustainable use of wildlife:

> ...since its inception the programme has become firmly established in the neotropics and West Africa... the Australian Nature Conservation Agency... (is) responsible for introducing the programme into the Asia-Pacific region.[89]

The 1994 IUCN General Assembly in Buenos Aires considered wildlife use issues, and worked on the development of draft criteria and guidelines for the sustainable use of wild species.[90]

3.6.7 The Draft Declaration on the Rights of Indigenous Peoples

Another international agreement which has particular significance is the Draft Declaration on the Rights of Indigenous Peoples. A UN Commission on Human Rights working group, which includes New Zealanders and Maori, has been developing this draft declaration since the early 1980s. The declaration is still in draft form, but it will eventually, when approved and signed by participating nations, provide minimum moral standards for governments to follow. It will also have the potential to strengthen or add to the obligations of other agreements such as the Convention on Biological Diversity.

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[88] Bridgewater p 10
[89] Bridgewater p 10
[90] Webb p 16

The Draft Declaration includes the following provisions for indigenous peoples:

-- the right to the protection of vital medicinal plants, animals and minerals (Article 24);

-- the right to own, develop and control traditionally owned or used resources (Article 26);

-- the right to determine and develop priorities for their resources (Article 28);

-- the right to full ownership, control and protection of their cultural and indigenous property (Article 29);

-- the right to restitution of cultural and intellectual property taken without their free and informed consent (Article 12); and

-- the right to compensation to mitigate adverse environmental, economic, social, cultural or spiritual impact (Article 30).

Under Article 44 the Draft Declaration further provides that "nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire".

3.6.8 The International Convention for the Regulation of Whaling

The International Whaling Commission or IWC administers the International Convention for the Regulation of Whaling. In the mid 1980s a moratorium was established on all whaling in all the world's oceans, with only a few exceptions.

Whaling is allowed for scientific research, and Japan does undertake some whaling under this justification, although there is controversy about the numbers of whales taken and the end uses.

The Convention does also allow for whaling for aboriginal subsistence use. This must be a strictly limited harvest by indigenous people for whom whaling has important nutritional and traditional cultural significance. The argument for a quota of whales must be strong, and the targetted whale population must not be threatened by the proposed quota.

The current management objectives for aboriginal subsistence whaling, developed in 1982 and reaffirmed in 1993, are:

-- to ensure the risks of extinction to individual stocks are not seriously increased by aboriginal whaling;

-- to enable the aboriginal people to harvest whales in perpetuity at levels appropriate to their cultural and nutritional requirement, subject to the other objectives; and

-- to maintain the status of whale stocks at or above the level giving the highest net recruitment and to ensure that stocks below that level are moved towards it, so far as the environment permits.

At present the IWC allows whaling for aboriginal subsistence by the Inuit people of Alaska, Canada, Greenland and Russia, and by West Indian people in St Vincent and the Grenadines. The justifications include reasons of traditional significance, and more pragmatic considerations such as the limited access of the indigenous communities to other sources of meat and protein. Any whale meat or product must be utilised only by the people that killed the whale, and may not be used for commercial purposes.

Other whaling does occur. Denmark and the Faroe Islanders take pilot whales under traditional cultural reasons -- they argue that the smaller pilot whales should not be subject to the moratorium. Norway objects to the international moratorium and continues whaling.

3.7 NEW ZEALAND'S BIODIVERSITY

3.7.1 A Diminished Heritage

At the end of the 20th century, the natural heritage of New Zealand and its off-shore islands is sadly diminished and severely compromised. The impacts of human presence, and natural phenomena such as volcanic eruptions, have been devastating for many indigenous ecosystems and species. For many species and resources, there can be little or no prospect of any use being sustainable in the foreseeable future.

There is a widespread lack of understanding of the precarious state of our natural heritage today. Some of the statistics can help to give an indication of the compromised status of New Zealand's natural taonga in the late 1990s:

-- New Zealand has 11% of the world's endangered species;

-- three-quarters of New Zealand's present heritage of land and freshwater birds are threatened -- a greater percentage of threatened native birds than almost any other country in the world;

-- nearly one-third of New Zealand's original diversity of land and freshwater bird species are now extinct;

-- virtually all New Zealand's native bird species are still declining in numbers, with only a handful of exceptions;

-- 58% of New Zealand's vertebrate animals are threatened;

-- 90% of New Zealand's wetlands have been drained, filled or destroyed;

-- New Zealand now has approximately 2,000 species of introduced conifers and flowering plants in the wild;

-- more than ten percent of these introduced plants are dangerous weeds in the wild, with at least 217 species of introduced plant pests strangling and overwhelming indigenous ecosystems on conservation lands;

-- what natural habitat does remain for native birds and animals is severely fragmented -- settlement, agriculture and production land-uses currently take up over 90% of lowland areas -- many species can simply no longer survive in the scattered "remnant patches... surrounded by hostile farmland, pine plantations or built-up areas where they cannot live";[91]

[91] Carolyn King p 135

-- the accidental by-catch from the fishing industry kills between 5,000 and 10,000 New Zealand seabirds each year, and over 1,000 marine mammals;

-- 70 million possums infest 92% of New Zealand's land area -- they carry noxious diseases including tuberculosis and giardia;

-- every night possums eat about 20,000 tonnes of vegetation, the equivalent of a large container-ship full every 24 hours -- they also eat or destroy the chicks and eggs of native and exotic birds;

-- nearly 3 million hectares of New Zealand's native forests are vulnerable to possums -- over 60% of the North Island's native forests are at serious risk;

-- in some New Zealand forests possums now make up a greater biomass than all other forest vertebrate species combined;

-- other introduced species causing serious environmental damage include: deer, thar and wapiti; rats; stoats and ferrets; feral goats, cattle and sheep; feral cats; rabbits and hares; wasps; and trout;

-- all New Zealand's native frog species are in the two most at-risk categories on DOC's priority list of threatened species;

-- all New Zealand's native bat species are in the two most at-risk categories on the threatened species list;

-- 10% of New Zealand's land area is classed as severely eroded.

3.7.2 Pre-European Experience and Impacts

Historians, archaeologists, scientists and writers are increasingly coming to recognise and understand the impacts of each and every human society on the landscapes they inhabit:

> A reduction in wildlife habitats and extinction of species on a local scale can be identified from the time of the first human settlements. In the Nile valley the extension of the cultivated area, the draining of marshland and the organised hunting of animals led to the elimination of many species... The spread of settlement around the Mediterranean produced the same results with the destruction concentrated on the vulnerable animals at the top of the food chain.[92]

> Addition of new species to an ecosystem can produce amazing ripple effects throughout the system, and humans, as the first species capable of extensive use of reason and tools in the New World, Australia and New Zealand, must have had an effect out of all proportion to their numbers... Humans, even if armed only with the

[92] Ponting p 161

> torch and with weapons of stone and fire-hardened wood, are the most dangerous and unrelenting predators in the world.[93]

Undoubtedly the settlement of Aotearoa by the first Polynesian immigrants had major effects on the pre-human ecosystems. Fire, whether deliberate or accidental, destroyed vast expanses of the original forests, especially on the drier eastern landscapes of both islands. Radio-carbon dating of the remaining stumps and logs shows the conflagrations continuing up to approximately AD 1600:

> An uncontrolled blaze, east of the Southern Alps, in a dry summer with a blustery, dessicating nor'wester blowing down the gorges and out over the plains would have had a profound ecological effect... The forest that had thrived in mild, damp conditions after the last ice age, 10,000 years ago, was already in decline because it was ill-adjusted to a drier climate. Now it would have been pushed back, and in its place vast expanses of grass and scrub would have developed... also chang(ing) soil conditions so that the trees would not readily come back.[94]

> Maori farmers and torch-wielding hunters had altered the plant cover in certain areas... but fully half of the islands' surface... was still covered with a forest as dense in many places as that of Amazonia.[95]

Other archaeological evidence traces patterns of changing resources over decades of human occupation of a site. The lower, earliest-time levels in midden sites reveal more diversity in food sources -- for example, at one Murihiku site moa, seals, whale, birds and fish. Later layers often show a diminishing resource in both diversity and specimen sizes -- moa and various other resources becoming rare, and being replaced by various shellfish.[96]

Some commentators and scientists have interpreted such fluctuations as evidence that Maori culture and traditions are not consistent with an understanding and application of conservation principles:

> ...the earliest colonists exploited the stocks of indigenous vertebrates until most, if not all, were extinct or reduced to remnants... Conservation practices which were introduced, such as rahui, were controls placed on resource exploitation after the main environmental damage had occurred and when the alternative to conserving the remaining resources was starvation...[97]

These studies indicate a cumulative process of exploitation and depletion of natural food resources, extensive alteration of the original environment, and introduction of animals such as kiore and kuri which had negative impacts on indigenous species. The studies trace prehistoric

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[93] Crosby p 273
[94] Cumberland pp 51-2
[95] Crosby p 222
[96] Cumberland p 54
[97] Holdaway p 2

pollen grains preserved in sediments to show that: "...Polynesian impact on the landscape and its biota was severe and continued to be so throughout prehistory."[98]

Later records also indicate high levels of harvesting, often to meet the particular requirements for special occasions and situations. At a hui at Ruatahuna in 1874, "Tuhoe set apart ten great carved calabashes containing 1800 preserved birds."[99] Hunting parties at Parihaka in Taranaki as late as the 1880s "collected 14,000 wood pigeons, kaka and tui";[100] contributions to the Parihaka community from other iwi were also extensive:

> ...the Chatham Islanders... sent huge quantities of fledgling albatross, too plump to fly and salted down or preserved in their own fat; the rain-swept lagoons were scoured for grey duck and swan; 20,000 eels were caught in a month...[101]

Such patterns of harvest have led commentators to conclude that:

> ...the Polynesian peoples had, throughout the period of their occupation, no more or less claim to have lived in harmony with their environment, or to have a greater environmental or conservation awareness, than do the Europeans who followed them... in their serial over-exploitation of the natural products of the new land, the Maori were no different from any other colonising culture in history.[102]

From the perspective of these studies, the tradition of rahui (refer 4.1.7 below) is a late evolution in Maori environmental management, a painful lesson learned from earlier losses and scarcities. However there is no linguistic evidence to support such a conclusion. Other researchers observe:

> It is likely that after the initial spate of disappearances, the rate of extinction declined as the fauna and flora moved at least part way toward a new equilibrium that incorporated the effects of sustained harvesting by Maori and predation by kiore... and kuri...[103]

A pattern emerges of continuous adaptation, as the Polynesian settlers tested the new environment and its resources, slowly over the generations learning its capacities and constraints and developing appropriate management techniques and controls:

> Although even as late as the 17th century some bird species may still have been vulnerable to the long-term flow-on effects of habitat modification and predation... it seems self evident that for the most commonly harvested birds the harvest system in place at the time of European settlement would have been sustainable, unless harvesting

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[98] McGlone quoted in Holdaway p 8
[99] Binney p 470
[100] Scott p 91
[101] Scott p 149
[102] Holdaway pp 1 & 22
[103] Kirikiri and Nugent, pp 54-55

> techniques or human population size changed dramatically, because these species had already survived 800 years of harvesting.[104]

Many of the respondents to the NZCA's 1994 Paper cited the extinction of the moa and other native birds, and the firing of some areas of forest, in support of their beliefs that Maori traditions of conservation are a romanticised myth, and their insistence that Maori access to natural resources should be strictly controlled. However:

> The legacy of the history that prised Maori from their best land persists, not least in conflict over whether traditional Maori society intuitively cared for nature -- living... in mindful connection with nature, or relentlessly despoiling it. The truth, as it often does, lies somewhere between...
>
> The country the first Europeans saw wasn't a pristine wilderness, but neither was it a run-down desert, burnt from one end to the other. Confounding the evidence of moa butchery-grounds and rubbish heaps with now-extinct birds' bones at the bottom but little more than shellfish at the top, are countless 19th-century European journals, sketches and paintings showing how close Maori lived to healthy-looking forests and swamps...
>
> The early Maori were capable of burning forests, and certainly did... but the natural forest cover of plains country, with slow-growing fruit-bearing trees like kahikatea, matai and hinau, was kept intact because these rainforests were often a better source of food than cultivated land or second-growth vegetation.[105]

3.7.3 The Last 160 Years' Experience and Impacts

The very first English contact with New Zealand was marked by optimistic opportunism. Captain James Cook's and Joseph Banks's journals of their voyages and explorations, as edited by John Hawkesworth, became enormously popular in late 18th and early 19th century England. Their utilitarian approach is characteristic of the times:

> The Noble timber, of which there is such an abundance, would furnish plenty of materials either for the building (of) defences, houses or Vessels. The River would furnish plenty of Fish, and the Soil make ample returns of any European Vegetables sown in it... the timber trees which were the streightest, cleanest and I may say the largest I have ever seen...[106]

Subsequent European arrivals were driven by the richness and diversity of the new colony's natural resources, and the relative ease of exploitation. These opportunities introduced an economic dimension and many Maori as well as Europeans were quick to participate in the benefits of trading and other commercial activities:

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[104] Kirikiri and Nugent, p 57
[105] Park pp 45, 47, 318
[106] Banks quoted in Park p 29

> The impact of European expansion on the rest of the world involved losses on an even bigger scale and in a shorter period. When the first Europeans reached... Australasia and the Pacific they were... stunned by the sheer profusion of wildlife... They proceeded to draw freely on this, without concern for the fate of any individual species, however strange or attractive or vulnerable it might be...[107]

Sealing and whaling were, for a while, very lucrative businesses. In the early 1800s, sealing ships took cargoes of 50,000 or 60,000 skins. Seals were so numerous, one observer reported, that clubbing them was as easy as killing "hogs in a pen with mallets."[108] However the ruthless efficiency of the seal traders took fur seal numbers close to the point of extinction; the industry was no longer sufficiently rewarding and sealing was over by the 1830s.

The whaling industry was no less profit-driven. Whale oil was essential in the 18th and 19th centuries for lighting and for lubrication for industrial machinery, and whalers from America, England and other European nations operated in increasing numbers in the waters around New Zealand. In the single year 1836, the Bay of Islands saw 93 British whaling-ships, 54 American and three French.[109] In 1840 the Americans alone had over 700 ships operating in the Pacific -- on average each ship took about 100 whales a year:

> By 1880 the once thriving Pacific whaling industry was reduced to a few areas off the coasts of Peru and Australia... both the right and sperm whale populations of the world had been hunted to the edge of extinction.[110]

Gold was another natural resource eagerly exploited in the classic boom-and-bust pattern. Tens of thousands of Europeans and Chinese arrived in the gold-rushes of the 1860s, many from other diggings in Australia and California. First Otago, then the West Coast and the Coromandel were invaded by hordes of prospectors and diggers. There were increasingly severe environmental impacts as the most easily accessible gold was quickly gone and more invasive, technological methods became necessary:

> Sluices and high-pressure water jets replaced the digger's spade. Explosives and giant rock-crushing batteries and stampers did the job of thousands of picks... Dredging boomed, and riverbanks were strewn with barren trails of "tailings" like enormous caterpillars. In 1903, more than 200 dredges were clattering and carving their way through gold-bearing gravels in Southland and Otago and 63 more were at work in Westland.[111]

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[107] Ponting pp 165-6
[108] Cumberland p 70
[109] Crosby p 247
[110] Ponting p 188
[111] Cumberland p 89

Timber was from the outset a primary resource for systematic exploitation. To give just one example of the widescale clearances of the colonial lumbermen -- the kauri forests of northern New Zealand:

> ...still covered more than a million hectares when the first European traders came looking for spars in the late 1790s. Today less than one per cent remains unmodified, some 7,500 hectares...[112]

The effects of agriculture on indigenous wild nature have been no less thorough, as New Zealand transformed itself into a producer of meat, wool and butter for the British and other markets:

> Within less than 200 years after 1800 the world's population increased five-fold, requiring a vast increase in agricultural output and the destruction of large areas of previously untouched natural ecosystems...[113]

> Once the New Zealand Company took hold of a piece of level ground, their surveyors and axes didn't wait... Revered forests...appeared briefly in the earliest paintings and plans and then were gone. With them went the centre of the Maori landscape...[114]

> Most forests cleared by the Europeans were burnt after only partial logging. The first stage of preparing for a burn... involved cutting the fern, vines, supplejack, bushes and small trees and leaving them to dry. In the right conditions this flammable material... achieved a burn hot enough to consume the denser material that could not be removed any other way. Fire was therefore the main ally of the settlers...[115]

The advent of refrigerated shipping in 1882 was a crucial development, enabling a vast expansion in agricultural exports, and demanding the felling of millions of kahikatea trees for making butter-boxes and packing-cases. The invention of mechanised milking machines and the increasing use of artificial fertilisers comprehensively revolutionised New Zealand's landscapes. By 1913, a Royal Commission decreed that:

> No forest land... which is suitable for farm land... except it be required for the special purposes of a climatic or scenic reserve... should be permitted to remain under forest if it can be occupied and resided upon...[116]

With agriculture came an endless invasion of plant and animal species, some deliberately introduced, others accidental arrivals or opportunists:

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[112] Ell 1996(b) p 29
[113] Ponting p 397
[114] Park p 241
[115] Carolyn King p 63
[116] Royal Commission quoted in Park p 69

> Exotic weeds took over both sides of the roads through the plains... Dock spread out along the banks of every river and far up along the streams into the mountains... Watercress clogged the rivers, and the new city of Christchurch had to spend six hundred pounds per year to clear it out of the Avon River... White clover, presumably ably assisted by honeybees, elbowed in everywhere, growing so thick that it smothered out the native grasses...[117]

Many early voices were raised in protest at the damage and losses (refer 4.3.4 below). But the impacts of these changes on the indigenous ecosystems and species were extreme:

> With the rising tide of European invaders... and their various animal companions, the extent and pace of disturbance quickly accelerated... When habitat and food supplies have been destroyed, birds will disappear whether or not predators help to speed them on their way... some species that are now rare, endangered or extinct were still relatively common in the 1870s, and showed serious decline only later.[118]

Many of the submissions on the NZCA's 1994 Discussion Paper referred to the record of pre-European extinctions of species in support of their insistence that Maori should not be given access to wildlife. However the post-European record is similarly grim -- statistics show 38 endemic bird species suffering decline or extinction before 1769, and 20 species since then. In the North Island 21 bird species became extinct before c.1800, and 13 species since then; 2,500,000 hectares of forest were lost before c.1800, and nearly 6 million hectares since then.[119]

3.7.4 Unlawful Poaching

The issue of unlawful poaching had a high profile in many of the responses to the NZCA's 1994 Discussion Paper. For many non-Maori respondents, customary use was little more than a euphemism for poaching. Some referred scornfully to recent cases of Northern kereru hunters offering the defence in court that their hunting was a customary or traditional practice. A recent case of deliberate out-of-season whitebaiting on the West Coast was also a challenge to the concept of Maori traditional use of the fishery.

Other native bird species are also at risk from unlawful shooting. In particular protected ducks and other waterbirds are at risk from the bycatch from gamebird shooting, kawau and kahu are sometimes shot without the statutory permission required for nuisance birds (refer 3.1.3), and keas are still considered a problem by some high-country farmers and are occasionally shot. Kea, kawau and coastal birds are also victims of reckless shootings, or retaliatory attacks by people who are disenchanted with government authority generally.

Maori respondents also commented on the question of unlawful harvesting. Their concerns were both with the poaching of kereru -- often undertaken by outsiders, people coming in from the city with no whakapapa connections to the rohe -- and with the taking of plant

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[117] Crosby p 255
[118] Carolyn King pp 81, 100
[119] Carolyn King, pp 212-13

materials, especially rongoa plants, without appropriate consultation and approvals from tangata whenua. Maori acknowledged the vulnerability of both birds and plants to uncontrolled, unskilled harvesting. The damage done to rongoa resources by inexperienced harvesters was a concern in some areas; the decline in kukupa numbers was a major worry in Northland.

Recent publicity campaigns by Forest & Bird and others have focussed attention on the Northland kukupa situation. It is claimed that:

> ...every fine day during the miro fruiting season and beyond -- a period which spans late March through to August -- hunters will be in the forests. In some sophisticated operations, hunters will camp out for maybe a week, bagging up to 30 birds which they store in chilly bins. A variant is "drive-by shooting" on the region's back roads... Birds that aren't eaten immediately have been known to be raffled in pubs for up to $200, or else they're traded for firearms, alcohol or drugs. These are not isolated instances... rather they are the norm.[120]

It is difficult to make a reliable assessment of the extent of poaching of native birds, because of its illegal nature and its connection sometimes with other illegal activities on conservation lands, such as cannabis growing. Many people local to the areas where poaching is reputed to occur will acknowledge it is a problem, but further precise information is simply not available.

Other instances of apparent poaching receive attention as dramatic stories but are based on supposition and circumstantial evidence. One NGO submission to the NZCA's 1994 Paper referred to "feasts of 700 or more for bikie gang banquets".[121] A recent Wanganui news item reported that poaching was responsible for a sudden drop in kereru numbers in a local reserve. However no evidence was found that hunting had taken place in the area; no efforts were made to check the possibility of other impacts on the birds or other reasons why they might not have been at that site; no discussion was undertaken with the tangata whenua before the news story was printed. Another recent story tells of poached kereru being smuggled out of Southland hidden under a layer of muttonbirds in buckets; no serious investigation was undertaken or evidence provided before the story was circulated.

Strong arguments have been made for improved tangata whenua participation in conservation management as a way of dealing with poaching by recognising mana and so giving stronger authority to the local Maori communities (refer also to 5.5.2 below):

> A more enlightened approach to the management of customary resources on the part of the Crown in particular and Pakeha in general would greatly alleviate the existing problem of illegal harvest by Maori of some protected species...

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[120] Barrington 1995 pp 30-31
[121] FMC submission

> Any transgression would be viewed by those Maori acting as kaitiaki for a given species as an offence against their manawhenua... An offence is therefore likely to involve a culturally more substantive sanction for the offender (although that sanction should continue to be supported by the capacity of legal enforcement). In more practical terms, kaitiaki who live close to their natural resource base are best placed to police its protection.
>
> Secondly, and we believe more importantly, fairer participation by Maori in the management of their culturally important natural resources would result in a much improved level of acceptance by them of access restrictions or rahui...[122]

There is however some distrust of this kind of rationale:

> Some marae have proposed electing their own forest rangers, but DOC's rangers are skeptical of this too. They believe the real motivation is not to stop the harvest, but to regulate it and accrue mana through its control.[123]

There is also some skepticism regarding the extent of possible politicisation of some instances of hunting, where assertions have been made for rangatiratanga and Treaty rights as justification for the activity (refer 3.3 above).

It seems however that unlawful harvesting, of both birds and plant resources, may be more usefully addressed in close association with tangata whenua. This would involve dialogue, education about the scarcity and vulnerability of the resource, and involvement of local Maori and communities in support of compliance and in programmes to restore habitat and deal with possums (refer 5.4 below).

[122] Wright Nugent & Parata p 85
[123] Barrington 1995 p 32

4: CULTURAL BACKGROUND

General Comments

The responses received to the NZCA's 1994 Discussion Paper and much of the debate through 1994 and 1995 suggested that there is a need for more information about the different philosophical frameworks, values and ideals that underpin the work of conservation today. The significance of traditional Maori relationships with native plants and animals has to be more clearly articulated for the wider public. The heritage of European cultures also needs to be more carefully assessed, and the evolving philosophies and beliefs that have shaped our contemporary civilisation's valuing and treatment of wild nature. The relevant factors include:

-- what is meant by Maori customary use -- why it is an important dimension of Maori culture, what levels of use and access are sought, what species and materials are valued, why customary use is not just a question of food -- many non-Maori respondents felt that in the late 20th century, with supermarkets and the wide range of foods available, traditional harvests of native species should not be necessary;

-- the wider contexts of Maori culture, traditions, history and relationships with the natural environment;

-- European culture and history, both before and after the European colonists' arrival in these islands -- the rich traditions of Europeans' relationships with and exploitation of nature, the more recent but powerful concepts of conservation and protection of wild places and creatures, the strong affinity and spiritual identification that many people feel with natural environments, and the expression of all this in such ways as the recognition of intrinsic values in both legislation and written commentary; and

-- the ongoing decline and increasing vulnerability of most indigenous birds and animals, plants and wild ecosystems.

The following sections are offered as only a starting point. Constraints here of space preclude anything more than a quick outline of the most important aspects. The reference list at Section 7 is a guide to further information and useful background.

4:1 WHAT CUSTOMARY USE MEANS TO MAORI

4.1.1 Introductory Comments

The NZCA acknowledges that the discussion that follows in this section covers concepts and information which are of the greatest significance and sensitivity to Maori.

Some Maori would say that only Maori have the right to discuss and define such matters -- only Maori can speak their own truth for their own people. The deepest spiritual dimensions and the identity, the very Maoriness of iwi, hapu and individuals are involved. The protection of intellectual and cultural property rights is at stake. Attempts by Crown agencies (such as the NZCA) to consider such issues could be seen as an appropriation or manipulation of Maori realities.

However many Maori commentators have, increasingly in recent years, published and presented various interpretations of Maori culture and heritage for more general public accessibility. The NZCA has used such authoritative Maori presentations in the development of the following discussion.

The Maori members of the NZCA have worked closely with this initiative since the outset, bringing the wisdom and knowledge of their iwi and the kaumatua and kuia with whom they confer regularly. The oral testimony of the Maori participants at the hui and meetings held through 1994 and 1995 has also been invaluable.

The NZCA offers this discussion therefore with respect and good faith. It is intended as a general summary to balance the discussion of Europeancultural values; it is not intended to replace the statements of Maori iwi and hapu on their own behalf on customary use or any other issue.

The NZCA recognises the tribal distinctiveness of Maori society and beliefs. Each iwi and hapu has its own particular traditions and identity. With many issues, each will insist on its own priorities, opinions and independence. Iwi and hapu will avoid making generalised statements, decisions or judgements on behalf of other iwi or hapu. This can result in some complexity; however especially when dealing with relationships with land and natural resources the individual distinctiveness of each group is essential.

There is furthermore a very wide range of variation in practices and taonga utilisation from hapu to hapu and iwi to iwi throughout the country. As such it is impossible to list exhaustively all Maori customary uses of native species and materials. But underlying all the distinctively local customary uses are certain basic concepts and values which are constant throughout Maoridom.

4.1.2 The Maori Universe

The Maori view begins at the beginning -- with the creation of the physical and intangible worlds and the powers acting within them:

> Some wananga... begin with a description of Te Kore (the realm of "chaos" or "nothingness"; of "potential being"). In this realm dwelt Io, the supreme being from whose iho... the subsequent voids were conceived. Thus from Te Kore arose Te Po (the night realm), and from thence the twilight dawn, then Te Ao Marama (the full light of day). Io then created a single being or ancestor from whence came Rangi and Papa... Ranginui e tu iho nei, the male principle, or "sky father", and Papatuanuku, the female principle or "earth mother".
>
> From these two primal parents arose many offspring, all supernatural beings, each responsible for, or guardians of, particular natural phenomena. Tane was the most important... as Tane mahuta (god of the standing forest) he engaged in numerous procreation events with supernatural female deities... eight wives produced nine species of large trees. With Punga he produced the insects and other small creatures of the forest... Further cohabitations produced all the other birds...
>
> Tangaroa was god of the sea and all sea creatures. All fishes are descended from one of his grandchildren (Ikatere) and reptiles from another (Tutewehiwehi).
>
> Tawhirimatea was god ancestor of the winds... Tumatauenga had authority over warfare, and human affairs... Rongomatane, god of agriculture, was responsible for all cultivated foods especially the kumara... Haumiatiketike was the god of the uncultivated foods, eg. the bracken fern root...
>
> Tane led the search for the female element from which to create human kind, but eventually the gods... moulded a human form from the red clay of Kurawaka at Hawaiki (the ancestral homeland of Maori). Tane then breathed into its nostrils the Ha or breath of life... Thus was Hineahuone, the earth-formed maiden, created from the whenua... of Papatuanuku, and imbued with the mauri... of the gods...[124]

Many wananga have differing versions of this, which give greater emphasis to the aspects of these teachings which 19th-century Christian missionaries found offensive and therefore attempted to delete.

In Maori tradition, all elements of the natural world, and all people, are descended from Ranginui and Papatuanuku, and are thus related. Everything, whether animate or inanimate, human or non-human, has its own whakapapa or genealogy linking it back to Rangi and Papa through the various atua: "There is no distinction or break in... the whakapapa between supernatural and natural. Both are part of a unified whole."[125]

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[124] Roberts et al pp 8-9
[125] Roberts et al p 9

This interrelatedness between people and nature means that people can not be separate from and superior over nature -- humans belong to nature and in nature, rather than being distinct, ascendant or dominant. "Papatuanuku was loved as a mother is loved, because the bounty that sprang from her breast nurtured and sustained her children. Humans... were not above nature but an integral part of it..." [126]

The personification of natural elements, species and phenomena is a fundamental aspect of Maori understanding of the world. From Ranginui and Papatuanuku on down through the mountains and rivers fundamental to tribal identity, to the manifestation of ancestors or spiritual presences in a bird, fish or lizard, all is interconnected like a family: "...a tribe will talk of being descended from its river or harbour and point out that a violation against that river or harbour is a violation against the people who are that river or harbour."[127] The links with these intangible dimensions are central to Maori identity and activity:

> Inseparable from the land are the multiplicity of spirit beings which make up the mana of the tribe. The forest is Tane; the fern roots are Haumiatiketike; the kumara, Rongo. In some nearby trees live [sic] a morepork who is really the chief's great-grandmother. With all these beings, intense relationships exist, manifested regularly through rituals and omens. They are simply part of the community...[128]

For Maori, these personal links with the natural world involve responsibilities and respect: "Although people were seen to test the boundaries of their relationship with the environment, a complex set of concepts and rules, grounded in the spiritual world, ensured that people did not push this relationship too far."[129] Appropriate human treatments of natural resources were defined within the framework of familial duty: "...as every son has social obligations to fulfil towards his parents, sibling and other members of the whanau, so has man an obligation to mother earth and her whanau to promote their welfare and good."[130]

4.1.3 Tikanga Maori

Tikanga Maori is defined in the Resource Management Act as "Maori customary values and practices". Other definitions include: "the correct way to carry out something in Maori cultural terms", and "culturally correct customary practices... based on respect and reciprocity."[131] Three levels are defined -- tikanga or substantive Maori law, kaupapa or procedural Maori law, and kawa or the local “by-laws” of iwi, hapu and whanau.

Tikanga Maori as relating to natural resources and phenomena is based in several interlinking concepts. Mauri is the essential life-force, the power and distinctiveness which enables each thing to exist as itself. Everything in the natural world -- people, fish, birds, forests, rivers, water, land, and even created things such as a house or wharenui -- has its own mauri. Humans

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[126] Ranginui Walker quoted in Mutu 1994(b) pp 9-10
[127] Mutu 1994 (b) p 10)
[128] Schwimmer quoted in Roberts et al p 10
[129] Manatu Maori, p 2
[130] Marsden and Henare, quoted in Roberts et al p 10
[131] Roberts et al p 12

however possess mauri-ora, which confers on them a particular responsibility towards other things.

Protection and nurturing of the mauri of any element of the natural world is essential for its survival and wellbeing.

Mauri can be diminished or destroyed when a natural resource is treated badly -- for example when sewage or other pollution is discharged into a river or harbour. This principle has been recognised in various judgements of the Waitangi Tribunal, notably the Waitara-Motunui claim, the Kaituna claim and the Manukau claim:

> In the Manukau report the Waitangi Tribunal accepted that "taonga" means more than objects of tangible value. A river may be a taonga as a valuable resource. Its mauri... is another taonga.[132]

Mauri can also be restored, enhanced and strengthened, through protection, rahui, and appropriate ritual.

Kaitiakitanga is the ongoing work of looking after things on all levels, physical and intangible. There are various definitions of kaitiakitanga all centring around the concept of guardianship. The wording in the Resource Management Act (section 2) includes both "the exercise of guardianship" and "the ethic of stewardship based on the nature of the resource itself"; some Maori however object to the implications of the term "stewardship":

> Stewardship is not an appropriate definition since the original meaning of stewardship is “to guard someone else’s property”. Apart from having overtones of a master-servant relationship, ownership of property (in the traditional Maori world) was a foreign concept... Thus the resources of the earth did not belong to man but rather, man belonged to the earth.[133]

The original kaitiaki were the atua themselves. Each of the children of Rangi and Papa has responsibilities for the welfare and protection of different sectors of the natural world -- Tane for example is kaitiaki of all plants, insects and birds, of all tapu things and of all ritual. Kaitiaki responsibilities are also shared by other spiritual beings, including the tribal kaitiaki brought to Aotearoa in the ancestral waka, and the spirits of deceased ancestors. These kaitiaki are manifested in the physical world, whether in a particular place -- rocks, mountains, rivers, caves, coastal inlets -- or in living things including trees, birds, fish, insects, lizards, and people. Most iwi, hapu and whanau have their own special kaitiaki, named creatures recognised by their distinctive appearance or behaviour, part of the whakapapa of the community, and part of the ongoing relationships of the tangata whenua with their natural landscapes and resources.

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[132] Justice Chilwell, High Court, quoted in Roberts et al p 13
[133] Marsden and Henare, quoted in Roberts et al, p 14

The work of kaitiaki includes not only the duty to care for the physical and ecological wellbeing of the place or resource and the human communities dependent on them, but also to protect and nurture the equally important intangible dimensions:

> ...As minders, kaitiaki must ensure that the mauri or life force of their taonga is healthy and strong. A taonga whose life force has been depleted... presents a major task for the kaitiaki. In order to uphold their mana, the tangata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength.
>
> In specific terms, each whanau or hapu... is kaitiaki for the area over which they hold mana whenua, that is, their ancestral lands and seas. Should they fail to carry out their kaitiakitanga duties adequately, not only will mana be removed, but harm will come to the members of the whanau and hapu.
>
> Thus a whanau or a hapu who still hold mana in a particular area take their kaitiaki responsibilities very seriously. The penalties for not doing so can be particularly harsh. Apart from depriving the whanau or hapu of the life sustaining capacities of the land and sea, failure to carry out kaitiakitanga roles adequately also frequently involves the untimely death of members of the whanau or hapu.[134]

The kaitiaki responsibilities of contemporary Maori communities are constantly evolving and adapting to provide practical solutions in the modern world. Korero and interpretations of the kaitiaki role are being developed by iwi and by Maori commentators. In the late 20th century kaitiakitanga has been manifested in submissions and contributions to Planning Tribunal processes, councils' Regional and District Plans, and DOC's CMSs as well as through more traditional activities. Legal recognition and practical mechanisms are continually advancing with findings on Waitangi Tribunal claims and other cases, such as the Huakina Development Trust's case protesting the discharge of cowshed effluent into a tributary of the Waikato.

Kaitiaki responsibilities are however solidly based in ancient tribal identity and the ancestral connections with the particular rohe of the iwi, hapu or whanau: "...to be a kaitiaki means looking after one's own blood and bones -- literally. One's whanaunga and tupuna include the plants and animals, rocks and trees."[135] While some non-Maori have enthusiastically taken up the concept of kaitiakitanga as a parallel or equivalent to Western-style conservation work, Maori insist on the intrinsic integrity of the kaitiaki role:

> Everybody on this planet has a role to play as a guardian. But if you use the word kaitiaki, that person must be Maori... (Kaitiaki is) traditional and inalienable. Kaitiaki cannot be filled by a group from anywhere (because) the status of kaitiaki stems from long tribal associations... Only tangata whenua can be kaitiaki, can identify kaitiaki, can determine the form and structure of kaitiaki.[136]

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[134] Report of the Board of Inquiry into the NZ Coastal Policy Statement, p 17
[135] Roberts et al p 13
[136] Roberts et al p 13

The work and obligations of kaitiaki are inextricably linked in with the exercise of rangatiratanga and the expression of mana. Mana is fundamental to the existence and proper functioning of Maori society:

> ...all living things, animals, trees and plants, fish and birds, as well as human beings, are embued with a mana of their own, a mana implanted by the gods. So also are many inanimate objects such as meeting houses and mountains... Mana whenua is a gift from the gods and always remains with the tribe of an area. The imposition of European title, for example, cannot remove mana whenua from a tribe.[137]

A number of Waitangi Tribunal findings have endorsed the principle that the Treaty guarantee of rangatiratanga ensures to Maori not only possession of resources and taonga but also the right to manage those taonga according to Maori tikanga and priorities, and to take into account Maori spiritual and cultural values (refer 3.3.8 and 4.1.2 above).

Another fundamental force in the Maori world is tapu. Deriving from the atua, tapu can apply to all living things and to places, land, oceans, rivers and forests. There are various kinds and degrees of tapu, covering the full range of experience from birth to death:

> The modern translation of tapu as "sacred" fails to capture the full essence of tapu. Elsdon Best, an early anthropologist, described tapu as the power that preserved order in the community, and took the place of civil law. Tapu implies a prohibition which if violated would have calamitous consequences; quite possibly, death. A tapu site has been described as being protected by an unseen gate, and has also been likened to an area of harmful radiation. That is, even though nothing is visible, a person who violates the area knows the awful and inescapable consequences which will certainly follow.[138]

In summary then traditional Maori relationships with the natural environment have a number of significant differences from the prevailing Europeanworld-view (refer 4.2 below). All existence is commonly descended from Ranginui and Papatuanuku and the other atua; all creatures including people, and all plants and natural things are related in a vast complex of cousinship or whanaungatanga. Spiritual and ancestral dimensions are crucially important, inherent in the natural landscape and in creatures and plants, water and stone. All things are sustained by mauri, and protected as necessary by tapu. The duty of kaitiaki is to protect and strengthen both the intangible mauri and the physical wellbeing of the resource, place or taonga.

The adoption of Christianity by Maori in the 19th century brought a new dimension of belief and new frameworks for humans' relationships with the world. In many communities Christian values and beliefs were themselves modified and adapted in a process of integration and accommodation with the enduring former traditions -- as had occurred with the evolution of Christianity in European cultures in the early Middle Ages (refer 4.2.1). It has been noted that some Maori world views have much in common with the Old Testament of the Christian Bible.

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[137] Mutu 1994 (b) p 7
[138] Manatu Maori pp 2-3

4.1.4 Traditional Environmental Knowledge

In recent years there has been increased interest in and respect for the traditional knowledge of indigenous peoples all across the planet. Previous colonial assumptions that indigenous peoples and hunter-gatherer societies led "poor, nasty, brutish and short"[139] lives are now giving way to increasing understanding of traditional relationships with the natural environment. Anthropologists and some scientists are now coming to appreciate the richness and complexity of indigenous knowledge:

> (Indigenous peoples) must know and understand the environment they inhabit, its rock formations and watercourses, its caves, springs, plants and animals, if they want to survive in it. Their survival through enormous spans of time is the best possible proof of their great range of knowledge... This lore includes not only a specific recognition of a phenomenal number of plants, birds, animals and insects, but also includes a knowledge of the habitats and behaviour of each...[140]

Indigenous peoples' knowledge of the natural world, and their systems of classification and storage of this information, are often seen as valuable to modern science and society for utilitarian purposes -- more than 75% of the prescription drugs derived from plants were developed from indigenous peoples' medicinal traditions.[141] The activities of bio-prospectors collecting samples of wild materials all over the planet are now leading to increasing concern for the protection of intellectual, cultural and genetic property rights (refer 3.5.2 above).

Various writers have outlined the characteristic qualities of traditional indigenous knowledge and concepts of the natural world. Similarities between traditional knowledge systems and science are noted -- both seek to make sense of the world, to render it comprehensible and to draw order out of apparent chaos; both are based on observations of natural species and phenomena and on generalisations deriving from those observations. However many important differences are also coming to be understood. Section 5.3.1 below discusses the need for greater understanding and respect between different kinds of knowledge.

Traditional indigenous environmental knowledge is characteristically:

- holistic and integrative, including all the range of species and processes in the particular ecosystem or catchment, as well as spiritual, historical and cultural information;
- inclusive of the human species and their needs and activities as another member of the overall system;
- linked inextricably with social and cultural identity and values;
- qualititative rather than quantitative;
- incorporating intuition, feeling and moral dimensions, rather than insisting on rational objectivity and neutrality;
- collective amongst the community, rather than a matter of individual private expertise -- although special healers and interpreters are recognised and respected;

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[139] Thomas Hobbes, *Leviathan*
[140] Seymour & Girardet p 21
[141] Knudtson & Suzuki p 12

- the cumulative experiences and observations of long periods of time and historical continuity in a particular place or region;
- passed down through the generations in oral traditions, often encoded or framed within symbolic systems, stories and parables;
- locally and regionally specific, rather than generalised;
- seasonal and cyclical, incorporating the yearly and lunar cycles; and
- not static or stuck in the past, but constantly adapting and updating as environments, species and populations change and new phenomena are introduced.

4.1.5 Matauranga Maori

As noted in the summary of feedback received (2.2 above) many Maori respondents referred to the traditional Maori knowledge of species, habitats and appropriate harvesting techniques. Examples were given of specific details, but there was also considerable caution with this information. Maori were careful about the confidentiality of much of this traditional information, and concerned that others would misuse it or abuse it, especially for commercial gain, if it was shared with them. The protection of intellectual, cultural and genetic property rights is discussed above (section 3.5).

Another fundamental factor is the tribal and regional distinctiveness of traditional knowledge, beliefs and views of the world: "there is no single Maori perspective on this subject -- nor indeed on any other."[142] As noted above (4.1.1) each iwi or hapu or whanau will have its own particular traditions and identity, its own priorities and opinions. This can cause difficulties for some non-Maori people for whom the multi-faceted complexity of Maori social structures means fragmentation and inconsistency. However especially when dealing with relationships with land and natural resources the individual distinctiveness of each group is an essential factor:

> Indigenous knowledge can be local to a whanau... a hapu, an iwi, a waka grouping or collectively to all Maori. The ability to distinguish these groupings and their areas and items of guardianship should be fully canvassed with Maori...[143]

The practical importance of traditional Maori knowledge of the environment, and its widespread general currency within tribal culture, can be seen in a number of ways. Whakatauki or proverbs are a rich source of detailed, specific information about natural species and their behaviour and characteristics. Each iwi and hapu has its own particular whakatauki, a vast number of which feature birds, fish, plants and natural processes. Human qualities -- bravery, patience, talkativeness, greed, persistence, watchfulness -- and emotions such as love, grief or fear are encapsulated in the pithy, often humorous whakatauki comparisons with various species.

Te reo Maori also shows the extensiveness of close environmental knowledge, in the vocabulary necessary to record natural phenomena with sufficient precision and accuracy:

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[142] Roberts et al p 8
[143] Mead pp 4-5

> (Elsdon) Best listed over 160 names for eels, reflecting the diversity of these traditions and the significance attached to variations in size, shape, colour, taste, behaviour and habitat.[144]
>
> In the 1870s, from a few North Island districts alone, the botanist James Hector recorded some 70 Maori names for different flaxes, where the Linnaean system recognised two species. Each of the 70 was known for its special use.[145]
>
> ...hundreds of Maori words and terms described every natural aspect of the environment... The people of Foveaux Strait, for instance, distinguished twenty separate winds. Kai Tahu... had at least fifteen different terms for the varieties of alpine snow...
>
> (the importance of kai moana) can be gauged by the dozens of specialised terms relating to the ocean, the shore, fishing activities and the species of marine life.[146]

Traditional Maori knowledge of the environment and natural resources has been formally recognised by the Waitangi Tribunal:

> In (the Motunui Report) the Tribunal was concerned to make clear that the customary rules deserved serious consideration and respect: such rules represent "the collective wisdom of generations of people whose existence depended upon their perception and observation of nature".
>
> Customary rules relating to the disposal of human waste were described in (the Kaituna and Mangonui Reports)... in the Manukau and Muriwhenua Reports the fisheries conservation rules of Tainui and the Muriwhenua tribes were described in considerable detail.[147]

In recent years many iwi have prepared comprehensive Resource Management Policy statements, outlining tikanga and setting out appropriate kawa and priorities for the management and restoration of natural resources in their rohe. These policies have been developed through exhaustive processes of consultation and research, drawing on the knowledge and inherited traditions of the entire community. They are framed to be integrated or applied within the systems of contemporary conservation management such as the formal requirements of the Resource Management Act. Maori are concerned that these policies should be acknowledged by the Crown under the Treaty of Waitangi, and that councils and government agencies should recognise and work with them in planning and management.

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[144] Ministry for the Environment p 85
[145] Park p 47
[146] Thom p 48
[147] Boast p 10

4.1.6 Traditional Harvesting

In the time before Europeans Maori harvested a wide range of plants, birds, fish and eels, shellfish and other kaimoana, marine mammals, even bats and tuatara -- anything that was useful -- and developed complex and subtle systems of management. These systems evolved over the generations and centuries through an ongoing processes of trial and error and compensatory adaptation.

As well as the hunting of birds and other creatures for food, Maori utilisation of natural resources included:

- large trees for waka and building;
- rongoa plants, often with distinctive local uses for particular species;
- wild plants for food sources, including bracken fern, karaka, hinau, nikau, mamaku, ti, tawa, kahikatea, raupo, puha, kiekie, kelp and seaweeds;
- flaxes, ti, pingao and kiekie, feathers, sealskins and dogskins for weaving and clothing;
- dyes from muds and soils, tree bark, berries or the pink feet of kereru;
- oils from whales, shark liver or plant seeds such as titoki;
- green leaves and twigs for ceremonial purposes;
- implements from birds' bones, whalebone, shells and woods; and
- decoration with special coloured feathers or plumes of birds, and teeth of sharks and whales.

Ingenious methods were developed which ensured both successful harvests and the ongoing viability of the resource. The appropriate spiritual dimensions were crucial -- for example the elaborate ceremonies performed when a large tree was to be felled, with necessary rituals, fasting, karakia and a complex sequential process to ensure that the tapu was removed and that the work could be completed successfully.

Hunting was strictly controlled by season, within specific tribal territories and sites, and according to "careful ritual observances, with many restrictions on the behaviour of those involved."[148] Hunters would "first make peace with Tanemahuta with the appropriate karakia."[149] Certain activities were banned completely during the hunting season, and cooked food could never be carried while hunting. Tane's protection was essential:

> The first bird killed during any harvesting expedition... was always laid aside as an offering to Tane, after which the hunters had his tacit approval to catch birds for themselves.[150]

Birds were never disturbed during their breeding season. Hunting methods included spears, nooses placed over water-troughs, decoy birds to lure the prey, fine nets, and cleverly constructed snares. Birds were also taken as juveniles from nests or burrows. Methods "were based on an intimate knowledge of the birds, their behaviour and feeding habits, and, for forest

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[148] Orbell p 167
[149] Dave Para quoted in Michael King p 30
[150] Kirikiri & Nugent p 56

species, the location, flowering and fruiting times of the trees and shrubs they fed on."[151] Birds were taken systematically when at their peak condition, then cooked and preserved in various ways and stored for later use:

> Potted birds would keep for as long as a year, and were one of the most highly prized delicacies at feasts. Birds of different kinds were preserved separately, and the containers placed before guests were decorated with bunches of feathers belonging to the kind of bird to be found within.[152]

For some iwi, some foods such as kereru and kiore had a luxury status as special foods provided only for women -- needing the maximum nutrition for child-bearing -- and for visitors, to enhance the mana of the marae.

Management of tribal resources sometimes involved habitat enhancement and modification -- for example, working on a wetland area for the sake of its eels -- or the deliberate distribution of breeding stock, most notably with shellfish. The most usual management technique though was to protect the resource, through maintaining seasonal restrictions, imposing rahui/prohibitions if the resource became depleted, and protecting sanctuary areas. These were special areas where harvest was prohibited, often serving as nurseries to build up the populations of the species concerned, much the same as today's Marine Reserves provide a healthy stock for fishing in the surrounding waters.

Management or regulation also involved the protection of certain hunting areas as the preserve of particular families:

> Harvesting rights were clearly delineated and were passed from father to son, more or less as a property right within well established guidelines. Areas from which birds were taken were jealously guarded, and any transgressors did so at their own peril.[153]

4.1.7 Rahui

Rahui is the traditional management technique most often discussed in the context of 1990s conservation:

> Rahui is a form of tapu restricting the use of land, sea, rivers, forests, gardens and other food resources. If a place is under that ritual restriction, access to it is forbidden to unauthorised people... A rahui would be put on a place by the mana of a person, tribe, hapu, or family and stays in place until it was lifted...[154]

Rahui is imposed only by kaumatua or people with the authority and status to do so. Traditional rituals and karakia are involved in both imposing the rahui and then lifting it again. Often a stick or post -- pou rahui -- is driven into the ground as a sign the rahui is in place. In traditional

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[151] Kirikiri & Nugent p 56
[152] Orbell p 25
[153] Kirikiri & Nugent p 56
[154] Barlow p 105

communities the authority of the rahui was unquestioned; defiance would bring both social ostracism and possible supernatural consequences:

> Fear of divine retribution generally ensured near-absolute compliance... and provided a highly effective enforcement system. If divine retribution failed, more down-to-earth measures like muru (confiscation of resources) were enacted.[155]

Other traditional punishments for transgressions of rahui or for hunting out of season included such sanctions as gouging out the offender's tongue.[156]

Rahui are used for various reasons, including the conservation of a resource to be used for a specific purpose or occasion, the cyclical spelling of a resource so that numbers or vitality can be built up again after heavy or prolonged use, and most importantly the protection of the tapu of a site or area after a death:

> Rahui is used... when a person is drowned at sea or in a lake or river. Even if their body is recovered immediately, gathering of fish or shellfish is prohibited for a period sufficient for the remains of the person to be absent...[157]

Although many commentators both Maori and non-Maori optimistically note the parallels and similarities between rahui and contemporary protection of natural areas, ecosystems and species, it must be recognised that the purposes of rahui are fundamentally different from the modern preservation ethic. In Maori resource management the objective is to ensure the long-term viability of the resource for future use and harvesting. For contemporary preservationists the objective is to preserve the resource inviolate from human exploitation -- although non-consumptive, low-impact uses such as recreation, tourism, aesthetic appreciation and the renewal of spiritual and personal values are accepted.

There may be similar outcomes sought in the short and medium term -- protecting species and habitats, controlling predators and weeds, enhancing ecological systems and processes -- but there are often different overall long-term goals. These differences must be acknowledged, but they need not negate the immediate usefulness of practical measures for species and sites at risk.

Some writers and scientists have assessed the concept of rahui as a necessary response to prior depletion and degradation of natural resources:

> Conservation practices which were introduced, such as rahui, were controls placed on resource exploitation after the main environmental damage had occurred and when the alternative to conserving the remaining resources was starvation...[158]

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[155] Kirikiri & Nugent p 56
[156] Kevin Prime pers. comm.
[157] Manatu Maori p 3
[158] Holdaway p 2

For discussion of the impacts on natural ecosystems of pre-European Maori society, and the development over time of different understandings and relationships with the natural resources on which they depended, refer to 3.7.2 above.

4.1.8 Why Traditional Relationships with Nature are Important

In the hui and meetings around the country in 1994 and 1995 the NZCA heard from Maori about the fundamental importance of traditional relationships with wild species and the forests, wetlands and other places that are their habitats. These traditional relationships -- of which use, harvesting or hunting is only one facet within a wider spectrum -- are vital for identity and cultural survival in a number of inter-related ways:

> ...a range of traditional activities and behaviours which are defining in cultural terms. Gathering kaimoana, eating titi or weka, a taste for paua or kareko -- all these are key components of socio-cultural identity for many Maori.[159]

Links with nga tupuna are extremely important in a society where identity is based in tribal and familial structures. Traditional uses of natural resources -- foods, weaving materials, carved timber, implements and musical instruments, and special taonga such as bone carvings or carved walking-sticks -- help to sustain the relationships with ancestors by continuing the patterns of their experience. The significance of the food, activity or object is in its echoing and connecting with your grandparents and their grandparents' grandparents and so on back through your whakapapa to the beginnings.

Inextricable from the connections with ancestors are the connections with place -- with the land, river, mountain, forests, coastline, lakes, islands, estuaries, swamps or grasslands that are the turangawaewae of each iwi, hapu and whanau. The especial significance of mahinga kai in tradition and for contemporary identity is reflected in their prominence in many claims to the Waitangi Tribunal (refer section 3.4.3). Maori at the hui in 1994 and 1995 spoke movingly about the importance of traditional places. Regular access to these areas, and use of the natural resources they provide, are integral parts of the identity and spiritual wellbeing of the whanau and hapu of each rohe.

Many Maori speakers at the hui and elsewhere also indicated some of the ways in which traditional uses are a means in to the spiritual dimensions of the Maori universe (refer 4.1.2 above). These respondents recognised the particular importance of certain things to kaumatua and kuia facing sickness and death. Certain foods -- most controversially kereru -- are considered essential preparation and sustenance for the long journey into the next world. A request from a dying relative for this traditional strengthening food is a serious matter and many Maori feel that refusal would be impossible. Water from particular springs in the forest is also important to some people. The spiritual dimensions of certain foods and materials can also be of special value for pregnant women.

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[159] Sir Tipene O'Regan, pers. comm.

The public admission by Northern kaumatua Sir Graham Latimer that he had provided a kukupa for kuia Dame Whina Cooper on her death-bed, drew considerable media attention.[160] This instance highlighted for many people the traditional significance of this food as a spiritual sustenance. However it has been criticised for possibly establishing a precedent:

> The danger of allowing even this limited practice to continue is that it may prompt widespread demands from increasing numbers of old and ailing members of the Maori community for tangible recognition of their mana in the form of a sacrificial pigeon.[161]

Other Northland elders have called for this particular tradition to be set aside in recognition of the kukupa's vulnerable state and ecological importance:

> Te Rarawa totally oppose poaching of kukupa in large numbers but when old people are dying in... the Pawarenga it's a custom for them to be given a meal of wood pigeon. (Gloria Herbert) favours a rahui on any killing of the birds to protect them from extinction in the North:
>
> > "My position is to talk to those people in my age group, and I'm sixty now, and say to them... let us look at having a cut off point where we will say that we no longer will look to seeing kukupa as kai tinana but rather as kai wairua, for our souls... when we die let it be that the birds are flying around our heads rather than perhaps one of us being the kaumatua or the kuia to eat the last kukupa within Tai Tokerau... let us keep it so that our moko's mokos will be able to see the bird in its natural habitat rather than as something on a postage stamp or stuffed in a museum."[162]

The inherent spirituality of the species and materials themselves -- the actual birds, feathers, bones and plants that are to be used -- is also an important dimension. All have their own mauri and mana as descendants of Tane or Tangaroa. In rural communities even in modern times a kereru flying past is greeted as Tane, and: "...a Maori will refer to plant life simply as Tane, and in that respect regards the trees and other plants as ancestors, requiring respect."[163]

The inherent spirituality of natural things is often also enhanced by the particular significance of the place where they lived or died -- the forest where a totara grew, the coast where pingao spread across the dunes, the beach where a whale came ashore -- and the other history or traditions associated with that place.

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[160] Radio NZ Kim Hill programme, 3 March 1994;
"Feathers fly over pigeon shooting", *Sunday Star-Times* 13 March 1994;
"Blincoe ruffles feathers with pigeon query", *The Dominion*, 23 March 1994;
"No prosecution on pigeon gift", *Sunday Star-Times*, 17 April 1994; and other similar media items
[161] Barrington 1995 p 31
[162] Radio New Zealand, Mana News, 6 September 1996, quoting Gloria Herbert of Te Rarawa
[163] Patterson p 2

One of the most powerful statements the NZCA heard in the hui and meetings was from a weaver in Taitokerau. She described the way the feathers and pelts of accidentally killed birds are delivered to her, stuffed roughly and unceremoniously into plastic bags. She explained that before any work can begin with these materials, a long process of lamenting and karakia is necessary to overcome this disrespectful, damaging treatment, to acknowledge the specialness of the birds, and to restore their mana.

Appropriate respect and recognition of the spiritual values of the materials used, even the most commonly available harakeke resources, are central to customary use:

> The need to respect the materials used is often expressed in terms of the concept of mauri or life force:
>
> > "It is important to me as a weaver that I respect the mauri (life force) of what I am working with. Once I have taken it from where it belongs, I must give another dimension to its life force so that it is still a thing of beauty."
>
> This is the central idea, and it applies to all sorts of work. The materials used are seen as having a life of their own, not simply as a means to the worker's ends. The materials are available for use, but must never be regarded as mere means. The project must be directed towards some worthwhile outcome. In the case of weaving, the outcome must be a thing of beauty, even if it is a simple food basket, used only once...[164]

The social and community dimensions are equally important, both for particular iwi and hapu and also more generally -- the ability to maintain ancient traditions is a fundamental aspect of what it is to be Maori, especially in the modern context of our increasingly homogeneous Westernised materialistic society:

> In a world where cultural distinctiveness is continually pressured by the compressive globalisation of internationally shaped values the markers of culture and identity become increasingly difficult to cleave to. The foods and feathers of Maori culture are such markers and the pressure on them makes them even more valuable.[165]

The regional and local variability of indigenous plants and animals is another crucial factor, for this results in a pattern of tribally distinctive relationships with particular species or resources. Often iwi and hapu are known and identified by these traditional relationships. The identity of the group is based in a number of factors, including whakapapa, history, dialect and placenames, and the unique natural resources of their region or district are especially important. Whakatauki (refer 4.1.5 above) often link a particular group with a particular bird, fish or other resource and so consolidate the identification.

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[164] Patterson p 2, quoting Erenora Puketapu-Hetet
[165] Sir Tipene O'Regan, pers. comm.

Traditional uses of local resources are essential to maintain the mana and status of the marae. This has intense significance in the relationships between marae, hapu and iwi. It is a matter of pride to be able to provide traditional foods -- especially unusual and locally distinctive foods -- for important guests on special occasions:

> Any hapu or iwi able to provide an impressive feast or gift of food for another hapu or iwi was in fact demonstrating their expertise in the ritual observance and practise of environmental kaitiakitanga, and their mana was thereby maintained and enhanced.[166]

Equally important are the resources and taonga to provide appropriate dignity for tangi and other ceremonial events, and to exchange gifts of appropriate status and beauty with other iwi and hapu. Intricate processes of barter, exchange and gifting stretch back through time and tradition, cementing the inter-relationships between iwi and hapu, and marking special events. Negotiated exchanges of locally distinctive resources or materials answered particular requirements -- for example, an exchange of totara and whalebone between an iwi with inland forests and a coastal people.

Kakahu, other woven items, carvings of whale bone, decorated boxes or chests, and musical instruments all take an extra dimension of significance and value from their incorporation of traditional indigenous materials -- a value that is more than merely monetary, and for which no substitution of other materials could be a true equivalent. The status and reputation of the people is enhanced by the traditional integrity of the taonga.

Another key feature of customary use is the actual activity involved in its practice, and the range of social and cultural outcomes for the hapu or community. The responsibilities of kaitiakitanga are collective and communal -- as are the rewards and benefits. Beyond the regular ongoing consolidation of the relationships, bonds and dynamics within the group, there is the sharing and reinforcement of knowledge and traditional tikanga:

> The arts of pawhera in the case of fish or tuna, the making of poha for manukai, the gathering and proper preparation of the materials, the exchange of the various recipes for flavouring kareko (karengo) with native fruits -- all these achieve something of a near-religious significance especially in a context of interchange between young and old... the transmission of heritage knowledge. Doing it makes you more secure in your Maoriness especially in tribal terms.[167]

The collective sense of duty within the hapu or whanau to maintain a resource sustainably is a paramount factor -- the moral responsibility of the community for the viability and wellbeing of the natural taonga of their rohe. Tradition, tikanga, knowledge, spirituality, identity, mana, ethics, practice and preference are all woven together within the ongoing role of kaitiaki, conserving the resource so that it can all continue down the generations.

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[166] Roberts et al p 15
[167] Sir Tipene O'Regan, pers. comm.

In contemporary New Zealand however these processes are often complicated and confused through the impositions of Statutory control and management. Iwi and hapu are alienated from these traditional roles and activities, and the ultimate statutory responsibility is assumed by the Crown or private owners; Maori contributions and priorities are only accommodated to a limited extent within the frameworks of contemporaryresource management systems.

4:2 THE WESTERN USE ETHIC

4:2:1 Use and Usefulness

Over the last two millenia of Western civilisation, the dominant concept of the relationship between people and the natural environment has been the concept of use and usefulness. This developed through a number of philosophical and belief systems over the centuries -- systems which have reflected the particular social, political and religious contexts of each society or historical period. Such belief systems are essential both to give people an explanation for their society's treatment and valuing of the natural world, and to support and legitimise the basic human needs for food, shelter and clothing.

European societies are themselves descended from prehistoric tribal civilisations, centred on the Mediterranean and the Black Sea or the rich Northern forests, civilisations which were inextricably embedded in and governed by the natural environment. In these cultures gods created and governed the universe while animals and plants attained mystical status. In the traditions of many cultures, people identified with and often assumed the form of animals and vice versa. The links between all the elements of life were holistic:

> ...the most striking thing the Romans noted about the people who were to become the first English -- the Anglii tribe of the North Sea low country -- was their passionate worship of nature and Earth. [168]

In a general sense the theological phenomena of the European prehistoric era reflect conditions common to all societies dependent on the land for their survival. Many beliefs reflect similar conditions in various hunter-gatherer societies and in rural communities where the imperatives of nature control the human environment. So strong were these influences that Christianity only succeeded in establishing itself by adapting some of its celebrations to pre-existing beliefs, such as Oestre, the spring festival of the pagan Earth Mother, which became the Christian Easter. The pagan tribal heritage lived on, in co-existence with conquering cultures, to create a rich pastiche of culture and tradition. Such primeval, universal links between people and the natural world, and the powerful archetypes and legends through which they are expressed, were explored in the works of such writers as J G Frazer.

The philosophers of ancient Greece and Rome, and the earliest Christian and Jewish teachings, gave more precise focus to the concept of use and usefulness. The first fundamental belief is that humans have been given dominance and authority over the rest of nature -- the Earth and all the things and creatures on it are made for humans. In the opening books of the Christian Bible God grants humans "dominion over the fish of the sea and over the birds of the air and over every living thing that moves upon the earth". Later, after the great flood, God makes a new covenant with Noah:

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[168] Park p 320

> Every moving thing that lives shall be food for you; and as I gave you the green plants, I give you everything... The fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hand are they delivered.

As superior beings, humans have a responsibility of wise treatment and good stewardship of the animals and plants given to them by God. Human intervention and management of nature is an improvement on raw creation, modifying and refining wild resources for general benefit according to the divine plan.

A second fundamental belief is that everything has its own purpose or reason for being, and fits into its own niche or place in the scheme of things. The world was perceived as a planned and ordered system, its perfection evidence of an omnipotent and benevolent God. This was the basis for the medieval and Renaissance concept of a Great Chain of Being, a strict hierarchy from the most humble up through more sophisticated creatures to the angels and finally to God. Humans' appointed place is above the animals, special and separate from the rest of the world.

These widespread beliefs were challenged by very few alternative ideas, the most well-known of which are the teachings of Saint Francis of Assisi. Despite varying degrees of popularity and official tolerance over the centuries, such different philosophies never seriously changed the utilitarian basis of Christian thought about the natural world.

The anthropocentric paradigm was so ingrained that it endured into later periods even when the religious dimensions had diminished and been replaced by secular philosophies. In the 17th, 18th and 19th centuries, as scientific discovery and exploration of the New World opened spectacular new horizons, the dominant place of humans remained central to the exploitation of these wonderful opportunities. The development of economic theory, with the early arguments of such writers as Adam Smith and John Stuart Mill, structured concepts of production, progress and material wealth within the basic assumption that all the earth's resources are commodities for human use and profit. Darwinian concepts of the evolution of species were revolutionary but still did not shake the belief in human superiority over other creatures -- indeed human achievements were a demonstration of the "survival of the fittest". Freud also endorsed human dominance over wildness, encouraging "the attack on nature, thus forcing it to obey human will, under the guidance of science". [169]

4:2:2 Other World Views

Other cultures and religions have different, less anthropocentric concepts of the relationships between humans and the rest of the world. Chinese Taoist beliefs work with the concept of a balance of forces, where opposing tendencies or energies achieve a harmonious accommodation with each other. The complex systems of *feng-shui* integrate human activities and uses with the dynamic energies and forces inherent within the natural landscape.

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[169] Ponting p 149

Buddhism and Hinduism are based in a cyclical concept where all creation is caught in a continuing repetitive process of reincarnation; actions in one life affect the next. Humans are only advantaged over the rest of the natural world because they are the only creatures able to achieve enlightment and so escape from the ongoing cycle of suffering.

Islam however establishes a more authoritative version of the Judaeo-Christian concept of human stewardship: "humans have a pre-eminent status and role, to exercise dominion over the rest of creation as the caliph (deputy or representative) of God."[170] The immutable laws established by God apply to all of nature:

> ...creation was designed to function as a whole. Each of its complementary parts, including humankind, plays its own self-preserving role, and in so doing supports the rest... Humankind has a special place in God's scheme. We are more than friends of the Earth -- we are its guardians. Although we are equal partners with everything else in the natural world we have added responsibilities... (We) achieve this by submitting... to the divine law.[171]

While some Eastern religions may offer a less aggressive and exploitative approach to the natural environment, emphasising compassion, restraint and the ideal of wisdom, these belief systems have not gained any significant place in our prevailing contemporary culture throughout both East and West. The dominant world view for the last several centuries has been rational humanism, upholding human superiority to other species, human power and progress, and human ability to solve all problems.

4:2:3 Hunting Traditions

Western civilisation has a number of strong and rich traditions of hunting wild creatures. Tens of thousands of years ago humans' prehistoric ancestors made eerily beautiful drawings of hunting scenes and bulls, bison, cattle, deer and other animals on the walls of caves (for example, Lascaux and Valltorta). Some interpretions of this Paleolithic art suggest that the drawings might have had a spiritual function, part of rituals to bring success in hunting and to ensure the continued fertility of the animals on which the people depended.

In classical and medieval times hunting larger game such as deer was usually reserved as the prerogative of royalty and the nobility, and was controlled by complex and ritualised systems. The formality, challenge and sheer excitement of hunting is evident from such medieval works as *Sir Gawayn and the Grene Knight* or *Les Tres Riches Heures du Duc de Berry*.

Hunting in feudal and Renaissance Europe was carefully regulated, and access to forests, fishing streams and other game areas was strictly limited under increasingly elaborate rules and laws. Monarchs and noblemen employed gamekeepers to manage game, replenish stocks, take care of habitat, patrol estates and protect these resources from unauthorised use.

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[170] Pratt in Dyer and Young p 256
[171] Khalid p 14

Poaching was rife, if severely punished -- although from an ethic of aristocratic proprietorship as much as any concepts of sustainability. The widescale enclosures of the late 18th and early 19th centuries (refer 4.3.2 below) further restricted common peoples' lawful access to lands and wild game.

These systems and attitudes persisted well into the 20th century. To take just one example -- the Russian Tsar's hunting forests in what is now Northern Poland were a private sporting venue for Arch-duke Franz Ferdinand of Austria (who used state-of-the-art technology, the new machine-gun, to kill Lithuanian bison), then in the 1930s for Herman Goering and the Nazi elite, and finally for Nikita Krushchev and the Communist Party *nomenklatura* in the late 1950s.[172] In Europe even into the second half of this century, hunting wildlife was one of the privileges of power.

In the colonies however rather different hunting traditions evolved. The American settlers evolved their own traditions, from Davy Crockett and Fenimore Cooper's romanticised Leatherstocking stories, to the hearty outdoorsy machismo of Theodore Roosevelt, Ernest Hemingway and Zane Grey, or the mystical primitivism of William Faulkner and Robert Bly. In New Zealand hunting was more pragmatic.

4:2:4 The New Zealand Hunting Tradition

European colonists to New Zealand in the mid 19th century brought with them a strong egalitarianism -- a determination that the restrictions of social class and wealth should not restrict opportunities or access for anyone. The private elite ownership of game resources that applied in Britain was anathema in the new colony and, from the outset, New Zealand fish and game resources were deemed part of the public commons. In the same spirit, it has always been against the law for a landowner to sell hunting or fishing rights.

The settlers also brought with them memories of poverty and regular food shortages. Survival in the new land was not always easy either and until agriculture was well-established, and for some time afterwards, colonists depended on native game for food:

> It was common practice... to set off for months in the bush with only a few staples such as flour and tea, relying on wild birds for meat. [173]

The explorers and settlers caught and ate a wide range of species -- kakapo, kokako, ducks, tui, weka, kaka, pukeko, robins, wrens, and most especially the kereru/kukupa. Two of the very first New Zealand Company arrivals in 1840 described landing on the beach at Petone:

> We strolled a short distance to the edge of the bush. Observing perched on one of the trees, several wood pigeons, each of us shot one...[174]

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[172] Schama pp 64-74
[173] Carolyn King p 77
[174] Park p 83

Early accounts indicate prolific numbers and easy hunting -- it was common for bags of up to 60 kereru to be taken in one morning. Kereru were still a regular part of some farming families' diet in remote areas in the 1920s.

As well as hunting native species for food, the colonists used these resources for other purposes. Museums and collectors eagerly sought native birds and their pelts. Penguins on the subantarctic islands were boiled down for oil.[175] Feathers were sold for large sums for decorating ladies' hats. And thousands of kiwi were killed in the late 19th century for their pelts to be made into ladies' muffs -- a whole display case at the New Zealand Court at the 1880 Melbourne Exhibition featured muffs made from native birds.[176]

4:2:5 The Acclimatisation Societies

The first Acclimatisation Societies were formed in the early 1860s to manage the introduction of familiar Northern-hemisphere birds, animals and fish species into New Zealand. They soon took on a wider role on behalf of fishing and gamebird shooting more generally. In 1866 the Animals Protection Act encouraged the Societies in their work and established a formal distinction between "game" and "native game", listing the native species then hunted which included pigeons, bitterns, stilts, black stilts, curlew and the now extinct native quail.

Over the next decades a series of statutes were passed giving increasing levels of control and restriction. Concern at the decline of some species brought the introduction of closed seasons for kereru in 1896 and for pukeko and kaka in 1901. In 1903 formal regulations were established for the operation of the Acclimatisation Societies. In 1907 protection was established for some native species including tui, kaka, paradise shelducks and oystercatchers. In 1908 the Fisheries Act provided for restrictions on the harvest of both marine and freshwater species:

> These regulatory powers were later used to further limit seal hunting, and to control the harvesting of toheroa, oysters, whitebait and some other fisheries.[177]

In the early 1920s the Animals Protection and Game Act included more formal requirements of the Societies and in 1923 the kereru was given full protection. In 1934 the Native Plants Protection Act prohibited the taking of most native plants -- excluding trees and particular weed species -- without landowner consent.

In 1953 the Wildlife Act established total protection for terrestrial native species, except those few listed as partially protected, and further focused the constitution and functions of the Societies, requiring them to take a formal role in the protection of native wildlife. In 1983 the Societies were given statutory responsibilities for the conservation of indigenous freshwater fish and their habitats. Later in the 1980s the role of Acclimatisation Societies was assessed once again and in 1990 under the Conservation Amendment Act they became Fish and Game Councils, with statutory responsibilities and a strong conservation mandate.

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[175] Galbreath 1989 p 263
[176] Star p 7
[177] Ministry for the Environment p 129

From their inception the Acclimatisation Societies had a clear concern for the quality and sustainability of both introduced and native species and their habitats. From the 1890s on, concern was expressed at irresponsible hunters' impacts and the falling numbers of native species. There were repeated calls to the authorities for better controls, restrictions and bag limits. Also from the 1890s onwards the Acclimatisation Societies, aware of the decline and vulnerability of some native species, were involved in campaigns for conservation -- recommending that offshore islands be reserved as bird sanctuaries, planting trees to provide food for kereru, or protesting at threats to native bush habitats.

The hunters' concern for conservation focused from the earliest stages on habitat quality, and this soon became a major priority for the Acclimatisation Societies. The rationale that healthy wildlife depends on healthy habitat involved the Societies in campaigns across a wide range of issues -- protesting about wetlands being drained, waters being dammed and artificially channelled, dams preventing fish migration, deforestation, pollution, and the demands of agriculture and electricity generation on New Zealand's wild natural waters. In more recent times the Societies' work for conservation has included:

-- campaigning against the Aramoana smelter and the Think Big proposals;

-- purchasing land to protect wildlife habitats and breeding grounds, and undertaking restoration and enhancement projects;

-- working for wetland protection, including the campaign for Whangamarino which benefited fernbirds, bitterns, marsh crakes and rare native orchid species as well as exotic game species; and

-- campaigning for the Wild and Scenic Rivers legislation and for particular rivers such as the Rakaia (benefiting the endangered wrybill plover).

4:2:6 The Fish and Game Councils

The responsibilities and functions of the national and regional Fish and Game Councils are set out in sections 26B, C, P and Q of the Conservation Act. They are responsible for the protection, management and enhancement of all game, freshwater fish and their habitats. They are required to prepare and work to sportsfish and game management plans that have regard to sustainability, to the impact of management on other natural resources and other users of the habitat, and to maximising recreational opportunities for hunters and anglers. The plans are prepared in accordance with a public consultation process prescribed by statute, and are approved by the Minister of Conservation.

The Councils continually monitor the habitats and populations of species, with surveys and census-taking an ongoing part of their work. Information and reports from local hunters and anglers add to the database. Councils are active in statutory advocacy for natural areas, regularly making submissions and working through formal planning processes to ensure that habitats and species are protected.

There are twelve regional Fish and Game Councils around the country, each with twelve members elected every three years by licence-holding members according to a formally regulated process. Each Council puts forward one member to the national Council. There are approximately 60 professional staff employed to undertake the management and statutory advocacy work of the Councils, many of whom are graduates in biological science or resource management.

Hunting and fishing are one of the most popular recreational pasttimes in New Zealand for both non-Maori and Maori. Recent surveys have shown that over a million New Zealanders 16 years of age and older go fishing and hunting each year. This includes all forms of recreational hunting and both saltwater and freshwater fishing, and includes both members of associations and casual hunters and fishers -- the great majority are anglers.

There are a range of motivations -- the opportunity to experience wild back-country landscapes and to become part of a natural process, the challenge of pitting one's skills against the instincts, speed and strength of the quarry, and providing game or fish for food.

The Fish and Game Council system is entirely self-funding, resourcing all its work through the licence fees charged to each hunter and angler each year. In 1996 the annual fee is $58.00, giving the Councils an income of approximately $4.5 million for the year. In the earlier history of the Acclimatisation Societies some public funding was provided, and lands were allocated for such purposes as hatcheries. But from the early decades of this century licence fees became the principal source of funding.

This financial independence is consistent with the strong tradition of self-regulation that has been a characteristic right from the earliest Acclimatisation Societies. This tradition of anglers and hunters managing their own affairs has been supported by governments and enshrined in legislation at various stages through their history. The anglers and hunters are able to establish their own objectives and priorities, to make their own regulations, to base decisions in their own members' expertise and knowledge of the resource, to undertake enforcement and compliance work, to set licence fees, and receive and manage all licence revenues. The Ministerial oversight allows the maximum autonomy while providing for overall accountability with the approval of systems and management plans.

Game shooting, including as it does largely introduced species with high breeding rates, involves a managed population, sustainably harvested. The comparative vulnerability of native bird species makes this form of harvest problematic for many protected birds.

4:3 THE WESTERN PROTECTION ETHIC

4:3:1 A Slowly Growing Awareness

The contemporary concepts of conservation and preservation -- and the principle that wild natural things should be respected and admired, protected and preserved -- are very recent phenomena in Western culture: "...appreciation of the wilderness must be seen as recent, revolutionary and incomplete."[178]

These kinds of approaches to nature have only developed in European culture over a little more than the last two centuries. At first, ideas of respect and conservation, and a sense of deep affinity and spiritual connection with natural places and creatures, were expressed by only a few committed individuals and groups. Slowly though these concepts came to have wider public and political acceptance.

4:3:2 European Attitudes

In the later 18th and early 19th centuries, a new sense of landscape and nature began to evolve, first for the upper classes and landowners newly wealthy with the profits of colonial expansion, but soon spreading more widely with the rising prosperity and pretensions of the middle classes.

The changes are most immediately obvious with the ideas of landscape which revolutionised the country estates of the upper classes from the second half of the 18th century on. Reacting against the stiff formality and geometrical precision of 17th century landscape design -- the mathematical patternings of plants and water at Versailles or Vaux -- the ideal was now for nature to be more natural. Irregularity and informality were considered more pleasing than controlled perfection, and the big estates were transformed accordingly. Designers such as William Kent, Capability Brown and Humphry Repton brought the landowning classes into what they believed was a closer relationship with unspoiled nature, breaking up the linear forms of earlier plantings, scattering trees in apparently spontaneous "clumps", and rejecting any separation of house and landscape with a new invention, the "ha-ha", a sunken ditch that kept livestock at a distance but did not interfere with the view.

Admiration for these concepts of nature became an essential requirement for persons of taste and sophistication through a number of inter-related influences. The basic framework of definition was established with Edmund Burke's 1756 analysis of the Sublime and the Beautiful. Other writers on landscape such as Lord Shaftesbury, Alexander Pope, Horace Walpole, Richard Payne Knight and Uvedale Price developed a complex philosophy of wild, sublime and picturesque scenery, its aesthetic values and its inspirational power.

Paintings by Claude Lorraine, Nicolas Poussin and Salvator Rosa -- and equally popular contemporary artists such as John Constable and William Gilpin -- gave society a new set of expectations of landscape. The Claude glass, a tinted mirror for framing sketchable views, became an essential piece of equipment for the cultured traveller.

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[178] Nash 1973 p xii

The new industry of tourism encouraged many people in an appreciation of the natural world. In previous centuries travel had been an arduous business undertaken only when absolutely necessary. The 18th century though saw marked improvements in roading and transportation, and it became fashionable to undertake a "Grand Tour" to Europe or, for those of more modest means, within Britain. The scenery of the Alps and Italy, and of the Lake District and Scotland, was no longer seen as difficult and dangerous, full of wild animals and wilder bandits, but was enthusiastically promoted for increasing numbers of travellers.

This shift in values was part of the wider development of Romanticism, and the power of unmediated emotional experiences in or with nature is central to the work of the Romantic writers such as Jean-Jacques Rousseau, Thomas Gray, William Wordsworth and Samuel Taylor Coleridge.

As well as these trends in the tastes and values of sophisticated society, European rural societies still retained much of the traditional living cultures which linked them directly with the natural world -- with the seasonal and yearly cycles, and with the particular history and characteristics of their local landscape. Country beliefs through into the 19th century still reflected the close relationships with nature and the gods and spirits of the old world which pre-dated the coming of Christianity. A little later the writings of George Eliot and Thomas Hardy captured these kinds of communities and their ways of life just as they were disappearing.

The new emphasis on the natural and unspoiled gathered impetus from many people's reactions against the pervasive processes of industrial development and urbanisation. A Romantic ideal of wild, primitive nature was a convenient device for criticising the artificiality and corruption of city life and of industrialised society in general. The painter J W M Turner may have found smog clouds transcendently moody, but the new collieries and factories, their pollution and noise -- William Blake's "dark Satanic mills" -- were ugly, unhealthy and unavoidable. The Acts of Enclosure throughout this period also rendered large parts of the countryside unrecognisable, and contributed thousands of dispossessed people to the spreading urban slums:

> (The) first object (of the legislation) was to turn land into a commodity... vast blocks of collectively owned... lands of village and town communities, common fields, common pastures, woodlands, etc, had to be made accessible to individual enterprise (by) division into individual lots... Some 5,000 "enclosures" under the private and general Enclosure Acts broke up some six million acres of common fields and common lands from 1760 onwards (and) transformed them into private holdings...[179]

Another important factor in the new valuing of nature was the exponential advance of science. The explorations of the New World and the assiduous collections of such scientists as Alexander von Humboldt and Joseph Banks increased knowledge, classification systems and understanding. People were introduced to creatures and plants that were thrilling and inspirational simply because they were so unimaginably strange. Later in the 19th century Charles Darwin offered both new insights into the natural order of creation, and exciting new observations of the extraordinary flora and fauna of exotic wild places.

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[179] Hobsbawm pp 186-188

This then was the mental and emotional baggage of the European immigrants who came to the new colonies in the second half of the 19th century. A relatively recent but ragingly popular set of concepts idealised nature as pleasingly picturesque or dramatically sublime, and valued the wild and unmodified as an antidote to the ills and artifice of civilisation. Wild creatures and plants were curiosities to be studied and catalogued. Although nature and wild things were valued and enjoyed, the idea of protection was yet to develop.

4:3:3 The American Experience

It is important to look at American philosophies of human relationships with nature, as these have been profoundly influential on the conservation movement in New Zealand.

Like all colonies the American experience with nature began in the necessary ruthlessness of the pioneer effort. Taming the wilderness was the dominant ethic, bringing progress and prosperity to what were seen as unproductive lands. Wildlife and forests were obstacles in the way of the noble advance of civilisation, or resources to be exploited -- by the end of the 19th century Western hunters had removed herds of approximately 50 million bison and brought the passenger pigeon, which had numbered in the billions, to extinction.[180]

As the frontier pushed on however there was increasing recognition of what was being lost. As with the rise of the picturesque in Europe, this was primarily an urban phenomenon:

> ...the beginnings of appreciation are found among writers, artists, scientists, vacationers, gentlemen -- people, in short, who did not face wilderness from the pioneer's perspective.[181]

Romantic concepts of wild nature were upheld as a solution for the stresses and dissatisfactions of modern life. Transcendentalism developed religious and mystical ideals in celebration of God's creation. The most famous of these philosophers is Henry David Thoreau, who retreated from "the desert of civilisation" to solitary contemplation of unspoiled nature at Walden: "...in Wildness is the preservation of the world."[182]

Official recognition of the importance of nature came with Abraham Lincoln's 1864 grant of Yosemite as the world's first wilderness park. The primordial magnificence of this landscape was seen as a uniquely American treasure. Its protection gained additional symbolic significance in the gruesome, desperate context of the Civil War. However its innocence was not absolute: "The brilliant meadow-floor which suggested to its first eulogists a pristine Eden was in fact the result of regular fire-clearances by its Ahwahneechee Indian occupants."[183]

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[180] Ponting pp 167-170
[181] Nash 1973 p 51
[182] Nash 1973 p 84
[183] Schama p 9

In 1872 Yellowstone was established as a National Park. Here too the original inhabitants, the Crow and Shoshone peoples who had lived and hunted in the area for generations, were not easily accommodated in the idealised concept of a natural wilderness; they "either left or were driven out by the army, which managed the park until 1916 when the US National Parks Service was set up."[184]

The landmark decisions to protect Yosemite and Yellowstone were given urgency by imminent threats of commercial development and exploitation -- and so the principle was established of government responsibility for protecting the wild and the beautiful from private enterprise.

Central figures in the campaign for wild nature were the writer John Muir and the landscape architect Frederick Law Olmsted, who transplanted the concept of wilderness into the midst of the city with his designs for New York's Central and Prospect Parks and other urban plans. Olmsted argued that contact with nature was the best cure for the "excessive materialism, loss of faith and lowness of spirit" of contemporary society. Another influential writer in the second half of the 19th century was George Perkins Marsh who recognised that protecting nature was necessary for practical reasons -- to prevent soil erosion, drought and floods -- as well as for recreational and "poetical" values, and as sanctuary for wildlife.

John Muir and the later "prophet" of an ecological land ethic, Aldo Leopold, also explored revolutionary philosophies for humans' relationships with nature. Leopold argued through the 1920s, 30s and 40s that an understanding of ecology leads to respect for all forms of life, recognition of the sanctity of life, and humility and restraint: "... every citizen (should) learn to hold the lives of harmless wild creatures as a public trust for human good, against the abuse of which he stands personally responsible."[185]

From the 1960s an increasing number of books and often controversial campaigns built public awareness of environmental issues. Some writers drew on Eastern or Native American religions and pantheistic concepts of a web of kinship uniting all living things. Rachel Carson's 1962 *Silent Spring* recognised the devastating impacts of human technology on wild creatures. Loren Eiseley made connections with the primeval and elemental -- "a sense of bigness beyond man's power to grasp, the essence of life in its great dealings with the universe" -- through seemingly inconsequential little episodes and details of nature.[186] James Lovelock, a chemist who had worked with NASA, and microbiologist Lyn Margulis proposed the theory of Gaia, a "geochemical myth" which considers the whole planet and all the life upon her as one vast conscious self-sustaining entity. Other environmental writers such as Wendell Berry, Wallace Stegner, Gary Snyder, Paul Ehrlich, Theodore Roszak and Bill McKibben have over the last three decades expanded conservation and preservation philosophies into an increasingly provocative force challenging the values and assumptions of modern society.

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[184] Adrian Phillips, 1995 "The Nature of Cultural Landscapes - An IUCN Perspective", p 2
[185] Nash 1973 p 183
[186] Eiseley p 36

4:3:4 Ideas of Nature in New Zealand

At the time of their first settlement in New Zealand the European colonists were distinctly divided by geography, culture and history, and by social class. For some the experience of industrial society had divorced them from direct links with the land, but many others came from rural backgrounds as famine and enclosures drove them out to the new colony. Many of the urban poor were but a generation or two from this state of living with the land, still holding much of the knowledge of nature and its processes in oral tradition and memory. These recently dispossessed people carried with them a knowledge of their loss, and strong political convictions relating to the ownership of land and the importance of the collective public commons.

Much of European tradition and belief was, however, immediately challenged in the new environment of forests and swamps. The significance of emergent Spring and the ancient Green Man, for example, were harder to relate to in an evergreen land; the old Earth Mother was a different one from Papatuanuku. European agriculture and pastoralism represented a revolutionary change from Maori gathering and gardening. For people setting out to establish themselves in another land, much of their past was now irrelevant.

The earliest European settlers in these islands had as their primary goal not the appreciation of indigenous nature but its eradication. To the majority of colonists, the forests were gloomy, alien, fearful; the scrublands and grasslands bleak, unproductive, accursed. Wild nature was either a resource to be exploited -- like Northland's kauri forests or Otago's gold -- or something savage, dreary and dangerous to be cleared as quickly and efficiently as possible. What the settlers valued were "improved" pastoral landscapes: "The theme of an intrinsically virtuous nature... did not flourish in New Zealand."[187]

The most common landscape concepts were the Sublime and the rough-edged, overgrown Picturesque. These conventions offered a means of responding to the unfamiliar scenery and accommodating it within understood frameworks. Romantically pictorial expressions were more common than any attempts at philosophical interpretation of the new environments:

> ...there was so little of the Rousseau-like reverie, of "intimations" induced by scenery, of the sense of kinship and spirituality in the surroundings that the white settler in New Zealand differs from contemporary English and Americans.[188]

As elsewhere, as the fires and axes did their work a sense of loss began, very tentatively at first, to develop. In 1859 the geologist Ferdinand von Hochstetter complained that the northern kauri forests were being “ransacked and ravaged with fire and sword”.[189] Around the same time the early Maori newspaper of the King movement of Te Wherowhero Potatau, *Te Hokioi,* issued a warning:

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[187] Shepard p 7
[188] Shepard pp 13-14
[189] Ell 1996(a)

> ...where the sky was often darkened by the smoke of tremendous fires set by the pakeha to clear away bush and tussock... *Te Hokioi* asked its readers not to set fire to the forests, "lest there be no trees for our descendants. Do not either set fire to the scrub on the waste lands lest the manuka and the eel-weirs be destroyed and the land spoilt."[190]

By the late 1860s and 70s a few writers were protesting about the loss of native birds, and encouraging nature rambles or botanical collections. There were the beginnings of recognition of the uniqueness and extraordinary beauty of New Zealand's landscapes, plants and wild creatures. Parliamentarians William Fox and Thomas Potts criticised the destruction of forests (citing Marsh's arguments for a utilitarian conservation ethic) and protested the exploitation of bird species. Kiwi, kakapo and other native species were hunted widely and were eagerly sought as scientific exhibits:

> The huia was finally exterminated in New Zealand by those collecting skins of this wattle-bird for the museums of Europe and North America.[191]

> The huia... is probably the most widely known example of species that became extinct in the aftermath of European colonisation. This species was highly prized by Maori as a food source and for spiritual and ceremonial reasons -- the white-tipped black tail feathers were often worn as a mark of nobility and are still worn on ceremonial occasions by some Maori today.[192]

A common view even amongst those who recognised the decline of native species was the theory that they (and native people) were inherently weak and feeble, doomed to die out in the face of the stronger more energetic arrivals from the Northern Hemisphere. This widespread belief owed much to Darwin, and fostered an elegiac approach to native wildlife:

> (the) indigenous must disappear as civilisation progresses... if, in the fields and groves where their warbling has ceased, the song of the lark, the blackbird and the song thrush may be heard, the compensation for such loss will be ample.[193]

> The extermination of (the forest) progresses from year to year, at such a rate that its final extinction is as certain as that of the Natives of New Zealand. The European colonisation threatens the existence of both, and with the last of the Maoris the last of the Kauris will also disappear from the earth. [194]

19th century ornithologist Walter Buller operated within this fatalistic rationale, and left an ambiguous and contradictory legacy for conservation. His 1888 book *A History of the Birds of New Zealand* was from the outset the definitive text. His campaigns for the protection of birds and their forest habitats were driven by an increasingly urgent sense of their imminent

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[190] Crosby p 263
[191] Gunn & Edmonds in Howell p 36
[192] Kirikiri and Nugent p 55
[193] Potts (1870) quoted in Star p 6
[194] Hochstetter (1859) in Ell 1996(a)

disappearance; he was concerned that museums and collectors should make sure they acquired enough good specimens: "A few years hence it will be impossible to obtain any."[195]

Early ideas of conservation were given more impetus with Tuwharetoa rangatira Te Heuheu Tukino's 1887 gift to the New Zealand public of the mountains Ruapehu, Ngauruhoe and Tongariro and their establishment as a National Park. (Interestingly after the example of Yellowstone the National Park concept took longer to be accepted elsewhere in the world.)

There were calls for protected status for special sites -- such as the internationally famous tourist destination, the Pink and White Terraces at Rotomahana -- and for island sanctuaries to shelter the last survivors of native birds and other species. Little Barrier, Kapiti and Resolution Islands were now seen as arks: "the means of preserving many of these rare forms."[196]

In 1895 the government was encouraged to protect the tuatara for its scientific value, and to declare a reserve on Takapourewa or Stephens Island for its protection. That same year on the same island the lighthouse keeper's cat was taking a unique species of island wren to extinction, and wreaking havoc on the rapidly dwindling birdlife (including piopio and saddleback) as the bush was being cleared for livestock.

In this period, Richard Henry, caretaker at Resolution Island and later Kapiti Island, pioneered the idea of transferring threatened bird species from the mainland. The early books of H Guthrie-Smith also focused on birdlife and the southern islands, before his exhaustive *Tutira,* a study of the natural history, wildlife and changing ecology on his Hawkes Bay sheep station.

By the turn of the century Walter Buller could write: "...it is the fashion to raise a wail over the disappearance of the New Zealand birds, and to invoke the powers in the way of protective measures."[197] Consciousness of the declining state of indigenous wildlife and landscapes gave urgency to the work of such early campaigners as parliamentarians Thomas Mackenzie and Harry Ell, and ecologist Leonard Cockayne.

In 1903 the Royal Society of New Zealand was formed from the earlier national and provincial Institutes to work for the advancement of scientific investigation. In 1904 the Scenery Preservation Commission was established to recommend areas of scenic or historic interest for protection as permanent reserves as "an inalienable patrimony of the people of New Zealand."[198] And in 1923 the New Zealand Native Bird Protection Society was founded -- later to become the Royal Forest and Bird Protection Society, now commonly known as Forest & Bird.

The original objectives of the Society were to advocate "unity of control in all matters affecting wildlife and also... a Bird Day for our schools" -- the priorities of integrated ecological management and building up public support that are still fundamental to the work of environmental and preservation lobbying today.

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[195] Buller in Galbreath 1989 p 266
[196] Buller in Galbreath p 210
[197] Galbreath 1993 p 266
[198] Thom p 120

The Society soon became involved in a wide range of issues: forest protection, erosion and soil and water conservation, National Parks, sanctuaries and reserves, pest and predator control especially on offshore islands, education and statutory protection. Native birds have been a continual priority:

> Rarely has an issue of Forest and Bird been published without an article about some bird, its song, its habits, or steps taken to prevent its possible extinction.[199]

The Society led programmes such as the campaign for the kuaka, taken off the Native Game List and given absolute protection in 1941 "as a Centennial gesture".[200] The decision for godwit protection was based in such arguments as:

- the diminished numbers of birds;
- their migration patterns and international significance;
- the fact that they did no damage to crops or pastures;
- the potential for killing other species indistinguishable in amongst the large flocks of godwits; and
- the poor sport offered by shooting into big flocks rather than testing skills with an individual target.

The post-War years saw increased focus on rare and endangered native species, with the 1948 rediscovery of takahe, presumed extinct, and the growing concern for kakapo and other species. The New Zealand Wildlife Service worked to control pests and predators and also undertook radical new projects, exploring the possibilities of island transfers and other intensive management strategies. The Mount Bruce Wildlife Centre was established in 1961 for captive breeding and other experimental projects. There was a broadening of focus from individual species to the wider habitats and environments on which they depend.

The late 1960s and 1970s were years of expansion and consolidation for conservation awareness in New Zealand and internationally. The globalisation of environmental issues, with the work of conservationists and writers in the Northern hemisphere (refer 4.3.3 above) gave added impetus here. High-profile high-intensity environmental campaigns -- most dramatically the protection of Manapouri, Aramoana and Pureora -- raised public awareness and support. New groups were formed to mobilise and build on increasing public concern, among them political groups such as the Values Party in the early 1970s, and campaign groups such as the Native Forests Action Council in 1975 (later to become the Maruia Society). Government agencies such as the Commission for the Environment, the Nature Conservation Council and the National Parks and Reserves Authority worked for conservation at official levels.

Wildlife issues were increasingly matters of some newsworthiness with the dramatic eleventh-hour rescue programmes for such severely endangered species as the Chatham Islands black robin, kakapo, kokako and black stilt. Conservation science now demonstrated bold and relatively sophisticated intervention methods -- the intensive new technologies of breeding and fostering programmes, transfers, radiotracking and supplementary diet programmes.

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[199] Dalmer p 76
[200] Govey, p 1

The heroic back-from-the-brink excitement of defeating extinction so narrowly was a crucial factor in raising public interest and support. So have been the increasing power and influence of television through the 1970s and 80s, the photogenic qualities of native birds and their wild habitats, and the increasing number and technical sophistication of nature documentaries and books -- both within New Zealand with the *Wild South* team at TVNZ's Natural History Unit, and internationally with such popular shows as David Attenborough's various series. The majority of the general public today encounter wildlife and the natural environment through these media.

Many New Zealanders will never actually go into the wilderness or have any direct contact with native wildlife in a natural habitat -- yet they would define themselves as concerned about conservation. There is an inherent reassurance or value in just "knowing it's there" even if there is no immediate personal experience. For many such armchair nature-lovers the importance of their country's natural wild places and creatures is no less intense.

Conservation has increasingly become a business of publicity, education and media campaigns, from such basic consciousness-raising work as the daily birdcall on National Radio, to popular commercial sponsorship projects like the Mainland Cheese yellow-eyed penguin scheme. Public support is assiduously fostered to give weight to conservationists' demands for political change.

In the mid-1990s Forest & Bird has a circulation for its journal of approximately 23,000, many of which are families or couples, giving an estimated 46,000 members in 55 branches and sections. The work of advocacy is shared between branch committees and a professional staff and project workers based in Wellington, Auckland, Tauranga, Christchurch and Dunedin. There are presently 21 staff plus a number of project workers, focussing on advocacy, membership and the production of a quarterly magazine and other information about the environment.

While its constitution focusses on the protection of native wildlife and plant habitats, along with scenery preservation, Forest & Bird takes a broad and holistic environmental view. Its policy of environmental protection extends into such areas as:

-- energy conservation,
-- ocean fisheries,
-- marine reserves,
-- conservation in urban environments,
-- water conservation,
-- air pollution,
-- land transport,
-- sewage and stormwater disposal, and
-- the impacts of weeds, pests and tourists on the natural environment.

This broadening concern reflects the nature of contemporary conservation generally, with the preservation of biodiversity conducted in a framework of the protection of the environment and specific habitats and species within it. A major concern for Forest & Bird remains, however, the protection of the conservation estate -- the lands administered by DOC. Forest & Bird along with the Federated Mountain Clubs and the Maruia Society has played a critical role in advocacy for the establishment of many of New Zealand's National Parks and Reserves, including the South West New Zealand: Te Wahi Pounamu World Heritage Area (in conjunction with tangata whenua and tourism interests). It was also closely involved in the moves to rationalise Crown land management through the establishment of DOC in 1987. Forest & Bird's lobbying in recent years has included contributions to the framing of the Resource Management Act and to its application through appeals to establish sound conservation principles in practise.

4:3:5 The Contemporary Protection Ethic

A wide range of factors and influences have helped shape the suite of values, beliefs and principles which comprise the contemporary protection or preservation ethic. Many of these concepts have evolved over the last two centuries, as outlined above -- others have only gathered acceptance in the last few years or so.

Some people share only some of these values and beliefs, or support them to a lesser degree than other environmentalists, or acknowledge qualifications and alternative factors. Others take these ideals to an absolute position and reject any caveat or compromise. It is neither possible nor useful to attempt here to adjudicate amongst the various "shades of green" -- the fruitlessness of arguing over different definitions of "conservation" has been evident since the bitter feuds between John Muir and Gifford Pinchot, US Forest Service utilitarianist, 100 years ago.[201]

What follows is a brief discussion of some of the key concepts and values which are significant for use of wildlife.

4:3:6 Intrinsic or Inherent Value

The concept that wild creatures and plants have intrinsic or inherent value as individuals, quite independently of any value or use that humans might ascribe to them, is central to many people's sense of an appropriate relationship with the natural world.

Recent New Zealand legislation specifically recognises the intrinsic values of nature, with provision in the Resource Management Act that decision-makers are to "have particular regard" for the "intrinsic values of ecosystems" (section 7(d)). The Conservation Act defines "conservation" as "the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values..." (section 2). "Preservation" of a resource is defined as "the maintenance, so far as is practicable, of its intrinsic values", and "nature conservation" is required to have regard to the "intrinsic values... of the natural resources of New Zealand".

[201] Nash 1973 pp 135 ff

Recent studies trace an ever-widening process over the centuries where basic rights are acknowledged and extended to various levels of society. Rights were recognised first only for the landowning upper classes, then male landowners generally, then progressively widened to include women, indigenous peoples, blacks, children, prisoners, the insane, the handicapped, and for many people the unborn foetus.[202] The concept of the rights of other species has some connections with the animal rights movements that fight against cruel farming practices and the use of animals in laboratory experiments. The concept of intrinsic values takes this process of extension on to embrace all other species in nature, according them an ethical status which can be equal to that of the human species.

Under these principles a wild bird or plant has as much right as any person to exist and to have the things it needs to thrive -- the right to life, liberty and the pursuit if not of happiness in the human sense at least of health and wellbeing. It is argued that humans need to recognise "biospherical egalitarianism" and see themselves as "just one organism in a whole range existing in nature"[203]:

> Conservation becomes possible only when man assumes the role of citizen in a community of which soils and waters, plants and animals are fellow members, each dependent on the others, and each entitled to his place in the sun.[204]

Some environmentalists link these kinds of concepts of rights with the traditional beliefs of Eastern and indigenous peoples' religions of the interconnectedness and equality of all creation. The lyrical statement attributed to Chief Seattle is an example of these concepts; it has been enormously popular, although in fact it was written by a European:

> All things are connected like the blood that unites one family... The perfumed flowers are our sisters; the deer, the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man -- all belong to the same family.

Scientific advances in the study of evolution and genetics have endorsed these concepts. Harvard biologist E O Wilson argues for "biophilia", a love of all life:

> We must rediscover our kin, the other animals and plants with whom we share this planet. We are related to them through our DNA and evolution. To know our kin is to come to love and cherish them.[205]

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[202] Nash 1990 pp 4-9
[203] Jeffreys in Grigg p 31
[204] Aldo Leopold, *A Sand County Almanac*
[205] Wilson quoted in Knudtson & Suzuki p xxiv

The fact that birds and plants can not speak their claims or organise political systems imposes a responsibility on humans "to articulate and defend the rights of the other occupants of the planet".[206] The duty of humans to protect the existence and the rights of others is developed into a powerful moral imperative.

4:3:7 Restraint and Humility

A factor related to the concept of intrinsic value is the corresponding obligation on humans of restraint and control. The prevailing utilitarian philosophy of Western civilisation (refer 4.2.1) is rejected; it is argued that humans do not have the right to "play God" over other sentient beings. Vegetarianism and Veganism are natural expressions of these beliefs.

The view that human society has already caused more than enough damage is commonly introduced to endorse the demand for humility and restraint. The terrible impacts and extinctions, the wastefulness and lack of controls, the enduring degradation and pollution of once-wonderful ecosystems are cited as irrefutable evidence of humanity's wickedness and rapacity. Such arguments work with concepts of innocence and sinfulness, purity and corruption very close at times to the fundamental Christian polarisations of good and evil, Eden and the Fall.

Other justifications for preservation take the more pragmatic argument that "use of wildlife, whether sustainable or not, is not obligatory".[207] The principle here is that while it may have been necessary in the past to exploit wild nature for human survival, the advances of modern civilisation, at least in First World societies, now allow us to exercise proper respect and restraint. Harvesting wild creatures and resources has become unnecessary with all that supermarkets and modern technology provide. Furthermore the awareness that wild resources are much diminished, combined with an understanding of the ever-greater pressure of increasing human populations, leads to the belief that for many wild species there is simply no longer enough for harvest to be a practical option.

4.3.8 Animal Rights

The animal rights movement developed from utilitarian philosophers such as Jeremy Bentham who in the later 18th century extended the concepts of equality and rights to animals: “each to count for one and none for more than one.” While it was accepted that other animals are significantly different from humans, Bentham and others argued that concepts of equality do not depend on intelligence, moral capacity or physical strength. Equality is a moral ideal, not a simple assertion of fact: “The question is not -- can they reason? can they talk? -- but can they suffer?”

From such philosophical beginnings the animal rights movement became politicised through the work of Henry S Salt in the 1880s, who stressed “the common bond of humanity that unites all living beings in one universal brotherhood.” Anticipating the American nature poet Gary Snyder by 80 years, Salt declared “it is not human life only that is loveable and sacred but all innocent and beautiful life.” Salt and others supported organisations such as the RSPCA, arguing that

[206] Nash 1990 p 10
[207] Jeffreys in Grigg p 29

injustice to non-human beings was part of a general social malaise. Salt's contemporary equivalent is the Australian academic Peter Singer, whose *Animal Liberation* (1975) had a profound effect on many animal activists. Singer maintains that:

> to treat animals as resources and argue about when use is sustainable, is a classic example of economic rationalism running heedlessly over non-economic values. We should no more hand our wild animals over to the tender mercies of the market than we should hand our children over to the same market forces. Neither children nor wild animals are a "product" or a "resource" at all.[208]

In New Zealand the animal rights movement, traditionally represented by groups such as the RSPCA, Beauty Without Cruelty and other anti-vivisectionist societies, has become more strident and direct in its recent manifestations in such groups as Save the Kaimanawa Horses and the ALF (Animal Liberation Front). Their tactics are becoming more radical after the failure of animal rights petitions to Parliament. One activist recently argued for direct action: "It gets publicity. I know alot of people don't support it because they think it's too extreme. We tend to think it's extreme when people go out and shoot animals for fun."[209]

The movement to protect other animals is expanding in New Zealand. The high profile in mid-1996 of the Kaimanawa wild horses, and the intensity of campaigns for their protection, is an indication of the increasing significance of this issue.

4.3.9 Wild VS Civilised

A widespread and deeply intense suite of beliefs and ideals holds that wild creatures and wild nature are valuable for their very wildness -- that their untamed, unfettered, primevally original existence is an essential antidote to the human condition (refer 4.3.3 above). Many preservationists argue that being able to respond to wild creatures and their natural habitats is a vital cure for the stress, pace, noise and artificiality of modern urban life. People insist on the need to free themselves from the demands of contemporary civilisation and, even briefly, encounter "nature on her own terms":

> If we are to be properly humble in our use of the world, we need places that we do not use at all. We need the experience of leaving something alone. We need places that we forebear to change, or influence by our presence, or impose on even by our understanding; places that we accept as influences upon us, not the other way around, that we enter in a kind of cultural nakedness, without comforts or tools, to submit rather than to conquer.[210]

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[208] Craig Potton's reference
[209] *NZ Listener*, 24 August 1996
[210] Wendell Berry, *The Unsettling of America*

4.3.10 Spiritual Dimensions

Through the last two centuries the old links with nature and the tribal gods and traditions of Europe have been forgotten, or found irrelevant to our present situation. The cultural links remain, however, and may have inspired some of the religiosity now attaching to a respect for nature and for its protection, just as it did the earlier Romantic movements in Europe.

This loss of a direct relationship between people and the forces of the earth began in Europe with the evolution of an urban society. In New Zealand, for Maori, there has been a more recent but similar process of rapid cultural change and social dislocation. This separation from the earth and the old ways is evident in the situation of many urban Maori, now divorced from their cultural roots (refer 3.3.10).

For all urban people much of the affection and love for the land has become intuitive and romantic. This is not to denigrate its sincerity -- simply to reflect on the force and persistence of such collective ancient memories.

Many environmentalists find a spiritual dimension in nature in response to the cultural appropriations and secularisation of modern society. The expression of these spiritual dimensions is quite different from the Romantic and Transcendental symbolism of the 18th and 19th centuries -- such early metaphors as “God’s cathedrals” for forests. Contemporary spirituality develops as a personal mixture of various Eastern and Western traditions, and as a celebration of the interconnectedness of all nature, including humans. Spiritual concepts are separated from conventional religious world views (refer 4.2.1) and from mythological language, and ethical and mystical concerns are now voiced in the vernacular.

What emerges as a common thread is a mystical understanding of the place of humans in the world, so that the spiritual dimension is no longer rooted in a heaven “out there” but is now found within our existential reality and within every atom. The visionaries and theologians of this spirituality of nature are diverse, including scientists such as Albert Einstein -- “God does not play dice with the universe” -- and James Lovelock. Eastern philosophies and key figures such as Albert Schweitzer emphasise the need for spiritual compassion to all sentient beings. Artists such as Mark Rothko and Anselm Keifer create new spiritual motifs more suitable to contemporary thought than traditional religious theology.

Many individuals within the contemporary conservation movement have gained more sustenance from these new dimensions of faith than is readily apparent in the largely political or scientific reportage of the movement.

4.3.11 Inspiration and Emotion

Many preservation concepts derive from a simple love of nature. Various environmental philosophers come back eventually to this fundamental base -- undeniable because deeply personal and subjective, inarguable although often not able to be clearly articulated. The lift of the human heart at the lift of a wild bird in flight, the excitement at successful fledgings, the visceral anguish at loss or destruction -- these kinds of spontaneous responses to the natural world are essential yet often under-rated components of the protection ethic.

Writers, artists, photographers, trampers, climbers, hunters, tourists, television watchers and even scientists all depend on this basic emotional and inspirational dimension. Ecological research and moral principles can seem hollow or unpersuasive without these kinds of essential feelings for nature.

4.3.12 The Popular Media

In many cases however these emotional dimensions reveal their own inherent paradoxes and inconsistencies. A select few icon species are the focus of great attention and concern whereas others are ignored -- indigenous bird life for example receives far more popular support than fish species, although the orange roughy and the snapper are, like kereru and kiwi, native species threatened by a range of habitat and management problems. It's not easy for people to feel warmly emotional about wetas, or the many less well-known but equally ecologically deserving invertebrate species.

Wildlife documentaries, even the best international programmes, manage audience emotions quite overtly. Key species are presented as noble and proud or vulnerable and sympathetic. Human attributes or qualities are attributed to species or their interactions. Musical soundtracks are very significant in these orientations of meaning and value. Some commentators have criticised the media's treatment and interpretation of nature and environmental issues as: "...inadequate, grossly distorted, sensationalist, oversimplified, naive..."[211]

The anthropomorphism and sentimentality inherent in many media programmes and campaigns' appeals to public feeling are in one sense a reductive manipulation of the full truth. But it can also be argued that the conservation messages must be pitched at a level where they will be accessible and appealing to the majority of the general public. The priority is to encourage people to appreciate and love wild nature.

4.3.13 A Pragmatic Approach

Some conservationists share the philosophical views of nature expressed above, but choose to combine these personal views with a pragmatic, conciliatory and flexible approach to decision-making. They believe that only by broadening and strengthening the conservation constituency, to include groups that have been marginalised from the debate, will society be able to solve some of its most difficult and critical conservation issues.

In seeking solutions to conservation problems they will focus on ensuring species and ecosystem preservation rather than on the preservation of each individual plant or animal. They believe that conservation should aim to be inclusive rather than exclusive. By acknowledging other people's economic, cultural, social and spiritual needs and building these into the processes and the solutions, the conservation cause itself is strengthened.

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[211] Dyer & Dyer, in Dyer & Young p 530

4.3.14 National Identity

New Zealanders have since the earliest colonial times identified with the unique flora and fauna of these islands. Governments, artists and early writers deliberately emphasised New Zealand's distinctive natural phenomena to increase a sense of nationhood. Symbolic species such as the kiwi and the silver fern soon become established as international signifiers of New Zealand identity. The images and icons of tourism promotions have endorsed this kind of symbolic approach. The attribution of significance to indigenous wild species is a powerful and enduring force in New Zealand culture.

More generally New Zealand has developed an image both for its own inhabitants and internationally as a clean green natural paradise, a remote unspoiled country free from the ugliness, pollution and crowding of many Northern Hemisphere nations. Despite various studies reporting on the imperfections of our landscapes' realities, toxic chemicals and urban sprawl, the concept remains tenaciously influential. Many submissions in response to the NZCA's 1994 Discussion Paper argued that allowing any harvest of wildlife would be a damaging contradiction of our international clean green image.

The sense of New Zealand's specialness is more recently gaining a more solid base as scientists develop a clearer understanding of these islands' unique heritage from the prehistoric continent Gondwana. Millions of years of isolation from other land masses led to the evolution of extraordinary flora and fauna. Together with the Hawaiian islands, Madagascar and New Caledonia, New Zealand is considered one of the world's most important examples of island and continental evolution. Ecologists now insist on the immense scientific value of this heritage, and New Zealand's international obligation to ensure its protection.[212]

[212] Ecological Society submission

SUMMARY

The NZCA recognises that a range of contexts are essential to an understanding of the issue of customary use and of our relationships -- individual, social and cultural -- with the natural world. The preceding sections have discussed the most important of these contexts -- ethics and values, traditions and beliefs, ecology and history, and the legal and international frameworks -- and the ways in which they shape and influence people's practical responses to wild native creatures and their habitats.

To summarise the key points arising from the discussion so far:

New Zealand's natural heritage is severely diminished and compromised as a result of past unsustainable activities of both Maori and Non-Maori. Additionally there are continuing losses through predation and habitat destruction. Almost all animal species are still declining, and for many species and resources, there can be little prospect of any use being sustainable in the foreseeable future.

DOC has a statutory obligation to give effect to the principles of the Treaty of Waitangi in its management of indigenous wildlife and protected natural places. Our understanding of the Treaty principles is continually evolving as the courts and the Waitangi Tribunal work through specific cases and claims.

The Crown's kawanatanga under the Treaty gives it the right to make laws for conservation. However kawanatanga must be balanced with rangatiratanga, the rights of iwi and hapu under the Treaty, to recognise and provide for the respective rights and duties of both iwi Maori and the Crown.

Claims to the Waitangi Tribunal, such as WAI 262 and the claim against the Tongariro/Taupo CMS, are also addressing issues of Maori rights and relationships with natural taonga. Many Maori concerns are with participation and decision-making, and with the practical integration of Maori values and priorities in contemporary conservation management. The recognition and protection of Maori intellectual and cultural property is part of this.

The various international agreements to which New Zealand is committed include obligations both to conserve our biological diversity and to protect indigenous peoples' rights.

Current legislation allows for native plants and animals to be taken under very limited, specific conditions. In some areas titi may be harvested by tangata whenua as a customary and sustainable practice.

DOC regional Conservancies have established relationships and practical mechanisms with tangata whenua to provide for customary use of the materials lawfully available. These include plant materials, bone from stranded whales, and feathers from accidentally killed birds.

The Crown allocates management of some particular ecosystems and species, with appropriate safeguards, accountability and Ministerial oversight, to an independent group -- the Fish and Game Council, which has responsibility for introduced game species and their habitats.

There are fundamental differences between introduced game species and native species.

The values and beliefs of the two principal cultures of Aotearoa/New Zealand are fundamental to people's responses to questions of customary use of native birds, animals and plants. Traditions going back centuries are powerful influences on present day management and expectations; other priorities and value systems are more recent.

There is significant common ground, including a commitment to conservation at the most fundamental levels -- the demand that nothing more is lost or damaged, so that future generations will still be able to enjoy this heritage. There is agreement that some plants and some materials from dead animals may be used. Both Maori and non-Maori are strongly opposed to unlawful poaching and to any uncontrolled harvesting which causes damage to vulnerable populations and habitats. And both Maori and non-Maori are determined to take an active part in conservation, to have their say, and to have their views and priorities taken into account.

The background and the issues are complex, but not unresolvable. The NZCA's investigation thus far has ranged widely, exploring the views and concerns of the various interested groups. The objectives have been to increase understanding and to establish a base of fundamental principles from which to advance further considerations and discussion on the issue.

From the points summarised above, the NZCA has identified three key principles:

1: the cultural significance of Maori customary use of native birds and animals, plants and other traditional materials;

2: that most indigenous species are under threat from predation and loss of habitat, and numbers are still declining; and

3: that any use of increasingly rare and precarious indigenous species must take into account and accommodate a number of essential issues. These include matters of sustainability, management techniques, research, spirituality both Maori and non-Maori, access and ownership, participation, funding and administration. These issues are now discussed in the following sections.

5: SOME ISSUES FOR DEBATE

General Comments

The discussion that follows traverses a number of key points which, in the NZCA's considerations of the issue of Maori customary use, have been identified as fundamental to the process of developing a resolution. They are:

-- conservation and protection of New Zealand's vulnerable natural heritage;
-- the concept of sustainable use of wild natural resources;
-- establishing levels of sustainability;
-- science and research requirements;
-- acknowledging and accommodating different kinds of knowledge;
-- access of both Maori and non-Maori to available materials;
-- the differences between traditional and commercial uses;
-- the formal ownership of crafted taonga;
-- Maori participation in conservation;
-- opportunities for restoration and enhancement of damaged or degraded resources and places;
-- opportunities for education and increasing people's awareness of conservation issues and the cultural dimensions;
-- administrative matters and systems;
-- accountability and reporting;
-- funding implications; and
-- reaching an appropriate balance between national, regional and local levels.

The NZCA notes that these matters are not necessarily the full range of issues and concerns that people may have about Maori customary use. Undoubtedly further questions and ideas will arise in the ongoing discussions on this topic.

Under many of these key points there is a range of viewpoints, and, in the space available, the NZCA has included considerations of the various different concepts and arguments. There is also a good deal of common ground, where there seems a clear and practically achievable way ahead. This common ground is reflected in the interim recommendations and points noted, given in italics at the end of each section. These interim recommendations are put forward in the hope that they may assist in making progress, and provide a useful resource for the ongoing debate.

5.1 CONSERVATION

5.1.1 Conserving New Zealand's Biodiversity

The Conservation Act, Section 2, defines "conservation" 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 the options of future generations.

The practical work of the Department of Conservation includes responsibility for the survival and wise management of New Zealand's native birds, animals, plants and the natural habitats and ecosystems on which they depend. Much of this work is the crucial intensive management of threatened species -- the essential requirements for critically endangered creatures such as the kakapo, kokako and black robin. Increasingly though the focus is widening to deal with more bird species -- rapidly declining species such as kiwi, kaka or yellowhead -- to work with whole ecosystems, and to address the broader range of habitat issues and ecosystem processes that affect the viability of wild native species. Plants, forests and wetlands are priority areas for management especially in regard to the depredations of introduced animals such as possums, deer and goats, and the impacts of exotic weed species. For a brief summary of the conservation status of New Zealand's natural heritage in the late 1990s, refer to 3.7.1 above.

The work of conservation has widespread public support from both non-Maori and Maori. In the submissions received by the NZCA and the meetings and hui through 1994 and 1995, there was strong endorsement of the imperative of ensuring that New Zealand's wild creatures, plants and places will still be there for future generations (refer 2.1.2 above).

The different cultural, historical, social and traditional values that underpin this commitment to conservation have been outlined above in 3.7.2, 3.7.3 and Section 4: Cultural Background.

There is general common ground, but conservation does mean different things to different people. Often shared short-term objectives -- the protection and restoration of wild species and habitats -- will be based in different longer-term goals. For many Western conservationists, the overall goal is preservation (refer 4.3.4, 4.3.6, 4.3.7 above). For many Maori the long-term kaupapa is to restore the populations and resources of natural species so that eventually, at some point in the future, sustainable use might be possible.

5.1.2 Adaptive Management

One practical model for conservation is the concept of adaptive management of populations and habitat ecosystems, where "risk and uncertainty (the wildlife management `wild cards') are integrated into the management regime."[213]

[213] Webb in Grigg p 18

The fundamental principles of adaptive management are:

-- it is not possible to get the information necessary to reliably predict the impacts of a change in management or a proposed use, without actually testing it out;
-- no abstract mathematical model can adequately account for the full range of variables and inter-relationships involved;
-- ongoing close monitoring across that full range of variables is essential;
-- maintaining a control population free from any interventions may be necessary; and
-- a corrective capacity is essential; the system must have the flexibility to adapt quickly and to alter the patterns of management or levels of use in response to the findings of the monitoring.

A fundamental aspect of this concept of management is that adaptive systems operate on the principle of flexibility rather than strict predetermined regulation. This kind of system also offers more opportunity for human and cultural priorities in conservation. It demands close, regular "hands-on" contact with the species and habitats -- it can not be a long-distance remote-control kind of operation. Therefore it is very important for local communities and land-holders to be directly involved.

5.2 SUSTAINABILITY

5.2.1 The Concept

The idea of sustainable use of natural resources is receiving increasing support from a diverse range of groups and agencies. There are however widespread differences of opinion about what sustainability actually means and how best to define and manage this concept. Each person or interest group -- in particular the burgeoning industry promoting sustainable land use, forestry and agriculture -- has their own sense of what's involved in sustainability, reflecting their particular needs and values. Some preservationist groups argue however that sustainability is a myth, that its claims are dishonest and its aims impossible.

In its 1994 Discussion Paper the NZCA quoted the following definition of sustainable use from Lester Brown of the Worldwatch Institute:

> the capacity to satisfy current needs without jeopardising the prospects of future generations.

The Resource Management Act 1991 (section 5) defines "sustainable management" as:

> managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while
> (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
> (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
> (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

5.2.2 Practical sustainability

Various practical models of sustainable management of wild species, systems and resources have been developed in recent years. Fish and Game Councils work to principles of careful management of sports fish and game species and their habitats. Managed hunting deals with wildlife as populations, not as individuals. Hunting is seen as consistent with the maintenance of a healthy population while allowing the annual surplus -- more numerous with the abundant, prolifically breeding introduced gamebirds than with many native species -- to be utilised. This is the basis of sustainability -- harvest is to be managed within the bounds of the species' natural annual surplus population, leaving a protected base stock to produce a similar surplus the following year. Use of the wild resource is relatively small-scale and low-impact.

Internationally there is increasing support for such concepts and mechanisms. International agreements reflect increasing acceptance of the inter-connectedness of sustainable use and conservation -- examples include the 1990 IUCN recommendation 18.24, on the conservation of wildlife through wise use as a renewable resource, or the 1992 CITES parties' resolution to recognise the potential benefits deriving from the sustainable use of certain species (refer 3.6.5). The "use it or lose it" philosophy focuses on fostering the commitment of the public -- in

particular the support of interested groups and stakeholders at local or national levels -- through a purposeful, carefully managed system of incentives and involvement.

Other arguments take an opposing view. Historical examples of unsustainable hunting -- such as the fur trade in Europe, Russia and North America, the sealing and whaling industries through to the early 19th century, the extinction of the passenger pigeon and the near extinction of the American bison -- are cited as evidence that harvesting will inevitably drive species to the point of extinction. Preservationist arguments based on such unregulated exploitations assume that all harvesting, even in a controlled and managed system, will in the end come down to fundamental self-interest (refer 5.5.2 below). There is strong suspicion of resource users' systems and claims of sustainability, and evidence of failures -- such as some contemporary fisheries -- is cited in support of the preservationist position. Preservationist campaigns have challenged harvest statistics and reports, insisting that they are misleading, confusing and unreliable.

Critics of sustainability are also strongly concerned at the problem of by-catch -- a widespread consequence of almost all hunting. Rare native ducks are shot along with mallards; toroa, seals and a wide range of non-target fish are caught along with target fish species; flesh-footed shearwaters and other seabird species are accidentally caught and killed in titi harvesting. Preservationists draw attention to the practical difficulties of distinguishing between game species and protected native species out in the field.

5.2.3 Fundamental Principles

Despite the different views there are a number of basic principles which are useful to consider. One key principle is that sustainability can only be addressed in practice, at site- and species-specific levels. Different methods will be needed for different species in different places and habitats. There is no universal formula that can be applied across the spectrum of wildly diverse situations, conditions and concerns.

Sustainability must also take into account the fact that natural species, ecosystems and processes are always in a state of flux:

> If ecological sustainability is interpreted to mean that no change can occur in the relationships between component parts (rather than simply sustaining the system), then no harvest or use can by definition be ecologically sustainable.[214]
>
> In a dynamic system... sustainability is fundamentally a question of balance, maintained over time. It thus cannot be easily scaled and measured, since it is a quality of motion rather than a fixed point. It may be more easily defined, in practice, as the lack of forces tending to upset an equilibrium over time. This is why most indicators are in fact measures of unsustainability, of the amount or extent of imbalances...

[214] Webb in Grigg p 20

> Being dynamic, sustainability includes such characteristics as the speed or rate of change... the inertia of the process, and the significance of the amount and rate of change relative to the initial and resulting states...
>
> Nothing is permanent on this planet. Wealth is created and destroyed; energy is degraded; materials are concentrated and dispersed; useful information is increased and lost; things wear out; objects and materials have a useful life and then become wastes; old technologies are replaced by new ones... Sustainability requires accounting for all this over time. For the ultimate balance to be sustainable, the processes of maintenance, replacement and renewal must equal or exceed the processes of depreciation, degradation and loss.[215]

Just like natural ecosystems and processes, human systems, processes and communities -- and the values and assumptions which drive them -- are always shifting and changing. The mainstream of a stronger awareness of conservation and environmental issues over the last three decades is only one example of this. The prevailing social opinions and criteria of last century, when native wildlife was commonly hunted and forests were enthusiastically cleared, are obviously very different from today's values -- and it must be recognised that the next century may see equally radical and unexpected changes. Society's attitudes towards the natural environment and wild species will inevitably evolve. Any sustainable management must therefore protect the widest possible range of options, and avoid any absolute foreclosures -- whether through extinction of species, destruction of habitats, or prohibition and loss of human interactions.

Some populations and habitats of native species have already become so severely compromised that it would not be possible to consider any level of harvest in the immediately foreseeable future (refer 3.7.1 above). For such situations of extreme vulnerability, the first priority must be to ensure the longer-term viability of the species and its habitat. Only when these have been restored, other options might later be able to be considered.

5.2.4 Establishing sustainable use levels

There are various theories, philosophies and systems for establishing levels of sustainable harvest of populations, which can be applied both to wildlife and to plant resources. A number of fundamental factors and principles seem only logical common sense. These include:

- population size and generational distribution, behaviours and special characteristics;
- habitat size and health, extent of habitat fragmentation and compromising factors such as pollution or pest species;
- compensatory factors from human interventions such as predator control or planting food trees etc;
- relationships with and recruitment from neighbouring populations;
- for migratory species both globally and within New Zealand, the conditions and quality of habitat elsewhere along their route, especially at breeding sites;
- reproductive behaviour and patterns, influences of other factors such as mustelids preying on eggs and fledglings, overall population replacement patterns;

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[215] Dahl pp 29-30

- indicator factors or phenomena as basic frameworks for monitoring;
- bottom-line levels below which the population will not be viable;
- level of significance, importance and urgency of the proposed use; and
- upholding the provisions of the protection legislation

Within the locally and regionally specific conditions for each species proposed for customary use, some of these factors may be more significant than others. However the national levels of each species or resource -- for example large totara trees sought for carving projects -- must also be taken into account. There will be different degrees of value and concern for different resources -- the scale of value discussed above at 2.2.1, ranging from easily-grown plant materials for weaving or medicinal uses, through to rare carving timber, wild birds and marine mammals. The different levels of protection provided in New Zealand's reserves system will also be relevant -- there is a spectrum of management criteria where use may be possible and appropriate in some areas but not in other more critically sensitive areas.

The NZCA notes that any customary use of native species would need to be lawful and sustainable, employing monitoring systems that provide advance warning of signs of stress or decline in the community or species being harvested.

5.3 SCIENCE AND RESEARCH

5.3.1 Different kinds of knowledge

Many of the Maori respondents to the NZCA's 1994 Discussion Paper commented on the value and importance of matauranga Maori; many other respondents emphasised that rigorous science and research are essential for successful management of indigenous biodiversity.

The relationships that might be possible between formal scientific research work and other kinds of knowledge present important and challenging potentials. In particular, there is matauranga Maori, the traditional environmental knowledge of tangata whenua (refer 4.1.5), but other informal non-academic knowledge and experience of natural places, species and systems -- such as the observations of farmers, fishers, local residents, trampers, ecotourism operators and hunters -- is also a potentially valuable resource.

The protection of intellectual, cultural and genetic property rights is crucial and is discussed more fully in 3.5 above.

In the past there has been mutual suspicion and mistrust between the holders and practitioners of different kinds of knowledge. Scientists who have spent long, expensive years studying for academic qualifications can find it difficult to accept that local Maori with very limited formal education may in fact know as much about a species, ecosystem or place as they do; expert status and professionalism are threatened. Maori communities on the other hand are often frustrated by scientists coming in and insisting they know it all, ignoring Maori knowledge and priorities, and compromising resources or values important to Maori. Science is often in the employ of the Crown or of commercial developers or forestry. There are simple communication problems, with academically trained scientists unable to let go of technical language and abstruse paradigms, to make it all accessible to ordinary people (Maori and others).

One purposeful new initiative is the National Association of Maori Mathematicians, Scientists and Technologists (NAMMSAT), established in 1994 to improve Maori participation and achievement in the fields of science, mathematics and technology. NAMMSAT has identified key priorities for the advancement and encouragement of Maori and Maori values in the contemporary scientific arena:

- -- to reconsider the definition of science, particularly when considering Maori science and the sciences of other indigenous peoples;
- -- the value of Maori contributions to New Zealand science;
- -- increased Maori participation to ensure Maori have control over their own resources and development; and
- -- the importance of Maori scientists who are able to work alongside and understand whanau, hapu and iwi needs and aspirations.

Many other commentators both in New Zealand and internationally are addressing the nature of science itself. New work is being done to evaluate the traditional environmental knowledge of indigenous peoples (refer 4.1.4) relative to the methodologies, values and assumptions of conventional science. Although "the belief that Western paradigms are intrinsically better than

indigenous world views is still a potent... conviction... [and] there is sometimes manifest an overt hostility when confronted with indigenous ways,"[216] many scientists and writers are now moving beyond this dismissal of indigenous or non-academic knowledge.

Interesting work is being done, bringing together science, anthropology and epistemology to develop clearer understandings of traditional indigenous knowledge and contemporary science, including what each has to offer, where there are differences and common ground, and how they might usefully complement and enhance each other. Studies incorporating practical applications of traditional wisdoms from indigenous societies all over the planet are helping to break down some of the ethnocentrism of much Western thought, and building new respect for alternative ways of dealing with the world. One of the fundamental realisations is that:

> ...there is more than one way of looking at any one piece of information. What the contemporary paradigm forgets is that it is a paradigm. There are many paradigms and there are many knowledges... [217]

However many writers also have strong warnings about some of the risks and problems in working with different kinds of knowledge. Enthusiasm for new concepts and opportunities should, these commentators insist, be balanced with realistic appraisal. Among the characteristic hazards are:

-- the tendency to romanticise traditional knowledge and systems, to glamourise traditional practices and ways of life, and to gloss over the shortcomings and difficulties;

-- the attribution of contemporary Western ideas, objectives, values and priorities to traditional indigenous frameworks and practices;

-- the propensity to overlook or trivialise the actual objectives, values and priorities of indigenous systems, especially if these are less than compatible with prevailing Western concepts;

-- the assumption that similarities in outcomes (for example, the protection of wild species and habitats) derive from similar motivations and beliefs (for many conservationists, the objective is preservation; for indigenous cultures, sustainable use); and

-- simple difficulties in communication, especially when working with concepts and values for which there are no clear equivalents in Western culture and no direct translations in the English language.

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[216] Cox and Elmquist quoted in Roberts et al p16
[217] Henry in NAMMSAT proceedings pp 46-47

Despite the need for caution and clear-sightedness, there are significant potentials. One area for research which could be given very high priority is the exploration and development of ways in which science and matauranga Maori can talk to each other more purposefully. Science and tikanga need to find practical ways to bring together the respective baskets of knowledge -- for the benefit of both cultures and the wellbeing of New Zealand's biodiversity.

> *The NZCA would recommend that encouragement is given to collaborative research between traditional Maori knowledge and science, which specifically targets customary use issues.*

5.3.2 The Research Base

Many of the submissions received in response to the NZCA's 1994 Discussion Paper drew attention to the general insufficiency of the existing scientific research for native species and ecosystems. People argued that for many species and ecosystems simply not enough is yet known. There are indeed enormous gaps in our scientific knowledge, and also many species, populations and ecosystems for which knowledge may be held but is not widely available or accessible. Research is an urgent priority -- both to address the requirements for assessing potential uses, and more generally to improve our understanding and to support and focus conservation work.

For many species and ecosystems, some of the research data may be of only limited relevance due to the local and regional variability of New Zealand’s indigenous landscapes. A research project undertaken in one particular area or catchment might well be only partially useful when considering the situation of a population in a significantly different ecosystem or region.

Furthermore, the status and condition of many native species and ecosystems are constantly changing, and the situation reported from one year may be completely different the following season. While for many this pattern will follow a downward trend -- from vulnerability to rarity to severely threatened status -- for others positive changes may occur. Improvements could be the result of purposeful intervention or management programmes such as predator and pest control work, control of water levels in rivers or wetlands, or new habitat becoming available with a corridor linkage being established. Research and monitoring needs to be a continual ongoing process -- nature never stays static.

More ecological and biodiversity research is needed into:

-- species populations, locations, numbers and robustness;
-- the complex of relationships between species and their habitats, and other ecosystems on which they may depend;
-- the particular significance of recruitment relationships between neighbouring populations;
-- the significance of ecosystem processes and trends for species' and ecosystems' wellbeing;
-- indicator species, factors or phenomena that give early warning of changes, risk or impending decline;
-- breeding patterns and behaviours, and the survival needs of the young;

-- predation and competition by introduced pests, the extent of these impacts on both native flora and fauna and the geographical regional or local patterns of these problems;
-- techniques and strategies for the control or eradication of predators and competitors;
-- techniques and strategies for the restoration and enhancement of habitat ecosystems, in particular projects with involvement and support from local communities such as planting and community nursery schemes.

5.3.3 How Much Research is Necessary?

There is a range of differing views on how much information is necessary before acceptable levels of use or harvest can be determined. The situation will obviously also vary for different species and for different levels of local or national rarity or vulnerability.

Some people argue that it is irresponsible and dangerous to allow any use of species for which full information is not held. These arguments insist that levels of sustainability must be guaranteed before use is approved; the only way to ensure sustainability is with comprehensive reliable data about every relevant aspect of the species' behaviour, habitat, population dynamics, etc. The concern arising from this viewpoint is that requirements for Maori customary use of native species would necessitate exorbitant and possibly unfeasible research. Funding requirements and logistics -- and the availability and professional incentives of research staff -- would in today's economic climate put such exhaustive research into the realms of impossibility.

Other arguments however work on the principle of testing things as you go -- the strategy of adaptive management outlined at 5.1.2 above. In such a system research is never finished -- indeed can never be exhaustive. Research, management and use are inextricably intertwined, working through continual feedback loops in an environment of flux and adjustment. This kind of system recognises and accommodates the influences of a range of other factors as well as human relationships with the target species. But because it is based on trial and experiment many people, especially those most conscious of the vulnerability and rarity of native biodiversity, would find it difficult to accept. For most preservationists, reliably comprehensive research is an essential prerequisite before any assessments of possible levels of use might be ventured.

5.3.4 Current Research Priorities

The Science and Research Division of DOC has recently developed a system of priorities for conservation research, related to the key strategic priorities of the Department's work overall. The research projects developed within this system may be undertaken by DOC staff or under contract by external researchers. The priority areas include:

-- to protect and maintain indigenous biological diversity, to protect and restore the most significant places and processes, to protect priority species, to respond to major threats and improve the effectiveness of management;

-- to meet people's needs, manage their impacts and influence their thinking and behaviour, to identify and manage visitor needs and impacts, to identify and manage other human and consumptive uses of conservation resources, and to monitor public attitudes and actions towards conservation; and

-- to improve the effectiveness of historic resources management.

Universities naturally generate research projects, increasingly in conjunction with other agencies or groups. Interesting examples of the kind of studies that are being undertaken include two Otago projects. One post-graduate project is checking the seal populations around the southern coastline, analysing the seals' numbers, diet, range and condition. A larger programme is Kia Mau Te Titi Mo Ake Tonu Atu (Keep the Titi Forever) research programme, which has been established in partnership with Rakiura Maori:

-- to assess the state of titi on the southern islands, and the current levels and impacts of traditional harvesting;

-- to study the diet of titi and the effects on them of other impacts (climate change, bycatch, pollution); and

-- to record and compare traditional knowledge and management practices for titi with ecological science and wildlife management.

The programme has been developed with full input from Rakiura Maori from the outset; extensive hui and discussion have worked through to an agreed programme which respects both intellectual and cultural property and the need for open publication of scientific findings. An adjunct to the project is now being negotiated with Runaka from the Otago and Catlins coasts which will aim to restore titi colonies on the mainland through an extensive programme of predator control; one possibility is for each marae to adopt a local colony and to assist restoration. These programmes and the consultation to develop them are necessarily rather different from the usual ways in which research and restoration projects are set up.

Research agencies are also doing important work. Manaaki Whenua: Landcare Research is working on several projects including:

-- Maori values in land-use planning (a GIS mapping exercise),
-- an ethnobotanical study enhancing knowledge of plants valued by Maori and featuring harakeke and ti, and
-- work on factors affecting the contribution of matauranga Maori to sustainable resource management.

Manaaki Whenua is also pursuing a longer-term study into traditional Maori tikanga and methods of harvesting and conserving native species. This project focuses on four areas, in consultation with Tuhoe, Ngati Kuri, Ngai Tahu and Ngatihine. It combines ecological and sociological research. Like the Rakiura Titi research, this project has had to develop its own kaupapa and methodology, something quite new in terms of the established practices for standard scientific research, but essential to gain the trust and participation of the iwi involved.

Iwi representatives participate as co-researchers -- an approach which ensures relevance and allays many Maori concerns about ownership of intellectual property and traditional knowledge. The project has found that rangatiratanga is a fundamental issue, coupled with a strong pragmatic desire to restore depleted bird populations.

5.4 ACCESS AND OWNERSHIP

Note: The concerns discussed in this section must be considered in the context of the Waitangi Tribunal's deliberation and eventual findings on the claim WAI 262 for Indigenous Flora and Fauna (refer 3.4 above).

5.4.1 Access to Available Materials

There are a wide range of materials and natural resources regularly available which would be valuable to Maori for traditional uses. Often these materials are wasted because their usefulness in customary terms is not recognised or valued, or because the logistics or other factors make their retrieval difficult.

One interesting example is the ongoing accidental bycatch of hundreds of toroa and fur seals each year in commercial fishing. At present these birds and marine mammals are collected and frozen in the fishing boats' freezers; on return to shore their details are recorded for scientific surveys, but often then their bodies are incinerated or otherwise disposed of.

Other examples of traditional species which become available for various reasons include:

-- road-killed birds, and birds which fly into powerlines or plate-glass windows and kill themselves;

-- stranded whales which have not been able to be refloated or rescued; and

-- birds or animals which have been culled or removed from an area for conservation management purposes, such as weka on Whenua Hou, the Chatham Islands and Kapiti Island, or kiore eradicated from offshore islands by DOC.

Plant materials, especially the valuable large podocarps such as totara or kauri, also become available from time to time. In Hawkes Bay a large fallen totara was discovered buried in a streambed. In a cooperative effort between the local DOC office and Ngati Kahungunu the log was retrieved and carted to the iwi crafts centre in Hastings where local craftsmen are working to utilise it for a ceremonial waka.

The NZCA considers that when materials are available -- when a wild creature is already dead either by accident or for legitimate management reasons -- tangata whenua of the area should have first access to those resources for traditional uses.

The NZCA would recommend that DOC adopts policy and procedures to ensure that tangata whenua have clearly defined access to traditional materials where these are lawfully available as a result of accidental kills or through management procedures.

5.4.2 Non-Maori requirements

The question of non-Maori requirements must be considered. For non-Maori uses of native plants and animal species, this will include respect and recognition of the values, views and priorities of tangata whenua -- just as relevant scientific information and techniques, and the concerns of conservation, need to be recognised and incorporated in decision-making processes for Maori customary use.

It may be helpful to discuss requests for traditional indigenous materials on a spectrum or hierarchy of proposed uses.

At one end of the spectrum are the needs of science and research, especially for conservation purposes (refer 5.3 above). These requirements should be given some priority as this work will help to increase the collective understanding of these islands' indigenous flora and fauna and their management. However tangata whenua must be included in the consultation process from the outset and have negotiation powers in the decision-making process for research requests. In some cases both Maori cultural needs and scientific needs may be met without conflict -- for example with a stranded whale where only certain bones are sought by Maori and scientists require other tissue and skeleton samples.

These matters are for Maori to discuss and determine with conservation managers and scientists. While general principles can be established as an overall framework for these decision-making processes, in most situations the decision would need to be negotiated on a case by case basis as resources became available (when the whale strands and dies).

Of lesser priority are requests from museums and other institutions for display specimens. These requirements can not be given the same importance as requirements for purposeful research, although there may in many cases be an educational or advocacy objective. However the nation's museums already hold collections of indigenous species, bones, skeletons, fossils, moa eggs and other items, many of which are not able to be displayed. Requests for research and museum specimens should also be considered with full participation of tangata whenua.

At the other end of the spectrum are requests for materials for commercial uses of various kinds -- plant nursery propagators seeking seeds or plant materials, carvers seeking whalebone, artists seeking feathers and other materials. These requests should be given the lowest priority.

> *The NZCA would recommend that tangata whenua are fully involved in the consideration and negotiation of requests for native birds, plants, animals and materials for scientific research, for display in museums and for other non-Maori uses.*

5.4.3 Commercial and traditional uses

The NZCA considered the questions involved in the commercial utilisation of traditional crafts and materials. A clear scale of values is involved for Maori, from the commonplace use of harakeke for kete and other small items to be sold, through to more significant materials and artefacts such as feathers for weaving cloaks which would never be for sale but would remain the valued taonga of the community.

The issues are not uncomplicated. Whalebone and pounamu for example while once things of great rarity and prestige, are now carved into items for sale. Should Maori be denied the opportunity to earn an income from traditional crafts? These skills and resources were traditionally fundamental to providing a living; can this be translated into a modern context of money, tourism and marketing an indigenous cultural experience?

The NZCA realises that there are no easy, obvious answers to these kinds of questions. Given the upcoming deliberations on the WAI 262 claim for indigenous flora and fauna, and the review of New Zealand's copyright and patenting laws after GATT (refer 3.4 and 3.5 above), these issues will inevitably be given more consideration.

The NZCA recognises though that some uses of indigenous materials are inarguably customary. These kinds of uses must be considered as distinct and as subject to different values and criteria from other uses. Customary uses are:

-- sanctioned and approved by the tangata whenua of the area where the resource comes from or where the activity takes place;

-- part of recognised Maori traditions, which may deliberately refer back to past forms, techniques and practices, or may equally validly adapt those within the evolving contemporary culture;

-- the collective property, participation or effort of the iwi, hapu or whanau concerned, rather than a private individual; and

-- the principal objective of the use or application is to sustain mana, culture, heritage and identity.

The traditional patterns between iwi and hapu of exchange, barter and gifting of special and locally distinctive items or materials are consistent with these principles.

5.4.4 Ownership of Crafted Taonga

In the hui and meetings around the country during 1994 and 1995, many Maori were shocked and angered to learn that, under the provisions of the Wildlife Act 1953, all crafted artefacts or taonga using indigenous materials, and all the feathers and other materials allocated by DOC to Maori craftspeople, remain the property of the Crown. These materials are only ever on loan to the iwi, hapu or marae. Although the NZCA is not aware of any artefacts or items ever being taken back by the Crown, there is the possibility for this to happen.

This is a matter of grave concern to Maori throughout the country. The lack of real ownership is felt as a severe insult to mana. The situation constrains traditional patterns of gifting and exchange -- if an item is not technically the property of the iwi, how can it be honourably gifted to another iwi? Issues of rangatiratanga, kawanatanga and the guarantees of Article II of the Treaty are also inherent in this constraint.

The kinds of distinctions discussed immediately above in section 5.4.3 are fundamental. Formal ownership of feathers, other materials and the crafted taonga made from them would need to be vested inalienably in perpetuity in the collective community of the marae, hapu or iwi as appropriate. This would recognise mana and help to maintain a vibrant, energetic heritage. The system would need to protect against any appropriations for individual ownership, commercialisation or profit-making.

The issue is technical and statutory rather than any question of protecting conservation values. The creatures which provided the feathers, fur, skin, bone or other materials are already dead.

There have been repeated requests from tangata whenua for this statutory technicality to be resolved so that the mana of iwi, hapu, marae and craftspeople with regard to crafted taonga can be restored. The NZCA considers that the resolution of this difficulty would be a valuable demonstration of good faith and goodwill from the Crown on an issue which is of fundamental importance to Maori.

> *The NZCA would recommend that the Wildlife Act 1953 be specifically amended to provide tangata whenua with lawful ownership of their crafted taonga comprising feathers and other materials of native birds and animals, and of the feathers and other materials allocated for the construction, maintenance and repair of those taonga.*

5.5 PARTICIPATION AND IMPROVEMENT

5.5.1 Maori Participation in Conservation

Many local Maori communities seek to become more closely involved in conservation of forests, wetlands and other natural ecosystems. Maori throughout the country are deeply concerned at the decline and degradation of natural places and resources (refer 2.2.10 above). In many instances this concern finds few opportunities to translate itself into practical constructive action. As noted above in 3.3, the active participation of Maori is a Treaty obligation. DOC and councils are progressively improving their consultation and participation mechanisms but there is still much more that could be done to harness the energy and support of Maori communities for conservation work in their rohe.

Priority should be given to extending and developing -- in conjunction with Maori -- appropriate participation systems. Pest and weed control work, coastal projects, restoration plantings, education and consciousness-raising work, monitoring, research, priority setting, management planning and policy development are all areas where increased Maori participation will benefit both conservation and Maori.

> *The NZCA would recommend that attention is given to enhancing ways in which Maori can become more directly involved in conservation.*

5.5.2 An Interest in Management

Appropriate mechanisms for participation need to be discussed. It has been argued that the independent self-regulation of users and hunters through such mechanisms as the Fish and Game Councils is a logical practical model for wildlife management, because those groups with the strongest interest in the ongoing viability of the resource are given the direct management responsibility. The concept is put forward that resource users are naturally also conservationists, having the most fundamental reasons to consider the welfare of the plant resources they harvest and the animal populations they hunt, and the habitats that support them. Maintaining a species is only maintaining the user's own interests. Therefore the two activities of harvest and species conservation are seen as inextricably linked:

> ...people are the best protectors of wildlife on the land they share. If the survival and well-being of people is directly and tangibly linked... to the use of wildlife in a particular area, then real incentives can be created to use wildlife on a sustainable basis...
>
> There are sound biological reasons why individuals put their own, immediate welfare before that of others. If conservation can be locked into that inner circle of real action, rather than be relegated to the wider circle of altruistic rhetoric, we will get real action to conserve wildlife. [218]

[218] Webb pp 16-17

The preservationist position however insists that the hunter is the last person capable of controlling the rate of harvest and ensuring sustainability:

> In a highly competitive situation the most rational action for any individual hunter was to seek to maximise the immediate kill before a competitor did the same. The faster the overall population fell, the greater the temptation to kill as many as possible as quickly as possible... This pattern of seeking to maximise the immediate short-term gain at the expense of any longer-term considerations is a central feature of the way in which modern societies have hunted and exploited animals.[219]

To preservationists it seems illogical, even absurd:

> ... that the sole qualifications for safeguarding the welfare of wild creatures should be the possession of the desire to kill them... the care of the prey is committed to the tender mercies of the predator. [220]

There is also some cynicism from those whose priority is the protection of native species, about the concept that management for sustainable use can foster a net conservation benefit for the wider habitats and ecosystems. Such management systems are perceived as focussing primarily at the species level, and as incapable of addressing the broader holistic levels. It has been argued that, unless well-regulated, such systems can lead to the manipulation and modification of natural environments to suit the target species, at the expense of other species and ecological systems and processes. These arguments hold that unless a species is considered directly useful, it will not be given sufficient priority.

In New Zealand the example of unsustainable harvesting most commonly cited in arguments against harvesters' self-regulation is the marine fishing industry. Preservationists, working from the assumption of the inevitability of mismanagement under conflicting interests, insist that the user should not set the level of use, and insist on the participation of conservation NGOs in the process. Regulation by a disinterested authority is considered essential.

For some Maori such insistences are perceived as "the prevailing misunderstandings about what are acceptable levels of interference by other parties in the relationship between the Crown and Maori."[221] Other commentators suggest that:

> This... assumes that Maori cannot identify when a species is in need of conservation and would not be capable of putting in place a protective management system, an assumption to which Cox and Elmqvist apply the term "ecocolonialism"... however, even before European settlement Maori recognised that from time to time restrictions on harvesting (rahui) were necessary to allow stocks to rebuild.

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[219] Ponting p 175
[220] Gerald Stokell, North Canterbury (1940s) quoted in McDowall p 39
[221] Wright Nugent and Parata p 85

> Further, there is no fundamental reason why Maori could not combine the best elements of current wildlife management with elements from their own management systems to conserve and, where sustainably possible, utilise bird species. The heart of the issue seems to be Maori involvement in and control of the management system, rather than the goals of management per se.[222]

Other arguments have been made very strongly that, if the mana and kaitiakitanga of tangata whenua was formally acknowledged in a system which gave iwi or hapu authority and a practical role in conservation management for taonga in their rohe, there would be a genuine incentive for participation, and a far greater level of support for conservation from local communities. It has been argued that if iwi or hapu had this appropriate respect and recognition, there would be correspondingly a significant impact on the levels of poaching and unlawful harvesting, and an increased commitment to restoration and pest control programmes (refer 3.7.4):

> Restoration of their Treaty rights as kaitiaki would, in our opinion, see Maori become actively involved in exotic mammal control programmes in key areas to benefit species such as kereru... We envisage species management under kaitiakitanga involving a variety of operating partnerships between Maori and appropriate institutions and Crown agencies... In more practical terms, kaitiaki who live close to their natural resource base are best placed to police its protection...
>
> ...fairer participation by Maori in the management of their culturally important natural resources would result in a much improved level of acceptance by them of access restrictions or rahui...[223]

5.5.3 Restoration and Enhancement Projects

There was widespread support from both Maori and non-Maori respondents to the NZCA's 1994 Paper for the idea of establishing special plantations of native plants for Maori customary use. The materials grown would include both weaving materials -- harakeke, pingao, kiekie -- and rongoa species for medicinal uses. The value of such plantations -- enhancing the overall resource and providing an alternative supply of materials to reduce the pressure on wild stocks -- was generally agreed. In fact this was the only concept which the majority of people supported, and for which there were no contradictory or oppositional statements. There was also general support for government funding to be allocated for such projects.

These plantations would logically be located at marae. As DOC controls only plant resources growing on the conservation estate, plant materials produced in marae plantations would be wholly the property of the marae. The marae community would manage the project and the allocation of materials. There could be possibilities also for plants to be grown for restoration and replanting projects off-site -- to grow extra pingao for stabilising sand dunes, or succession species for a local reforestation scheme.

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[222] Kirikiri and Nugent p 58
[223] Wright, Nugent and Parata, pp 84-85

The necessary information and practical guidance for setting up native plant nurseries is easily available. Marae could call on the expertise of DOC or NGO botanists and nursery staff to contribute constructively to such projects. Many local Polytechnics run practical and theoretical courses, and the Open Polytechnic of New Zealand operates a long-distance mail-learning programme which may be more suitable for many remote marae communities. The Open Polytechnic has an excellent course focusing specifically on native plants, which includes:

-- the distinctive qualities and characteristics of New Zealand's flora and forest communities;
-- establishing a low-cost nursery;
-- seed collection and propagation;
-- restoration projects; and
-- traditional and other uses.

Other possible avenues of support for customary use plantations include the Whakaruruhau programme operating within DOC's Tu Kakariki Tree Programme. A marae-based scheme to encourage growing native trees, Whakaruruhau's achievements include a substantial totara plantation for future generations of carvers at Kawhia. DOC also operates a programme for conservation projects of particular relevance to Maori -- Tikanga Atawhai. Te Puni Kokiri also provides support for marae projects.

The Rene Orchiston harakeke collection located at Havelock North, Rotorua and Lincoln will also be an important resource. Harakeke plants from the many different regional varieties in the collection are made available to craftspeople and marae. The Pu Hao Rangi Trust at Mangere is potentially another rich resource of expertise, practical advice and materials.

The NZCA notes that plantations of native plant species could be established to provide for Maori customary use.

5.5.4 Education and Increasing Awareness

It was evident from the majority of the responses to the NZCA's 1994 Discussion Paper that many New Zealanders have very little knowledge or understanding of Maori culture and priorities, of this country's history, of the Treaty of Waitangi and its contemporary interpretations, and of European cultural heritage. Many of the responses also showed a disconcerting lack of knowledge of contemporary ecological realities beyond the general assumption that icon species are endangered and must be protected. An emotional identification with native birds and bush was not necessarily based in any appreciation of the complex of factors actually impacting on species and ecosystems -- such as predation, competition, and habitat loss and fragmentation.

Some Maori have commented that the task of improving public awareness of Maori culture, traditions, history and modern realities should not be seen as a Maori responsibility -- this work is for the Crown and for non-Maori themselves. Others have stated that only Maori have the right to determine and express Maori culture and Maori views of the world; there is often angry scorn at efforts, however well-meaning, to interpret and explore Maori concepts and traditions.

Scientific information is also crucial to a realistic understanding of customary use and other conservation issues. Often valuable scientific information is available but not accessible -- either tucked away in a specialist academic library or presented in such abstruse technical jargon that ordinary people bounce right off it.

> *The NZCA notes that publicity and educational programmes could be established to increase public understanding of:*
>
> - *New Zealand ecology and conservation issues as they relate to customary use;*
> - *Maori and European cultural traditions of the natural environment and humans' place in nature; and*
> - *Treaty of Waitangi obligations as they pertain to conservation, including DOC's legal requirements.*

5.6 ADMINISTRATION

5.6.1 Committees and Structures

Many of the responses to the NZCA's 1994 Discussion Paper included comment and opinions on possible systems for administering Maori customary use.

There was widespread concern from NGOs, both national and district groupings, at the concept of regional or local committee systems considered in the NZCA's 1994 Discussion Paper. The feeling was that such systems would be over-complicated, too numerous and too expensive.

There was some feeling expressed in a number of the written submissions that the existing advisory committees managed by DOC were an appropriate system already serving the function of managing Maori customary use of native species and materials (refer 2.2.6 above). In one Conservancy local iwi reported that DOC's control of the allocations of available materials was advantageous in that its relative neutrality protected individual iwi representatives from pressure from craftspeople seeking materials.

However for many Maori respondents these DOC-managed systems were not satisfactory because:

-- they are a kawanatanga Crown-controlled system and do not reflect mana of tangata whenua;

-- they only advise and do not have full decision-making authority;

-- their advice can be and has in some regions been ignored by the Regional Conservator;

-- they do not include adequate representation of all iwi or hapu in the Conservancy region; and

-- NGO committee members and DOC staff can have a higher profile than some people feel is appropriate.

Maori also commented on the committee format discussed in the NZCA's 1994 Paper. Some people noted that Maori already have their own systems and structures, at marae and hapu levels and more widely, which could be useful without having to duplicate things. There was some concern that the success of any committee depended on the skills and expertise -- both with natural taonga and with social and human processes -- of the members. It was noted that members or representatives could change over time and that some continuity is essential.

Other Maori comment paid little heed to the committee idea at all, on the basis that any system or management structure must be developed with full tangata whenua input from the very outset. Any concept (even as briefly sketched as the 1994 Paper's concepts) put in front of Maori for their consideration was viewed with suspicion as a fait accompli, an imposition of the Crown, something which had already been decided upon by bureaucrats and preservationist NGOs. In

the climate of the Government's Fiscal Envelope proposals for the settlement of Treaty claims, and the nation-wide rejection of those proposals by iwi through early 1995, many Maori were scornful of any idea that had not evolved with full Maori participation.

The NGOs and many non-Maori respondents were also insistent that any management or committee system must include representatives of NGOs, DOC and ecological science as full members. The principle of public democracy was upheld -- the NGO groups argue that their role and duty in such processes is to represent the whole New Zealand public. Their concern is that responsible decision-making about management of publicly-owned species (refer 3.4.2 above) must be open, transparent and accountable, with full opportunity for input from the public, relevant expertise and interested groups. Assertions of rangatiratanga are not likely to counter or moderate these groups' deep concern about what they perceive as closed, exclusive processes.

The NZCA acknowledges that all interested groups are strongly determined to have a role in the development and subsequent implementation and operation of appropriate processes for Maori customary use. It seems that the actual forms and structures in which such processes will manifest themselves can only be determined by consultation and dialogue between tangata whenua and the various stakeholder groups.

The regional Conservation Boards are well placed to take the lead and facilitate these kinds of discussions. It is likely that addressing the issue of systems for customary use will help with the development of practical mechanisms for improved Maori participation in conservation management across a wider range of concerns, including protection of wahi tapu, restoration projects and pest control.

> *The NZCA would recommend that consultation hui/meetings are held between tangata whenua, the Department of Conservation, the Conservation Boards and conservation stakeholder groups to consider improvements for systems of administering Maori customary use.*

5.6.2 Accountability and Reporting

It is clear that whatever systems might be implemented for Maori customary use, adequate accountability frameworks will be necessary. Decision-making would need to be defendable and transparent to avoid destructive suspicion and criticism.

The Fish and Game Councils work to annual management plans for sportsfish and gamebird resources, prepared in accordance with a statutory public process, and approved by the Minister of Conservation. All Councils report to the Minister of Conservation and are audited by the Office of the Controller and Auditor-General in accordance with the requirements of the Public Finance Act.

5.6.3 Funding

The potential costs of a system of Maori customary use caused great difficulty for many respondents to the NZCA's 1994 Discussion Paper. There was most concern at the prospect of funding being diverted from other conservation priorities -- in particular endangered species projects and pest control -- for a new harvesting system. Most respondents were strongly concerned at the present constraints on conservation funding and adamant that Maori programmes should not cut into the limited resources available.

Maori were concerned that adequate resourcing must be allocated for consultation, management and distribution processes, and for restoration and pest control. As outlined in 2.2.18 above, Maori were concerned that their contributions of time, expertise and practical work should be valued and paid for. Some NGOs and many non-Maori would however resist direct allocation of funds to Maori. Some NGOs emphasise the voluntary contributions of their members to protection projects over the years.

The Fish and Game Councils model was referred to in some submissions. All the Councils' work is funded from licence fees paid each year by the anglers and hunters (refer 4.2.6 above). This kind of user-pays system would not be easy to reconcile with the concept that utilisation of natural taonga is a guaranteed right to iwi under Article II of the Treaty.

The Public Good Science Fund for research work and the development of model projects was mentioned as another potential way of establishing customary use and restoration programmes.

Another option could be the negotiation of funding as part of the provisions for settlement of Treaty claims.

It is difficult to establish just what levels of funding would actually be required -- different sums would be necessary depending on the systems in place and level of use undertaken. How long is a piece of harakeke? Regional differences may create inconsistencies between Conservancies. Until there is greater clarity on possible systems and administrative frameworks, and on the levels of use sought, it seems that concern over funding will only confuse the issue and generate further hostility and resentment amongst those opposed to Maori customary use.

5.6.4 National, Regional and Local Levels

A recurring theme in the feedback on the NZCA's 1994 Discussion Paper was the question of finding a workable balance between centralised national control and devolution out to regional and local levels.

Characteristically many of the respondents arguing for preservation of biodiversity insisted on strong central government control. Many people argued that only national government-managed systems could give reliability and consistency and thus avoid losses and degradation of species. There was considerable distrust of local ad hoc decision-making and of local expertise and professionalism.

However Maori respondents and a number of others recognised the value of working at district and local levels for a variety of reasons:

-- recognition of the mana of tangata whenua;

-- flexibility to deal with particular local or regional priorities and issues -- different things are going to be important in different regions and areas;

-- flexibility to focus on the particular species and ecosystems that are traditionally significant for each iwi and hapu;

-- greater commitment and participation of local communities, especially in comparison to the defiance and resentment of many externally imposed systems and restrictions;

-- closer involvement of local people with sites, habitats, ecosystems processes, and closer more familiar knowledge of key ecological factors; and

-- efficiency of utilising existing community structures and systems, especially in rural areas where traditional marae communities are stronger.

Many Maori argued that conservation management systems should work with local communities at the hapu and marae level. There was some feeling that in some places the wider iwi and runanga structures are not always appropriate for a range of reasons including the perceived inefficiencies of some of these structures, their domination by males and external political agendas, and difficulties of communication with local communities.

The NZCA recognises the importance of strong purposeful structures at both the national level and the regional and local levels. Consistency must be balanced with flexibility, the collective consensus with meaningful participation.

Some of the tensions between the two levels seem anyway to be more apparent than real. What is required at the national level -- overall goals, an ethic or agreement amongst several ethics, guidance and advice, and some kind of accountability reporting system -- is essentially different from what's necessary at the regional and local levels -- the more practical business of sorting out local priorities and objectives, methods and techniques, knowledge and skills, resources and networks, and getting on with the job.

Given that debate is continuing, the NZCA recognises that any system of administering Maori customary use of native species would need to be managed through a system that:

- *ensures national consistency and guidance within a framework defined by law and informed by science;*
- *recognises the differences and distinctiveness of regional and local systems, both natural and human;*

- *allows for the exercise of regional and local input in the application of the guidelines; and*
- *encourages maximum communication between the different levels and sectors within the system, including the interests of science and the wider community.*

6 CONCLUSIONS

At the request of the Minister of Conservation, the NZCA has undertaken an extensive investigation into the question of Maori customary use of native plants, wildlife and other traditional materials.

The NZCA's first Discussion Paper in 1994 provoked a wide diversity of responses, many of which were notable for their intensity, vehemence and passion. In written submissions and in statements at meetings and hui, the NZCA heard the strong feelings and the concerns of New Zealanders about this issue.

The present situation regarding Maori customary use of natural materials is complex. A range of different statutes govern the management of different species and different categories of land. The relationships between the laws and the principles of the Treaty of Waitangi are continually evolving, as new cases and instances develop New Zealand's interpretation and application of the Treaty in contemporary contexts. Questions of justice, rights, rangatiratanga and the role of the Crown must be taken into account when considering an issue such as Maori customary use, as well as questions of conservation, ecology and species survival.

Many New Zealanders are deeply concerned at the diminished state and vulnerability of our natural heritage. Many species and their habitats have already suffered a cumulative process of compromise and degradation. For these species there can obviously be no prospect of sustainable use in the foreseeable future. The immediate priority for both Maori and Non-Maori is to ensure the long-term survival and well-being of these plants and animals and the natural environments on which they depend.

The responses to the NZCA's 1994 Paper revealed a wide diversity of philosophies and beliefs about the natural world and appropriate human relationships with it. These frameworks of values range from the preservation ethic -- a belief that all indigenous wild things must be absolutely protected and kept inviolate from human disturbance and use -- to an ethic of sustainable use, which locates humans and their needs within the natural world with the responsibility for wise and careful management of resources and impacts.

There is also considerable common ground across the spectrum of views. Most respondents share a strong commitment to conservation, and a deep concern at the potentials for further damage and loss. They want to be involved and to have their priorities recognised, their views heard, and their knowledge taken into account.

For many aspects of this issue, New Zealand's knowledge is as yet limited and incomplete. More work needs to be done in ecological and scientific research, to understand more fully the realities and requirements of species and ecosystems, and to recognise appropriately and protect Maori traditional environmental knowledge. More work needs to be done to build and strengthen the public's understanding of the cultural, social and historical dimensions. Both Maori and non-Maori have rich, complex and powerful traditions with the natural environment.

The NZCA has worked through the issue carefully and comprehensively, exploring the different views and opinions on different aspects of conservation and use, debating and balancing the various priorities and values involved. This process has now reached the stage where the NZCA can take the issue out to the New Zealand public again for further discussion and feedback, before reporting finally to the Minister.

The NZCA's investigation has identified some positive things that can be done to make progress on this issue. The resolution of the statutory technicality regarding the ownership of crafted items would be an enormously significant step for Maori. At present cloaks, carvings and other traditional crafted taonga remain technically the property of the Crown. The NZCA considers that the legislation should be amended to recognise the mana of tangata whenua and give ownership in perpetuity to the iwi or to the marae where the items are held.

Another constructive initiative could be the establishment of plantations of traditional weaving materials -- flaxes, kiekie and pingao, rongoa plants, and, for the longer term, totara and kauri for carving -- to ensure that Maori needs for these resources can be met without disturbing resources in the wild. Plants for restoration and enhancement projects could also be grown, and iwi and marae could be involved more closely in practical conservation work at all levels.

Thirdly, more work is needed to advance the dialogue and increase understanding of the values and traditions that underpin Maori and non-Maori approaches to conservation. Many issues and questions -- concerning customary use, traditions and values, and the wider context of Maori and non-Maori relationships with the natural world -- need to be given careful attention before any resolution will be possible. Maori must have meaningful participation in these processes of discussion and education. Other interested groups, particularly scientists and environmentalists, must also be able to contribute and be fully involved.

Ko koe ki tena, ko ahau ki tenei kiwai o te kete.

With you on that handle, and I on this handle, together we will lift the basket.

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The NZCA gratefully acknowledges the generous advice, suggestions, comments, information and assistance provided by a wide range of people and organisations -- the collective, cumulative nature of our knowledge and understanding is itself an important principle.

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8 GLOSSARY

Aotearoa -- New Zealand

atua -- the gods

biodiversity -- the variety of all life on Earth, including plants, animals and micro-organisms, the genes they contain and the ecosystems they form

CMP -- Conservation Management Plan -- a ten-year plan for a defined area managed for conservation purposes -- compulsory for each National Park

CMS -- Conservation Management Strategy -- a ten-year management plan for all conservation lands and resources in a region

Director-General -- the Chief Executive of the Department of Conservation

DOC -- the Department of Conservation

ecosystem -- a biological community and the physical environment associated with it

habitat -- the normal locality of a plant or animal -- the place or kind of place where it is usually found, where conditions are best for it and its particular needs are met -- often characterised by physical features or by dominant plant types

haka -- ritual dance, a formal challenge in chant and movement

hakoakoa -- skua, *Catharacta lonnbergi*

hapu -- family or district groups, communities

harakeke -- flax, used in weaving, *Phormium tenax*

Haumiatiketike -- god of uncultivated foods eg. bracken fern root

hinau -- tree, *Elaeocarpus dentatus*

hui -- gatherings, discussions, meetings, usually on marae

huia -- extinct wattlebird, *Heteralocha acutirostris*

ihi -- power, authority

iho -- spiritual essence

inanga -- whitebait, *Galaxias spp.*

iwi Maori -- Maori tribal groups

kahikatea -- forest tree, *Dacrycarpus dacrydioides*

kahu -- harrier hawk, *Circus approximans*

kahu kiwi -- kiwi-feather cloak

kaitiaki, kaitiakitanga -- traditional responsibilities, kaupapa and methods for tangata whenua to take care of the resources in their rohe and the mauri of those resources

kai -- food

kaimoana -- seafood

kaka -- forest bird, *Nestor meridionalis*

kakahu -- korowai -- cloaks with feathers of native birds woven into them

kakapo -- flightless endangered parrot, *Strigops habroptilus*

karaka -- tree with large orange berries naturally toxic but traditionally prepared by Maori through a complex process for use as food, *Corynocarpus laevigatus*

karakia -- prayer, incantation expressing respect

kareko -- karengo -- edible seaweed, “sea lettuce”, *Porphyra columbina*

karoro -- common black-backed gull, *Larus dominicanus*

kauri -- Northern forest tree, the timber especially valued for carving, *Agathis australis*

kaumatua -- elder, iwi or hapu decision-maker

kaupapa -- plan, strategy, approach, fundamental principles

Kaupapa Atawhai Manager -- DOC Conservancy manager responsible for liaison with iwi

kawa -- protocols, correct ways of doing things

kawakawa -- rongoa tree, *Macropiper excelsum*

kawanatanga -- government, the right of the Crown to govern and make laws

kawau -- black shag, *Phalacrocorax carbo*

kea -- alpine parrot, *Nestor notabilis*

kereru -- wood-pigeon, *Hemiphaga novaeseelandiae*

kete -- woven bag

kiekie -- epiphytic plant used in weaving, *Freycinetia baueriana*

kiore -- Polynesian rat, brought to Aotearoa in the ancestral waka, *Rattus exulans*

kiwi -- flightless bird, symbol of New Zealand identity, *Apteryx spp.*

koha -- gift, visitor's contribution

kokako -- forest wattle-bird, *Callaeas cinerea*

korero -- discussion, talk, debate

koromiko -- rongoa plant, *Hebe salicifolia, H. parviflora*

korowai -- kakahu -- cloaks with feathers of native birds woven into them

koura -- freshwater crayfish, *Paranephrops planifrons*

kuaka -- godwit, *Limosa lapponica*

kuia -- older woman in the hapu or whanau

kukupa -- wood-pigeon, *Hemiphaga novaseelandiae*

kumara -- sweet potato, *Ipomoea batatas*

kuri -- Polynesian dog, *Canis familiaris*

kuta -- lake reeds, strong weaving material highly prized for floor-matting, *Scirpus lacustris*

mahinga kai -- traditional places for food-gathering and other resources

mamaku -- tree fern, *Cyathea medullaris*

mana -- respect, dignity, status, influence, power

mana whenua -- traditional status, rights and responsibilities of hapu as residents in their rohe

manuka -- tree with important traditional medicinal uses, *Leptospermum scoparium*

manukai -- birds preserved in the traditional way

marae -- local community and its meeting-place and buildings

matauranga Maori -- Maori traditional knowledge

mauri -- essential life force, the spiritual power and distinctiveness which enables each thing to exist as itself

miro -- tree, the berries of which are a popular food for kereru and flavour the birds' flesh, *Prumnopitys ferruginea*

moa -- extinct large flightless birds, *Dinornis spp.*

moana -- the sea

moko -- mokopuna -- grandchildren, descendants

morepork -- ruru -- native owl, *Ninox novaeseelandiae*

muru -- punishment, confiscation of resources

NGO -- non-government organisation -- particularly the environmental organisations including the Royal Forest and Bird Protection Society and the Federated Mountain Clubs

nikau -- indigenous palm tree, *Rhopalostylis sapida*

NZCA -- the New Zealand Conservation Authority

Pakeha -- New Zealander of non-Maori descent

Papatuanuku -- Papa -- the ancestral elemental Mother, the earth, the land

parera -- grey duck, *Anas superciliosa superciliosa*

paua -- shellfish, *Iris haliotis*

pawhera -- dried fish

piharau -- lamprey, *Geotria australis*

pikopiko -- fern fronds

pingao -- coastal dune plant used in weaving, *Desmoschoenus spiralis*

piopio -- thrush, *Turnagra capensis*

piupiu -- flax skirt

poha -- bag made of kelp

pou -- stick, post, pole

pounamu -- greenstone

puha -- leafy green vegetable plant, *Sonchus oleraceus*

pukeko -- swamp bird, *Porphyrio melanotus*

putangitangi -- paradise shelduck, *Tadorna variegata*

rahui -- protection of a place or species by forbidding access or taking of resources

rangatira -- chief, principal leader of an iwi or hapu

rangatiratanga -- tino rangatiratanga -- rights of autonomous self-regulation, iwi or hapu authority to make decisions and control resources

Ranginui -- Rangi -- the ancestral elemental Father, the sky

raranga -- weaving

raupo -- bullrushes, *Typha orientalis*

Regional Conservancy -- regional office and administrative unit of DOC -- there are currently 14 throughout the country

Regional Conservator -- excutive manager responsible for a Conservancy of DOC

rimu -- forest tree, *Dacrydium cupressinum*

rohe -- geographical territory of an iwi or hapu

rongoa -- plants traditionally used for medicinal purposes

Rongomatane -- god of agriculture and cultivated foods eg. the kumara

rourou -- small woven basket

runanga -- committee of senior decision-makers of an iwi or hapu

species -- a grouping or kind of plant or animal -- a group of closely allied, similar and mutually fertile individuals, showing consistent differences from other groups

Tai Tokerau -- Northland region

takahe -- flightless bird, presumed extinct but rediscovered in 1948, *Notornis mantelli*

takapu -- gannet, *Sula bassana serrator*

Tane -- Tane Mahuta -- god of the forest, and of all forest plants and animals

Tangaroa -- god of the sea and all sea creatures

tangata whenua -- people of the land, Maori people

tangi -- funeral

taniwha -- water monster, spirit of a river or lake

taonga -- valued resources, assets, prized possessions both material and non-material

tapu -- sacredness, spiritual power or force

tauhou -- silver-eye, *Zosterops lateralis*

tawa -- forest tree, *Beilschmiedia tawa*

Tawhirimatea -- god of the winds

Te Papa Atawhai -- the Maori name for DOC

Te Puni Kokiri -- the Ministry of Maori Development

te reo Maori -- the Maori language

ti -- ti kouka -- cabbage tree, *Cordyline australis*

tikanga -- customs, traditional correct ways of doing things

tinana -- the physical body

tipuna -- tupuna -- ancestors

titi -- muttonbirds, *Pterodroma cooki*

titoki -- tree, *Alectryon excelsus*

tohora -- whales

toroa -- albatross, *Diomedea epomophora*

totara -- forest tree, important for carving timber, *Podocarpus totara*

Treaty of Waitangi -- founding document of the New Zealand nation, signed at Waitangi and other places throughout the country in 1840

tuatara -- the single remaining species of an ancient reptile family which has changed little since the age of the dinosaurs, *Sphenodon punctatus*

tui -- forest bird, *Prosthemadera novaeseelandiae*

Tumatauenga -- god of warfare and human affairs

tuna -- eels, *Anguilla spp.*

tupuna -- tipuna -- ancestors

turangawaewae -- home, ancestral area or marae, literally “a place to stand”, a place where you and your family belong and have rights and duties

wahi tapu -- special and sacred places

wairua -- spirit, soul

waka -- canoe

wananga -- schools of traditional learning

wehi -- fear, awe

weka -- flightless woodhen traditionally commonly harvested by Maori, *Gallirallus australis*

whakapapa -- genealogy, ancestry, identity with a place and hapu

whakatauki -- proverbs, sayings

whanau -- whanaunga -- family groups

wharenui -- meeting-house on the marae

whenua -- the land -- also the placenta buried to connect the newborn child and the land

9 THE TREATY OF WAITANGI

The text in English -- signed by 30 chiefs and by William Hobson, Consul and Lieutenant Governor:

Article the First:
The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second:
Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third:
In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection and imparts to them all the Rights and Privileges of British Subjects.

The text in Maori -- signed by 512 chiefs and by William Hobson, Consul and Lieutenant Governor:

Ko te tuatahi:
Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te tuarua:
Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga Hapu ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru:

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini. Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

A literal translation of the Maori Version of the Treaty: NZ Court of Appeal 29 June 1987, translation by Professor I H Kawharu:

The First:

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government over their land.

The Second:

The Queen of England agrees to protect the Chiefs, subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The Third:

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.